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Court : Kolkata

Decided On : Aug-07-1924

Reported in : AIR1925Cal856,85Ind.Cas.799

Appellant : Pran Mohan Das and ors.

Respondent : Hari Mohan Das and anr.

Judgement :

Chakravarti, J.

1. This second appeal by the defendants Nos. 1 and 3 to 5 arises out of a suit brought by the plaintiffs for the recovery of possession of a brick built house. The suit was dismissed by the learned Munsif but has been decreed on appeal by the learned Subordinate Judge. The facts are shortly these :-The house in question admittedly belonged to the plaintiff and was also admittedly in possession of the defendant No. 2 and her husband, until it was sold by defendant No. 2 to the defendants Nos. 3 to 5 by a registered kobala in 1916. The plaintiff's case is that he permitted defendant No. 2, his daughter and her husband to occupy the house as a matter of favour and their possession was permissive and as they have sold the house to the defendants Nos. 3 to 5 he has brought this suit for recovery of possession of the house with mesne profits. The defence of the defendant No. 2 was that the plaintiff promised to make a gift of the house to the defendant No. 2 as her dower at the time of her marriage and the husband of defendant No. 2

agreed to marry her on such a promise having been made by her father: that she obtained the house as a gift from her father in 1907, and she and her husband possessed the same in that right, until they sold the house to defendants Nos. 1 and 3, 4 and 5 for Rs. 401 by a registered kobala, in the year 1916, executed by defendant No. 2 and that since then the purchasers are in possession of the house. The defence of the other defendants is the same and they further pleaded that since their purchase they have made considerable improvements in the house.

2. It appears that although defendant No. 2 was put in possession of the house after her father made a gift of it to her, no registered conveyance was executed by the plaintiff who it is alleged executed an unregistered deed of gift in favour of defendant No. 2 in 1909.

3. The learned Munsif found that 'the plaintiffs agreed to give the house to Charubala (defendant No. 2) and that this induced the bridegroom party to agree to this marriage ' and overruling the objection of the plaintiff that the transfer was invalid as there was no registered deed, gave effect to the transfer and dismissed the suit.

4. On appeal by the plaintiff the learned Subordinate Judge did not set aside any of the findings arrived at by the learned Munsif and on the contrary he found from the recital of the unregistered', deed of 1909, 'that the house was given to the defendant No. 2 according to a promise made at the time of marriage and also on account of natural love and affection.' In spite of these findings the learned Subordinate Judge held that the plaintiff was entitled to recover the house from the defendants. It is difficult to understand the judgment of the learned Subordinate Judge as to what the real ground of his decision is. It seems that he held that the gift was invalid under the provisions of Section 127 of the Transfer of Property Act.

5. The learned Vakil for the appellants contended that there was a good and valid consideration for the deed because the transfer was made on the basis of an ante-nuptial contract and that the donee having been put in possession and having held such possession for a number of years was justified in resisting the claim of the plaintiff on the principle of the doctrine of part performance of a contract and relied

upon the case of Syam Kishore De v. Umesh Chandra Bhattacharjee (1920) 24 C.W.N. 463 and the cases cited in that decision.

6. The learned Vakild for the respondent relied on the oases of Kalavagunta Venkata Kristnayya v. Kalavagunta Lakshmi Narayana (1916) 32 Mad. 185 and Gulabchand v. Fulbai (1909) 33 Bom. 411 in support of the proposition that the contract set up by the defendant was not valid and he further contended that the learned Subordinate Judge did not intend to find that there was any consideration except that of natural love and affection.

7. We are of opinion that there is no doubt that the learned Subordinate Judge did not disturb the findings of the Munsif which have been already set out and the learned Subordinate Judge has accepted the passage which he quotes from the unregistered deed as correct. There is, therefore, a finding by the Courts below that there was ante-nuptial promise by the plaintiff which became a binding contract when the marriage followed. The validity of such contracts is well-established. In the case of Gobinda Rani Dasi v. Radha Ballabh Das (1910) 15. C.W.N. 205, Mr. Justice Mookerji held that such contracts are valid and binding.

8. The cases cited from Kalavagunta Venkata Kristnayya v. Kalavagunta Lakshmi Narayana (1916) 32 Mad. 185 and Gulabchand v. Fulbai (1909) 33 Bom. 411 are clearly distinguishable on the ground that they are what may be called marriage brokerage contracts for procurement of marriages and are opposed to public policy.

9. We are, therefore, of opinion that the contentions of the learned Vakild for the appellants are well-founded and that the contract is valid in law. That being so the defendants are entitled to rely on the cases which estop the plaintiff from urging that the defendants could not resist plaintiff's claim as the transfer was not evidenced by a registered deed.

10. Mr. Justice Mookerjee after reviewing a number of the earlier oases of this Court, which have been affirmed by the Judicial Committee of the Privy Council in the case of Mahomed Musa v. Aghore Kumar Ganguli A.I.R. 1914 P.C 27 observed in the course of his judgment in the case of Syam Kishore De v. Umesh

Chandra Bhattacharjee (1920) 24 C.W.N. 463 referred to above that 'the decisions are based on the well-known doctrine of equity enunciated in Walsh v. Lonsdale (1882) 21 Ch. D. 9 that under certain circumstances equity regards that as done which should have been done.' The rule thus laid down clearly applies to the present case.

11. On the whole we think that this appeal should succeed and the judgment and decree of the learned Subordinate Judge are set aside and those of the Munsif are restored with costs in all Courts.

Greaves, J.

12. I agree.

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