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Court : Kolkata

Decided On : Sep-14-1881

Reported in : (1882)ILR8Cal138

Judge : Mitter and ;Maclean, JJ.

Appellant : Prayag Singh

Respondent : Ram Nirunjun Singh

Judgement :

Mitter, J.

1. This is an appeal against a judgment of the Subordinate Judge of Sarun, awarding a decree in favour of the plaintiff. The claim relates to the estates left by two persons named Dund Bahadoor and Jung Bahadoor. The plaintiff is related to them as half-brother, while the defendant is their uterine brother. Under the Hindu Law of Inheritance, it is clear, therefore, that the defendant's right is superior, but the plaintiff bases his claim on a compromise embodied in two petitions, filed by himself and the defendants respectively to the Collector of the District on the 28th March 1859.

2. We agree with the lower Court in the findings to which it has come. It appears that, in the year 1870, the defendant and Dund Bahadoor (who had then attained majority) for self and as guardian of Jung Bahadoor, brought a suit to recover

possession of the 'Jethans' by setting aside the compromise upon the self-same grounds as are taken in the written statement in this case. That case was dismissed so far as the defendant and Dund Bahadoor were concerned. The claim of the minor Jung Bahadoor was not gone into, as it was held that he was not properly represented in the suit. It was found in that case that, at the time of the compromise, the defendant was of age, and that the petition of the 28th March 1859 was signed and presented by him to the Collector. Therefore on these two points the judgment is conclusive evidence between the parties.

3. As regards the objection that the agreement is not binding on the defendant because an unconscionable advantage was taken of his youth and inexperience, we do not find any notice of it in the previous judgment alluded to above. If the defendant did not raise it then, it is doubtful whether he is competent to raise it now. But conceding that he can, we are unable to say, on the evidence, that this defence has been substantiated; the evidence of Hiramun and Saligram, uncle and first cousin of the parties, is very clear upon this point. They have been believed by the lower Court, and it appears to us that they are thoroughly reliable in all respects. It is proved by them that, on the death of Thakoor Singh, a dispute broke out between the parties, and that it was settled through their intervention; that advice was taken from a mukhtear, a pleader, and a person who was then employed as Sherishtadar of the Judge's Court. It is evident from the evidence that, however clear the question of the respective rights of the parties appear to us now, the pretensions of the plaintiff were not then considered as wholly unfounded. The dispute appeared to the parties and also to their friends, relatives, and legal advisers as in no way being a doubtful question of law; and the terms of the compromise were considered to be a fair solution of it, and to be conducive to the interests of both. It further appears to us, that the compromise was made on the part of the defendant not with haste and precipitancy, but with due deliberation, caution, and consideration.

4. Then as regards the objection that the stipulation is not supported by any consideration, we are of opinion that it is not valid. The settlement of the dispute was the mutual consideration between the parties.

5. It has been further said that the agreement in question ought not to be enforced against the defendant, because he was labouring under a mistake of law regarding the rights of the contending parties. Mistake of law is not a ground for setting aside a contract (see Section 211 of the Contract Act) especially of a family arrangement. This proposition of law is thus laid down in Kerr on Fraud, page 335, as extracted from several decided cases cited in a foot-note at page 336.

6. 'Mistake in law is not a ground for setting aside a compromise, if the parties to the transaction were in difficulty and doubt, and wished to put an end to disputes and to terminate or avoid litigation. If one or more parties having, or supposing they have, claims upon a given subject-matter, or claims against each other, agree to compromise these claims, and the knowledge, or means of knowledge, of each of them with respect to the mode in which, and the circumstances under which, his claim arises, stand upon an equal footing, and there is an absence of fraud or misrepresentation, the transaction is binding, although the conclusion at which the parties may have arrived is not that which a Court of Justice would have arrived at had its decision been sought. The real consideration which each party receives under a compromise being, not the sacrifice of the right, but the settlement of the dispute and the abandonment of the claim. It is no objection to the validity of the transaction that the right was really in one of the parties only, and that the others had no right whatever. If, for instance, two parties claim adversely to each other the inheritance of a deceased person, and, in order to avoid litigation, agree to divide the inheritance, it is no ground for setting aside the agreement that only one was heir, and that the other gave up the right which he really possessed. The fact that the one may have had no claim is immaterial, if he was honestly mistaken as to his claim. It is enough if, at the time of the compromise, he may have believed he had a claim, and that the parties have, by the transaction, avoided the necessity of going to law. To render valid the compromise of a litigation, it is not even necessary that the question in dispute should really be doubtful, if the parties bon fide consider it to be so. It is enough to render a compromise valid, that there is a question to be decided between them. A compromise of doubtful rights will not be set aside on any other ground than fraud.'

7. This is the rule of law regarding compromise generally. But that the Courts go still further in favour of upholding compromises by which family disputes are settled, appears from the following passage in the same treatise, p. 364:

The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

8. The appellant's contention upon this point must therefore fail.

9. The next point urged before us is, that the stipulation in question is not enforceable in law: 1st, because it lays down a special law of inheritance for the purpose of governing the rights of the parties; and 2ndly, because it is an agreement to convey an expectancy which the law does not permit.

10. It has been contended on behalf of the appellant that an agreement to convey an expectancy is, according to the law administered by Courts of Equity in England, ab initio void. That this proposition is not correct will appear from an examination of the cases collected in White and Tudor's Leading Cases, Vol. I, p. 534. Such contracts are not absolutely void, but are generally closely scrutinized by Courts of Equity. The principle upon which the Courts of Equity act in these cases is thus laid down in the following passages to be found at pages 537 and 538 of the same volume:

11. In the earlier cases it was held necessary to show that undue advantage was actually taken of the situation of such person; but in more modern times it has been considered not only that those who were dealing for their expectations, but those who were dealing for vested reversions also, were so exposed to imposition and hard terms, and so much in the power of those with whom they contracted, that it was a fit rule of policy to impose upon all who dealt with expectant heirs and reversioners, the onus of proving that they had paid a fair price, and otherwise to

undo their bargains, and compel a reconveyance of the property purchased.

