SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Abdul Rasheed and Others Vs. Anwar Ahmad and Others

Abdul Rasheed and Others Vs. Anwar Ahmad and Others

SooperKanoon Citation : sooperkanoon.com/484742

Court : Allahabad

Decided On : Sep-06-2000

Reported in : 2000(4)AWC3355

Judge : Yatindra Singh, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 100 - Order XLI, Rule 27; Evidence Act, 1872 - Sections 65, 74(2) and 111; Registration Act, 1908 - Sections 57(5); Land Acquisition Act, 1894 - Sections 57A

Appeal No. : Second Appeal No. 2448 of 1979

Appellant : Abdul Rasheed and Others

Respondent : Anwar Ahmad and Others

Advocate for Def. : Navin Sinha, Adv.

Advocate for Pet/Ap. : P.S. Tripathi, ;G.D. Srivastava, ;K.S. Chaudhary, ;A.S. Awasthi and ;Gyaneshwar Nath, Advs.

Judgement :

Yatindra Singh, J.

1. Property is one of the causes of family feauds--greed is another. Dispute among the family members in this case is perhaps because of both. This is how it has

come about.

The facts

2. Abdul Samad is the common ancestor. He had four sons : three of them are Abdul Rasheed. Abdul Hameed and Abdul Sattar (the appellants) and Abdul Majeed isfourth one. Abdul Majeed has five sons (the contesting respondents). Abdul Samad and his son Abdul Majeed were co-tenure holders in plot No. 79 (area 5 biswa) of village Tanda. They together executed a sale deed dated 3.7.1969 (Ex. 16) of this property for Rs. 1.500 in favour of one Abdul Majid--a stranger to the family. (Abdul Majid is different person than Abdul Majeed may not be confused with him.) Abdul Samad was apart from other properties, exclusive owner of plot No. 168 (area 9 bigha 9 biswa) of village Muradpur. He also executed a second sale deed (Ex. 1) on the same day, i.e., 3.7.1969 of this property for Rs. 10,000 in favour of the contesting respondents--his grandsons from his son Abdul Majeed.

3. Abdul Samad filed the present suit on 28.8.1969 against the contesting respondents for cancellation of the sale deed in their favour. The Plaint allegations are that:

* Abdul Samad is 85 years old and is infirm. He was living with his son Abdul Majeed and the contesting respondents at the time of the impugned sale deed ;

* The contesting respondents and their father Abdul Majeed were in position of his active confidence and dominate hiswill ;

* They have obtained the impugned sale-deed (Ex. 1) by committing fraud on him and no consideration was given to him.

Abdul Samad, however, did not challenge the other sale deed of the same day in favour of Abdul Majeed.

4. The contesting respondents contested the suit alleging that :

* No fraud was committed on Abdul Samad and he was given Rs. 10,000 as consideration for the sale deed.

* The suit is not filed by Abdul Samad but is by the appellants (their uncles--the other three sons of Abdul Samad).

* Abdul Samad has executed one more sale deed (Ex. 16) on the same day that is not challenged. It shows that he was mentally fit and has executed the sale deed after fully understanding it.

* The appellants have also obtained sale deeds from Abdul Samad about the same time and this shows that he (Abdul Samad) was mentally fit and was capable of understanding the transactions (paragraph 17 of the written statement).

5. Abdul Samad died on 29.10.1969. His three sons (the appellants) filed a substitution application on 17.11.1969. It was alleged that rights of Abdul Samad have devolved on his four sons but as the fourth son (Abdul Majeed father of the contesting respondent) has refused to become plaintiff, the appellants be substituted as the plaintiffs and Abdul Majeed be made defendant No. 6. This substitution application was allowed accordingly.

6. The trial court framed 5 issues and decreed the suit on 5.9.1974. The contesting respondents filed appeal. They had taken a plea in their written statement that Abdul Samad had executed sale-deeds in favour of the appellant but did not file any evidence in support of the same before the trial court. In the appeal, they filed an application under Order XLI, Rule 27 of the Civil Procedure Code (the C.P.C.) (paper No. 19-C) along with certified copies of 4 sale deeds executed by Abdul Samad in favour of the appellants. Out of these 4 sale deeds, one sale deed is dated 8.8.1968 and the other three sate deeds are dated 14.8.1969 : One sale deed is prior to the impugned sale deed and three others are subsequent to it. The contesting respondents also filed an application for the amendment of their written statement (paper No. 28-C) setting up a case that:

* Their grandfather Abdul Samad wanted to distribute the property among his four sons ;

* He has executed these sale deeds by way of family arrangement to them ; 3/4 of the property has been given to the appellants and 1/4 has been given to the

contesting respondents--sons of the fourth son.

