

Mange and ors. Vs. Shanker

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Court : Punjab and Haryana

Decided On : Nov-16-1972

Reported in : AIR1973P& H372

Judge : C.G. Suri, J.

Acts : Indian Registration Act - Sections 73

Appeal No. : Second Appeal No. 274 of 1969

Appellant : Mange and ors.

Respondent : Shanker

Judgement :

1. The simple question for decision in this regular second appeal is whether Shri Shanker plaintiff-respondent intended to make an outright sale of his land in defendant-appellant's favour when he subscribed his thumb-impression to the document, Exhibit D. 1, dated 14-3-1964 or whether his intention only was to further mortgage the land to raise additional funds. The defendant-appellants had secured compulsory registration of this document under Section 73 of the Indian Registration act because the plaintiff-respondent had taken the earliest opportunity, after the document had been read out to him, to object that he had not agreed to sell the land.

2. Shri Shanker plaintiff-respondent is an illiterate villager, as may appear obvious from the fact that he does not sign such important documents. The first suspicious circumstance relating to this transaction is that the non-judicial stamp for the deed which should have been purchased by the transferor was said to have been purchased for him by the Scribe. The purpose for which the stamp paper is purchased is to be stated by the purchaser and the stamp-vendor is supposed to mention that purpose in an endorsement made on the back of the stamp paper. The purchaser has sometimes to sign or thumb mark the endorsement and also an entry in the stamp vendor's register. The funds for the non-judicial stamp had also been supplied in this case by one of the appellants in the absence of the respondent. His thumb-impression was obtained on the document before it was read out to him by the Scribe for the transferees. After this illiterate peasant had been made to thumb-mark the document, he had asked the Scribe to read it over to him. The scribe states that the respondent did not understand the meaning of 'bai' and when it was explained to him that the word meant a sale, the respondent had promptly denied that he was selling away his land. This had led to a dispute between the parties and the document had continued to remain with the Scribe for a period of about a fortnight thereafter. The statement made by the Scribe before the Registrar was that the document had been collected from him by Mange appellant when the Scribe was supposed to have returned the document to the respondent. The reason given is that Mange had made the misrepresentation to the Scribe that the parties had settled their differences and that the respondent was sitting in a lawyer's office close by. The registration of the document was secured by compulsion. The appellants had deposited a part of the purchase price amounting to Rs. 6,500/- in the Government Treasury and the respondent had made the mistake of withdrawing that amount. He had, however, realised the implications of his act and had redeposited the amount in the Treasury after about a month. This might show that the respondent had at one time changed his mind but that would not mean that the respondent's intention was to sell the land when he was made to thumb-mark the deed, Exhibit D-1, on 14-3-1964. Two persons, one of whom was a Lambardar, had attested the document. The respondent's case is that these attesting witnesses were not present when the Scribe obtained his thumb-impression on this document. The fact that none of the attesting

witnesses of the document have been examined by either party may seem to suggest that there was no proper execution or attestation of the document. The respondent had denied his thumb-impressions on the document. This would be the first reaction of an illiterate person who has been led into a trap. His refusal to appear before the Sub-Registrar would also be due naturally to this reason.

3. After taking into account all these circumstances, the learned Court of first appeal had arrived at the finding of fact that the respondent had not intended to effect a sale of his land when he was made to thumb-mark the document, Exhibit D-1. This is a finding of fact which cannot lightly be disturbed in second appeal. Shri Chhokar relies on the Privy Council ruling in Satgur Prasad v. Har Narain Das, AIR 1932 PC 89, in this connection.

4. The appeal fails and is hereby dismissed. Parties are, however, left to bear their own costs in this Court.

5. Appeal dismissed.