12. The policy of the nation to prevent what was a growing mischief to ancient families that of seducing an heir apparent from dependence on his ancestor, who probably would have supported him, and, by feeding his extravagances, tempting him, in his father's lifetime, to sell the reversion of that estate which was settled upon him, forasmuch as this tended to the manifest ruin of families.'

13. Then it has been said that whatever might be the rule of law in Courts of Equity in England, the Judicial Committee of the Privy Council in two Indian cases that of Massamut Oodey Koowur v. Massamut Ladoo 13 Moore's I.A. 585; S.C. 6 B.L.R. 283 and Kali Chandra Chowdry v. Sib Chandra Bhaduri 6 B.L.R. 501 have laid down the law in accordance with the appellant's contention. A careful examination of these cases will show that this point was not decided. All that the Judicial Committee say is, that it is doubtful whether, under the Hindu law, the sale of an expectancy right is valid. In the most recent case in which the same point was mooted Dooli Chund v. Brojo Bhookun Loll (unreported, decided 4th February 1880)--their Lordships make the following observations:

14. The point on which the lower Court in part proceeded, and which has only been treated as doubtful by the High Court, namely, whether such an interest could be the subject of a sale at all, is of general importance, and one which their Lordships, who do not sit here to determine abstract questions of law, would be unwilling to determine in a case in which no decree in favour of the plaintiffs can be passed. They are certainly not prepared to affirm that such an interest can be made the subject of a sale, still less that it can be made the subject of a sale, highly speculative as any such sale must be, by a guardian acting or purporting to act on behalf of an infant. The decision of this Board, which has been cited by the Judge of the lower Court, is not precisely in point; but it goes far to show that the principle of English law, which allows a subsequently acquired interest to feed, as it is said, the estoppel, does not apply to Hindu conveyances.'

15. The case referred to here is one of those cited above, and the rule of English law alluded to has been extended to this country by Section 18 of the Specific Relief Act.

16. But in our opinion the clause in the compromise upon which this suit is based is neither a special rule of succession laid down by the parties, nor a conveyance of an expectant right; but it is an agreement between expectants to divide a particular property in a certain way on the happening of a particular contingency. That Courts of Equity in England enforce such agreements as the present will appear from the following passage at page 538 of Vol. I of White and Tudor's Leading Cases:

It may be here mentioned, that a fair agreement between expectants or their heirs, to divide the property which may be left between them or to any one of them, is not contrary to public policy, and will be enforced in equity. Thus, in the leading case of Beckley v. Newland 2 Peere Wms. 182 the plaintiff Beckley and Sir George Newland, who had married two sisters, the presumptive heirs of Mr. Turgis, a very rich man, entered into articles whereby they agreed, that whatsoever should be by will left to either of them should be equally divided between them. Mr. Turgis, who had made and revoked several wills, at length made a will in favour of Sir George Newland, whereby he left a great personal estate to Sir George. Upon a bill being filed by Beckley for a specific performance of the agreement, it was objected, that the articles to divide a man's estate while he was living, and to share that in which the parties, at the time of making the agreement, had no manner of right, and possibly might never have, were unfair, and not to be encouraged; that it was to disappoint the will of the testator, who, in all probability, would have given nothing to either of the partes to the agreement, in case he could have foreseen that his disposition would be frustrated as soon as ever he should die. However, Lord Macclesfield decreed a division of the personal estate according to the articles. 'Suppose,' he observed, 'there were two daughters, and the father should have given almost all the estate to the eldest, and nothing or very little to the youngest; if there should be such an agreement as in the principal case surely it would have been no more than what every one would have wished for.' See, also Wethered v. Wethered 2 Sim. 183; Harwood v. Tooke 2 Sim. 192; Hyde v. White 5 Sim. 524.

17. There is nothing in the Hindu law which makes such agreement void.

18. From another point of view the agreement in question seems to us to be valid. It is a promise made by each of the four brothers in favour of the others to this effect: 'If I die without issue, you will receive my property in equal shares.' It was made upon a good consideration as already shown. Is it invalid in law? I see no reason to hold that it is invalid. It is in the nature of contingent contracts treated of in Chapter III of the Contract Act.

19. Suppose a man agrees to execute a conveyance of his estate in favour of another for value received after ten years if a certain event happens. It will be fully admitted that such a contract is valid, and would be enforceable against his heirs if he dies in the meantime. Is there any difference in principle between this contract and the stipulation mentioned above. The only difference I find is as to the time after which the contract is to be fulfilled; but that is a non-essential difference.

20. Then it has been said that this promise was made not by Dund Bahadoor and Jung Bohadoor themselves, but by a guardian on their behalf while they were minors. Whatever difficulty there might have been in the solution of the question, if it had not arisen between the plaintiff and the defendant who acted as guardian, it does not admit of any doubt in this case. It does not lie in the mouth of the guardian to say that the contract is not binding, because he exceeded his authority in entering into it.

21. Upon all these grounds we think that the decision of the lower Court is correct, and we dismiss the appeal with costs.

1[Section 21: A contract is not voidable because it was caused by a mistake as to any law in force in British India, but a mistake as to a law not in force in British India has the same effect as a mistake of fact.]

Effect of mistaken as to law.