7. The appellate court dismissed the applications mentioned in the preceding paragraph on 28.9.1976. The District Judge dismissed the revision of the contesting respondents on 31.1.1977. Thereafter the appeal of the contesting respondents was allowed on 21.7.1988 : one additional issue, namely, the sixth issue was framed ; and the case was remitted back to the trial court for decision on merits.

8. The trial court this time dismissed the suit on 6.11.1978. The appellants' appeal was also dismissed on 1.8.1979. Hence the present appeal.

Submissions of the parties

9. I have heard Sri G. D. Srivastava, senior counsel for the appellants and Sri Vipin Sinha, counsel for the contesting respondents. Sri Srivastava, counsel for the appellants raised following question contained in ground No. 5 of the memo of appeal.

'(5) The defendants (The contesting respondents) stood to Abdul Samad in a fiduciary relationship and in a position of active confidence with the consequence that the burden to prove the fairness and genuineness of the transaction rested on the defendants. (The contesting respondents) and not on the plaintiffs (The appellants).'

10. Sri Sinha, counsel for the contesting respondent made following submissions :

(i) The Court while admitting this second appeal has not framed substantial question of law on the ground No. 5. They should not be permitted to raise it.

(ii) The question of burden of proof loses its importance where the parties have led their evidence. The Courts below have judged the relevant issue on the evidence on record and have recorded a finding in favour of the contesting respondents. It cannot be set aside in this second appeal.

(iii) in case the Court permits the aforesaid question and finds substance in it then-

* The validity of the orders rejecting the applications to take additional evidence and amendment may also be seen.

* These orders are wrong and they should be set aside.

* The certified copies of the registered sale deeds are admissible and should be taken on record without any further proof of execution.

Orders rejecting additional evidence and amendment of the written statement.

11. The submission of the appellants and the first two submissions of the contesting respondents are Interconnected and will be dealt together. But before deciding them. I would like to say few words about the third submission advanced by the contesting respondents on the orders rejecting the application for additional evidence and the amendment application.

12. The contesting respondents had filed certified copies of the sale-deeds in favour of the appellants. These sale deeds were executed about the same time as the impugned sale deed : one was before it, and three were after it. These sale deeds, if admitted, would have shown that Abdul Samad was not so infirm as not to understand the nature of transaction and wanted proper distribution of his property among his descendants. These documents werenecessary for deciding the case. To say that there is no substantial cause to admit them is an understatement. The order rejecting amendment application is correct but 1 have my reservation about the orders passed by the Courts below on 28.9.1926 and 31.1.1977 rejecting the application for taking additional evidence on records. I would have taken my reservation to its logical conclusion by setting them aside but I am not doing so, as I am not impressed with the submission of the appellants on the merit of the second appeal.

Substantial question of law can be framed at the time of hearing.

13. Sub-section (5) of Section 100 states that a second appeal may be heard on the substantial question framed at the time of admission of the second appeal. Proviso to this sub-section empowers a Court to hear appeal on any other substantial question for the reasons to be recorded. This can only be done

provided the case involves such a substantial question.

Substantial question of law?

14. What is a substantial question of law? it is a question of law ; it need not be question of general or public importance (Section 100 of the C.P.C. does not mention these words) but it has to be substantial to the rights of the parties. It is not an academic question and if answered in favour of the appellant, it should affect the rights of the parties and the judgment.

15. The question raised by counsel for the appellants is undoubtedly a question of law, but whether it will affect the judgment is another question.

Old and infirm--Burden of proof:

16. Abdul Samad was 85 years of age and was living with his son Abdul Majeed and the contesting respondents at the time of execution of the impugned sale deed. Sri Srivastava counsel for the appellants has brought to my notice Section 111 of the Evidence Act and submitted that:

* The contesting respondents and their father Abdul Majeed stoodin a position of active confidence of Abdul Samad as he was old, infirm, and living with them.

* They were in a position to dominate the will of Abdul Samad.

* in view of Section 111 of the Evidence Act, the burden was on the contesting respondents to prove the good faith of the impugned sale deed. The Courts below wrongly placed the same on the appellants.

