(Varnasi) Venkata Sastrulu and anr. Vs. Kalluri Veerabhadrudu

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Court : Chennai

Decided On : Mar-02-1934

Reported in : AIR1935Mad26

Appellant : (Varnasi) Venkata Sastrulu and anr.

Respondent : Kalluri Veerabhadrudu

Judgement :

Venkatasubba Rao, J.

1. This case (S.A. No. 241) illustrates forcibly the way in which the subordinate judiciary, I find, often misapplies the rule as to the fraud on the Registration Law laid down by the Privy Council Harendra Lal v. Haridasi Debi 1914 P.C. 67 and Mathura Prasd v. Chandra narayan 1921 P.C. 8. It is forgotten that, as in the case of every other kind of fraud, the party, who sets up this defence is bound to make it out by clear and cogent evidence. As has been pointed out by Beasley, C.J. and Curgenven, J., in their judgment in Ramanathan Chetti v. Delhi Batcha Thevar 1931 Mad. 335.

There should be the strongest evidence of the fact there was collusion between the mortgagors and the mortgagees before the mortgagees can be deprived of the mortgage amount owing under the mortgage deed by reason of its registration being invalid, because of the inclusion of a small item of property not belonging to the mortgagors.

2. Again, it is important to bear in mind that a mere failure to make out a good' title to the property dealt with by the instrument, is something totally different from the fraud contemplated by the decisions: See the observations of the Judicial Committee Ramanathan Chetti v. Delhi Batcha Thevar 1931 Mad. 335. The crucial question in each case, as I observed in my judgment in Marina Ammayi v. Sundayya 1929 Mad. 432, is, was it intended or not that the document should take effect in regard to the particular item of property in dispute? The fact, that it is a fictitious item, may often furnish clear evidence of fraud, but when the item does exist, to invalidate a transaction on the ground that the party has not adduced satisfactory evidence as to his title, is to misunderstand and misapply the law on the subject. If there were some legal evidence on which the lower Courts could have properly acted, however much I might regret their finding, I should not, this being a second appeal, interfere with it; but this is not a case of insufficient or meagre evidence but of no evidence at all and

a decision that there is no evidence to support a finding is a decision of law : Harendra Lal v. Haridasi Debi 1914 P.C. 67.

3. This is, strictly speaking, not a suit by a reversioner, because on the death of the widow Gangammal in 1913, the person that succeeded to the property as the reversioner, was not the plaintiff but his father, who lived for about nine' years thereafter, never impeached the sale and died in 1922. The plaintiff brings this suit in 1925 just as the period of limitation was about to expire. The sale was of lands to the extent of about 7

acres and both the lower Courts have found that the plaintiff's case that it was not for legal necessity, is thoroughly false; but then it is said that the sale deed comprises an item of a small house site measuring 64 sq. yds. which did not belong to the widow Gangammal and that therefore the parties committed a fraud on the registration law. The relationship of the parties has a material bearing on this issue. The vendor was Gangammal, and the vendee was defendant 1, her brother. The plaintiff alleged in his plaint that that plot did not belong to Gangammal but to defendant 1 himself. The District Munsif, who has found that fraud has been made out, has not chosen to give a finding as to whom this property belonged, When the attack is that the vendor was not the owner of the property, one would expect that this attack is made good by showing that somebody else was the owner. The learned Subordinate Judge seems to think, although he has also not given a definite finding, that the property belonged to Gangarnmanl's father. The position then is this; the defence maintains that Gangammal was the real owner; the plaintiff came to the Court with the allegation that it belonged to her brother and while the trial Court gives no finding, the appellate Court seems to think that it belonged to the father. This house site appears to have formed a portion of a bigger waste plot, on which there were encroachments made both by Gangammal and her father; that is what the Subordinate Judge says. Naturally, no kind of title deed could be produced; the acquisition, if at all, was by some kind of trespass.

