Manjuri Dassi and ors. Vs. Khetramani Dassi and ors.

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Court : Kolkata

Decided On : Nov-23-1922

Reported in : AIR1924Cal403,73Ind.Cas.96

Judge : N.R. Chatterjea and ;Cuming, JJ.

Appellant : Manjuri Dassi and ors.

Respondent : Khetramani Dassi and ors.

Judgement :

1. S.A. Nos. 1710, 1830 of 1920. These two appeals along with four others arise out of suits for declaration that certain properties which had been attached and sought to be sold were not liable to attachment and sale on the ground that the judgment-debtors in each case had no interest and that the plaintiffs in each case had title to the same.

2. The properties attached belonged to a family consisting of four brothers Nikunja, Kunja, Hira Lal and Makhan. The first three became involved in debt and transferred their interest in the properties attached separately to the plaintiff in each case.

3. It appears that suits were instituted against the three brothers and there was attachment of the properties before judgment on the 16th July, 1907. On the 4th August, 1907, there was a conveyance by Nikunja of his interest in the properties to his father-in-law, Mukunda. Subsequently, on the 24th August, 1907, there was

a compromise between the parties and a petition of compromise was filed, Nikunja and Kunja undertaking not to transfer their interest in the properties until repayment of their debts.

4. Kunja transferred his interest to his biother Makhan and Hira Lal having died, his widow transferred her interest to her brother Kishori. These transfers took place after the petition of compromise had been tiled on the 24th August, 1907. Subsequently, when the creditors (Khetra Moni Dasi and the Majumdars) executed their decrees and in execution the properties were attached, claims were preferred by the transferees. The claims, however, were disallowed and thereupon the six suits were instituted out of which these six appeals have arisen.

5. The Court of first instance in all these cases found, that there was consideration for the transfers and that they were bona fide. In that view, all the suits were decreed.

6. On appeal the learned District Judge allowed the appeals in the two cases which gave rise to Second Appeals Nos. 1710 and 1830 of 1920 and affirmed the decrees of the Court of first instance in the other suits. The plaintiffs are the appellants in Second Appeals Nos. 1710 and 1830; while the defendants are the appellants in the other four cases.

7. We take up these three sets of oases separately. In the first set S.A. 1710 and 1830, as already stated, the transferee was Mukunda who was the father-in-law of Nikunja, The District Judge has found that the consideration money, namely Rs. 1,414, was paid by Mukunda to Nikunja, and that that was the exact amount required by Nikunja to meet his liabilities to the Kushtea Swadeshi Bhandar. It was found that the money was applied by Nikunja in payment of his debt due to the Swadeshi Bhandar. The learned Judge, however, observed that: 'It is very improbable that it really represented the consideration for the purchase by Mukunda of his son-in-law's share in his dwelling house and the other properties included in the kobala.' He was also of opinion that the transaction was not bona fide. His conclusions are mainly based upon certain statements made by Mukunda in the claim case.

8. It is strongly urged before us that the deposition of Mukunda ought not to have been used by the learned District Judge, at any rate without giving the plaintiff an opportunity of raising objections thereto.

9. It appears that arguments in the lower appellate Court were finished and judgment was reserved on the 24th March and that on the next day, 25th March the defendants filed a copy of the deposition of Mukunda in the claim case and that was accepted by the learned Judge. So far as it appears from the record, there is nothing to show that the plaintiff had any notice of the document having been filed or having been used in evidence. We are of opinion that the learned Judge ought not to have admitted this document in evidence after arguments had been finished on both sides and judgment reserved. An opportunity should have been given to the plaintiff to raise any objection which he might have to the admissibility of this document in evidence.

10. In these circumstances, we think that the cases should go back to the lower appellate Court in order that such an opportunity might be given to the plaintiff and the question of the admissibility of the document considered after hearing both sides on the point. The appeals will then be reheard by the lower appellate Court on all the points necessary to be decided in the appeal.