17. The law normally presumes that deeds duly executed are valid and it is upon the person challenging its validity to prove the same. Section 111 of the Evidence Act shifts the burden on the other persons if they stood in a position of active confidence of the executor. This principle was initially applied to pardanashin ladies, who were in such position and the burden was upon other side to satisfy the good faith in the transfer transaction effected by them. This principle was so stated by the Apex Court in Kharbuja Kuer v. Jangbahadur Rai :

'In India pardanashin ladies have been given a special protection in view of the social conditions of the times ; they are presumed to have an imperfect knowledge of the world, as, by the pardah system they are practically excluded from social intercourse and communion with the outside world-

As regards documents taken from pardanashin women the Court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the documents to which he has affixed his name does not apply in the case of a pardanashin woman.

The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not her physical act but also her mental act. The burden can be discharged not only by providing that the documents was explained to her and she understood it but also by other evidence, direct and circumstantial.'

18. This principle regarding pardanashin ladles was extended to illiterate and ignorant ladies though not pardanashin. And was further extended to old. Infirm, ignorant, and mentally deficit. It is applicable in the present case also. But was the burden of proof wrongly placed in this case?

Burden of proof loses importance when parties have led evidence.

19. The question of burden of proof is important in the early stage of a case. It may assume importance where no evidence is led on the question in dispute by either side ; in such an event the party on whom the burden lies to prove a fact must fall. Where, however, evidence has been led by the contesting parties on the question in issue, abstract considerations of burden of proof are out of place : truth of the case should be seen on the evidence led by the parties.

20. The relevant issue in this case is issue No. 3. It is as follows :

'Whether the impugned sale deed dated 3.7.1969 is liable to be cancelled as alleged in para 7 ofthe plaint.'

The parties adduced their evidence in respect of their case before the Court. The appellants apart from other witnesses produced one Abdul Haque (P.W. 3) (witness of the appellants) who is an attesting witness to the two sale deeds executed on 3.7.1969, i.e., the sale deed in favour of Abdul Majeed that is not challenged and the impugned sale deed. The trial court--without placing burden upon the appellants--on the basis of the evidence on record and the statement of P.W, 3 (witness of the appellants) has held that : Abdul Samad had received consideration, and had executed the sale deed. The trial court has decided the issue on the basis of evidence produced before him as he ought to have done in case where parties had led evidence.

21. it is true that the appellate court at one place has stated that :

'The question which now arises is whether Abdul Samad had actually intended to execute the sale deed in favour of his grand-sons or whether he never Intended to execute that document, but his thumb impression was taken on it fraudulently by his son Abdul Majeed. The burden is obviously on the plaintiff-appellants to establish that the document in question was got executed fraudulently.'

But this was in answer to the question posed by the appellants :

'In this appeal, it has been asserted on behalf of the plaintiffappellants that the evidence on record was sufficient to establish that the Impugned sale deed was got executed by playing fraud upon deceased Abdul Samad and that no consideration was paid to him'.

This does not mean that burden was wrongly posed especially when the appellate court has also recordedthat:

'However, from the plaintiffs evidence itself, it is clear that he (Abdul Samad) could at that time properly understand as to what he was doing and could manage his affairs. It is admitted that Abdul Samad had agreed to execute a sale deed in favour of P.W. 2 Abdul Majeed in respect of five biswas of land situate in another

village.

If Abdul Samad was in fit mental condition to understand the contents of one document executed on 3.7.1969. He could obviously be in a fit mental condition to understand the contents of the second appeal documents also executed on the same day.'

The appellate court was affirming the judgment of the trial court. In view of this, the Courts below did not place the burden wrongly on the appellants. They have weighed the evidence and drawn conclusions from it, which they ought to have done as both sides had led evidence. The question raised by Sri Srivastava, counsel for the appellants, is not a substantial question. It neither arises in this case nor affects the rights of the parties or the judgment. I refuse to grant permission to raise this question.

Remaining questions of law :

22. The appeal was admitted on two substantial questions of law mentioned in the ground Nos. 7 and 8. There is no merit in them. SriAnwar Ahmad was examined as D.W. 1 and was cross-examined by the appellants. His alleged statement before the mutation court was not put to him in cross-examination. The Courts below have rightly refused to take it into account. The Courts below have also held that the defendant No. 1 could have paid the consideration from the sources disclosed by him. There is no illegality in this finding.

CONCLUSION

23. The question mentioned in ground No. 5 is not a substantial question. It neither arises in this case, nor substantially affects the rights of the parties or the judgment. I refuse to grant permission to raise it. The second appeal has no merit. It is hereby dismissed with costs. As the second appeal is being dismissed, there is no necessity to consider the illegality of the orders passed by the Courts below dated 13.12.1976 and 31.1.1977, which are against the contesting respondents.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com