4. The learned Judge also seems to think that on a part of this waste plot adjacent to the site in question, Gangammal had built a granary. Incidentally, I may mention that in arriving at this conclusion, ho acted upon a statement made by P.W. 2 in a previous suit, which of course is not evidence. Both the Courts appear to have approached the evidence from the stand point, that it is for the defence to make out that there was no fraud. Indeed, in the judgment of the District Munsif, there is not even an attempt to weigh or estimate the evidence adduced by the plaintiff; in fact there is no reference made to it at all; the whole of his judgment is directed to showing that defendant 1 has not affirmatively made out that Gangammal bad title. The case of the defence was that on the death of Reddy Sastry, Gangamma's husband, in 1885, she came over to her father's village Moygeru where this plot is situate and that her father about the year 1890 made to her a gift of this site, on which she then built a thatched hut, in which she began to reside. As already observed, Gangammal executed the sale deed in question on 12th April 1892, which comprises inter alia this item. Later on, i.e., in November 1893, the father both of Gangammal and defendant 1 executed a formal gift deed (Ex. C) giving her a plot of the extent of 280 sq. yds., which included the suit site measuring, as stated above, 64 sq. yds. This is what defendant 1 categorically deposes. This evidence, in my opinion, remains un-contradicted. The plaintiff examined himself as P.W. 1 and though he professed in his examination-in-chief to have some knowledge of the extent of Gangammal's property, he was obliged to admit, when cross-examined, that his evidence was hearsay. The only other witness examined on the point was P.W. 2. He deposed,

She (Gangammal) got some laud from her father eight or nine years after her marriage.

5. Her marriage, according to the Sub-ordidate Judge, took place in 1879 though the witness gives the year as 1882. This, for the present purpose, is immaterial, for, granting that the marriage was in 1882, Gangammal, according to this witness's evidence, got the land in 1890 or 1891. This is precisely what defendant 1 himself stated. No doubt, P.W. 2, adds that it was under a gift deed that Gangammal got the site from her father, and this is said to negative the idea of a prior oral gift. I cannot agree, for, the witness, when pressed, had to admit that of the gift deed, he had no personal knowledge. Then again, he deposed;

The site on which Gangammal built the house is a portion of what is called Pammarajuvaripadu Chintala Peradu. Gangammal built the house nearly 38 or 39 years ago.

6. The witness gave his evidence in 1928 and the building of the house, would, according to him, be therefore about 1890. That again is a corroboration, pure and simple, of defendant 1's evidence. What is worse, he was confronted with a previous statement made in a former deposition and that was:

This site on which Gangammal built the house is called Pammarajuvaripadu Chintala Peradu.

7. Each encroached thereon and built their houses for themselves. She raised a granary in the Pemmarajuvari

site. She acquired rights in the site by encroachment before her father gave her site.

8. This shows, if at all, that she owned some site in this waste land even before the date of the formal gift, and at any rate what I wish to point out, is this; the object of confronting the witness with this statement was to show that be previously admitted that Gangammal had acquired some portion of the land by trespass prior to the gift deed. This witness's present evidence, I have shown, literally taken, far from being opposed to the defence version, actually supports it. The learned Judge therefore is at pains to fall back upon the witness's previous deposition and read into it some kind of statement, that the house was built not previous to but subsequent to the gift in writing. Surely, this is not the way in which evidence is to be weighed or considered for the purpose of arriving at a finding of fraud. The whole of the evidence consists of what I have referred to now and it is impossible to hold that there is a scrap of evidence in support of fraud. The District Munsif has had therefore to content himself with commenting on the evidence adduced by the defence; the learned Subordinate Judge tries to explain away the evidence of P.W. 2 by referring to his previous deposition which he uses very wrongly as substantive evidence. Granting that his former statement can be treated as evidence, even that does not show that the defence version is untrue. In a case of this kind, it is astounding that the lower Courts should have held that fraud has been made out. As I have said, the case is not one of meagre evidence but of no evidence and I cannot possibly accept the finding. The fallacy underlying the District Munsif's judgment is obvious; ' he observes that, even if the oral gift was true, that would not be valid by reason of the absence of a registered deed. He has completely misdirected himself, as already observed, in approaching the question from this point of view.

