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Court : Allahabad

Decided On : Feb-12-1924

Reported in : AIR1924All396; 79Ind.Cas.429

Judge : Mukerji, J.

Appellant : Ram Sarup

Respondent : Hardeo and ors.

Judgement :

Mukerji, J.

1. The facts which have given rise to this second appeal are briefly these:

2. There is an enclosure No.43, in which there are, it seems, several rooms or houses. The appellant who was the plaintiff in the Court below, has been found to be the owner of the entire enclosure. Two of the rooms or buildings in this enclosure are the subject-matter of the suit. In a portion of this enclosure, the defendants and their predecessors were living. It has been found by the Court below that their possession was permissive. The parties, it appears, quarreled and fought over the possession of the defendants and one of the parties on the side of the defendants sustained grievous hurt. There was a criminal case and a compromise was arrived at on the 5th of June 1918. It was embodied on a paper bearing stamp-duty of eight-annas and was not registered. It was stated in the

compromise-deed that room No. 126 was given up by the defendants and that they were given room No. 129 in lieu of the same. It was further stated and agreed that the defendants would continue in possession of room No.128 'as before.' The finding is that on this compromise being entered into, the prosecution was dropped and evidently the permission of the Court was obtained to the compounding of the offence. For the compromise was filed in the Criminal Court. Just on the last day of the expiry of three years, the plaintiff filed this suit for recovery of possession of the rooms Nos. 128 and 129. He pleaded that the compromise had been obtained by the exercise of undue influence. But that point has been given up in appeal in this Court. The only point that has been argued is this. The compromise was really a document by which the plaintiff transferred his title to the property in favour of the defendants. The value of the property has been found roughly, by Court below, to be about Es. 500. Such a transfer could only be 'effected by mean's of a registered document under the provision of the Registration Act, Section 17 and Section 54 of the Transfer of Property Act. The document being unregistered it really conveyed no title to the defendants and, therefore, the plaintiff is entitled to get back what was really his own property.

3. The Courts below dismissed the suit holding that the plaintiff was estopped from claiming the property back, although the title still remains with him.

4. I have to see whether this proposition of law is correct. It having been found that the property originally belonged absolutely to the plaintiff and it having been found that the possession of the defendants was only permissive there can be no doubt that the defendants are bound to leave the property when the plaintiff asks them to do so. If any document is pleaded in bar of such a suit that document must be registered under the law already quoted, even if we take the transaction as one by which the plaintiff relinquished his title in favour of the defendants, the document would come under Clause (b) of Section 17 of the Registration Act and his title to it can be extinguished only by a registered document.

5. The document being unregistered is inadmissible in evidence under Section 49 of the Registration Act. Indeed, the defendants are precluded from saying that there is a document in their favour by which the title of the plaintiff has been

extinguished. Further, they are not permitted to prove the agreement by oral evidence because the agreement, such as it was, had been reduced into writing (Section 92 of the Evidence Act). Such being the case there really remains nothing to prevent the plaintiff from recovering.

6. For the respondents reliance as been placed on the case of *Salamat-ul-Zamani v. Masha Allah Khan* 42 Ind. Case. 645 : 16 A.L.J. 98 : 40 A. 187, a decision by two learned Judges of this Court. In that case it appears that there was an exchange of property between two parties and that exchange had been acted upon. After some time one of the parties to the exchange wanted to go back over the transaction and sought the recovery of the property which he had given away. There was no registered document to record the transaction. It was held by Waish, J., that the rules of equity would prevent the plaintiff from succeeding. Piggott, J., was of opinion that the title of the plaintiff was not lost but on equitable principles the Court would not give its aid in favour of the plaintiff. In my opinion that ruling has no bearing on the facts of this case. In the case before me, the defendants gave nothing to the. plaintiff in the shape of any tangible property according to the finding of the Court below. The property which they purported to exchange was the property of the plaintiff himself. The entire enclosure has been found to be the property of the plaintiff. All the consideration that the plaintiff got for purporting to give away his two rooms Nos. 128 and 129 was the dropping of. the prosecution that was going on against him. This was no doubt a good consideration and would have created a valid consideration for a sale. But the question is, where there is no sale-deed, can the mere fact that a consideration passed operate to create a title? To put it in simple terms, suppose a man agrees to sell for a sum of Rs.500 his house. He receives the consideration and hands over the property. Can he not, in the absence of a registered sale-deed, go back over the contract and say here is the sum of Rs. 500 which you gave to me, take it and give me back my property. If he could not be allowed to say so, the result would be an extension of the law, as embodied in Section 54 of the Transfer of Property Act. It lays down that in the case of property of the value of Bs. 100 or more, a sale could be effected only by a registered instrument. In the case of property of lesser value a sale could be effected by delivery of possession.

7. If we say that the mere fact that possession had been delivered and the sale price had been paid, was sufficient for the creation of a title or for preventing the plaintiff from getting back his own property, shall we not really be legislating? The Calcutta High Court in a case directly on the point, Jagadbandhu Saha v. Badha Krishna Pal 4 Ind. Cas. 414 : 36 C. 920, held that the rules of equity would not apply where there were clear provisions of law to the contrary. In the case of Umrao Singh v. Lachhman Singh 10 Ind. Cas. 285 : 8 A.L.J. 465 : 15 C.W.N. 497 : 13 P.C.L.J. 519 : 9 M.L.T. 507 : 13 Bom. L.R. 404 : 21 MN.L.J. 637 : 33 A. 344 : 14 Q.C. 38 133 : I.A. 104 : (1911) 2 M.W.N. 242 (P.C.). there was a compromise in the nature of a family settlement. It had been partially acted upon as the son of one of the parties to the contract obtained arrears of maintenance on foot of it, but their Lordships of the Privy Council had no hesitation in holding that the compromise failed so far as immoveable property was concerned simply because the document had not been registered under Act of 1877, Section 17. That in India a mere contract does not create any equitable interest in immoveable property was held in the Privy Council case of Maung Shwe Goh v. Maung Inn 38 Ind. Cas. 938 : 44 C. 542 : 15 A.L.J. 82 : 21 M.L.T. 718 : (1917) M.W.N. 117 : 32 M.L.J. 6 : 25 C.L.J. 108 : 19 Bom. L.R. 176 : 21 C.W.N. 500 : 5 L.W. 532 : 10 L.T. 69 : 44 I.A. 15 P.C.

8. The title being with the plaintiff, as I have said, he must succeed. But he must also put the defendants in the same position in which they would have been in, if there had been no compromise. The compromise was to the effect that they would have a certain consideration for dropping the prosecution. If the consideration had been a certain sum of money there would have been no difficulty in putting the plaintiff to terms. He could have got his decree for possession on payment of the sum of money which was the consideration. In this case the prosecution was dropped in consideration of the two houses which have been found to have been the absolute property of the plaintiff. There was no dear issue before the lower Court as to the actual value of the houses. This point, therefore, should now be decided. It is my opinion that the plaintiff would be entitled to recover the houses only on payment of an equivalent in money of the same.

4. I remand the following issues for trial to the Court below:

5. What is the value of the two houses Nos. 128 and 129 in enclosure No.43.
6. Fresh evidence would be allowed on behalf of the parties. The finding would be returned in two months. Ten days time is allowed for filing objections.

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