11. Costs to abide the result.

12. S.A. Nos. 1854 and 1870 of 1920. In these cases, Kunja transferred his interest to his brother Makhan. It is found that Kunja wanted this money very urgently to pay Counsel's fees for his defence in the Alipur Bomb Case in connection with which he had been arrested. The learned Judge has also found upon the evidence that the money was actually paid by the purchaser Makhan and that he has since been in occupation of Kunja's portion of the joint house. The learned Judge further found as follows : 'Up to the time of the transaction, there is evidence that Makhan and Kunja were not on very good terms; but it was imperatively necessary for Kunja to raise money and it is probable that rather than let a stranger occupy a portion of the joint premises Makhan purchased them, they would also be more valuable to him than a stranger and Kunja would naturally see where he could get the highest price even if he was not anxious to keep the house

in the hands of the family.' This would have been sufficient for the disposal of the case; but Makhan was not a creditor and it was necessary to come to a definite finding that the transfer was a bona fide one. The learned District Judge, however, says : 'Thus I think that the transaction was most probably bona fide even though on the evidence I think it extremely probable that Makhan knew of the compromise....' Then, again, he goes on to say : 'But I do not think the circumstances show positively that Makhan was lending his name to the transaction in order to defeat the creditors; it seems to me that his object was probably to assist Kunja in raising the money, etc., etc.'

13. It appears, therefore, that the learned Judge has not come to a definite finding upon the question of bona fides in these cases. We are accordingly of opinion that these two cases should go back to the lower appellate Court for re-hearing the appeals and disposing of them according to law after coming to a definite finding upon all the points necessary for the determination of the appeal.

14. Costs to abide the result.

15. S.A. Nos. 1908 and 1930 of 1920. In these cases, Hira Lal's widow transferred her interest to her brother Kishori. The transfer was made to pay off a mortgage-debt due by Hira Lal and the consideration money was partly applied in payment of the debts. The learned Judge observes with reference to the kobala that it was apparently executed to pay off a mortgage debt. He says : 'In this case the circumstances have been exhaustively discussed by the learned Munsif and I agree with his conclusions.' The learned Munsif no doubt, decided the question of bona fide in favour of the plaintiff after placing the onus of proof upon him : and if the learned Judge, by saying 'I agree with his conclusions' meant to refer to all the conclusions arrived at by the Court of first instance, including his conclusions on the question of bona fides, then there is nothing to be said against the judgment of the learned District Judge.

16. It is contended, however, on behalf of the appellants that the observation refers only to the passing of the consideration and payment of the mortgage-debt and not to the question of the bona fides of the transaction which is referred to in the next passage where the learned Judge says : 'The appellants have not been

able in these cases to show conclusively that the transaction was not bona fide but was intended to defeat the creditors. No doubt the circumstances are very suspicious. The vendor was heavily in debt and closely related to the vendee (her brother), and that the property after sale was let to the son-in-law of the vendor at a nominal sum and remained practically in possession of the vendor and his wife.' Further on the learned Judge says : 'The evidence shows conclusively that the debt was a real one and that the consideration passed.' But lower down, he refers to the fact that 'there are a number of circumstances as pointed out by the learned Munsif indicating that this was probably a genuine transaction.' It is accordingly contended that the learned Judge has not come to a definite finding upon the question of bona fide. The observation of the learned Judge that he agrees with the conclusion of the Court of first instance might refer to all the conclusions, or only to the conclusion with regard to the passing of consideration and payment of the mortgage-debt. The matter cannot be said to be free from doubt. In these circumstances, these two cases also should go back to the lower appellate Court for re-hearing of the appeals after coming to a definite finding upon the point.

17. We may mention that another contention was raised before us, namely, that the attachment, so far as Hira Lal was concerned, was not withdrawn under the terms of the solenama and the decree passed thereon, as Hira Lal was not a party to the solenama.

18. This question does not appear to have been raised in the grounds of appeal to this Court. In the Court of first instance, the question was decided in favour of the plaintiff. It appears to have been taken in the grounds of appeal to the lower appellate Court; but it is not clear whether it was pressed before the learned Judge and the learned Judge has not considered this point in his judgment. As, however, these cases are going back to the lower appellate Court, that Court will consider the question whether the attachment had been withdrawn, and if not, the effect thereof having regard to the terms of the decree.

19. Costs will abide the result.