9. Mr. Lakshmanna argues that the very fact that the father executed Ex. C, shows that the oral gift cannot be true. I cannot assent to this. The reasoning is somewhat thus. By Ex. 1 it was the son that became the owner; how then could the father make a gift of the same property? The answer is perfectly simple. Even P.W. 2 identifies the father with the son in this transaction. He says more than once, quite as a matter of course, that Gangammal sold her land to the father, forgetting that the vendee under Ex. 1 is the son. He admits also that the father and the son were joint and undivided. In the result, the lower appellate Court's judgment is set aside and. the second appeal is allowed with costs throughout.

10. Coming to the second of these two appeals 242 of 1930, this case again presents a very curious method of treatment by the learned Subordinate Judge. The transaction impeached by the plaintiff is that evidenced by Ex. 12 of the year 1880. It purports to be a sale by the last male holder himself, i.e., Reddy Sastry of a paltry extent of 89 cents for Rs. 30. The sale was made in favour of his father-in-law, who, having died, the suit was instituted against the son, defendant 1. In the plaint not a single allegation was made about this sale; it was not referred to, much less attacked. But at the trial it transpired that so far back as 1892, the land was transferred to the name of defendant 1. The plaintiff, suggesting that the sale deed had been forged, hazarded the guess that the forgery must have taken place just prior to the mutation of names in 1892. What apparently was put forward was, that the deed was first forged and on the strength of it the transfer was effected in 1892. The learned Judge's reversing judgment on this point is based on a. series of surmises, for not one of which; there is the slightest foundation. The stamp paper was admittedly of the year 1880, but on account of some discrepancy in the dates the Judge condemns it as suspicious. Then again, by Ex. 1, as has been pointed out in my judgment in the previous appeal, defendant 1 purchased some properties from the widow on 12th April 1892; Ex. 1 conveys inter alia some land in Bhimole. The plot in question is also in the same village. If the intention of Gangammal was to transfer this plot to her brother in 1892, she could well have included it in Ex. 1, which admittedly, came into existence in that year. The Subordinate Judge conjectures that the parties made a, mistake in not including this small plot in Ex. 1 and therefore brought into-existence a forged deed in the same year soon after. It is extraordinary that by a line of reasoning of this sort, based on speculation and conjecture, the Subordinate Judge has held that the document is a forged one. I have been taken through the evidence and there is not a. word to be found in it in support of this finding. In this connexion, I must re mark that no Court should be too ready to lightly pronounce against a transaction impeached long after its date; the tendency to set aside or invalidate ancient transactions on inadequate or

meagre grounds must be strongly deprecated. Now let us turn to the dates. The, sale purports to be of the year 1880; the last male holder died in 1895.

11. According to the plaintiff, the deed must have been forged in 1882. The widow died in 1913. What prevented the reversioner, i.e., the plaintiff's father, who lived for 9 years thereafter, from impeaching the transaction, at any rate after death? The plaintiff comes to Court in 1925 just on the eve of his claim becoming barred. The trial took place in 1928 about half a century after the transaction. What has happened to the writer of the deed, defendant 1 is unable to say and that is quite natural. As regards one of the attesters, he was at the trial 80 years old, blind and deaf and was of feeble mind. Is the party to be blamed for not examining such a man? D.W. 2 was examined to identify the signature of another attester. His evidence is disbelieved on the ground that he merely saw the attesting witness sign his name 'over two decades previously.' It seems to me that on no evidence and on flimsy grounds this deed has been condemned as a forgery. In the result, the second appeal is allowed with costs throughout.