

Shakuntala Chawla Vs. Om Prakash Chawla and Another

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Court : Delhi

Decided On : Apr-24-2012

Judge : PRADEEP NANDRAJOG & SIDDHARTH MRIDUL

Appeal No. : RFA (OS) 49 OF 2008

Appellant : Shakuntala Chawla

Respondent : Om Prakash Chawla and Another

Judgement :

PRADEEP NANDRAJOG, J.

(Oral)

1. As per Proviso 1 to Section 92 of the Indian Evidence Act 1872, a fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

2. Appellant Shakuntala Chawla, the sister-in-law of the respondents is aggrieved by the impugned judgment dated May 28, 2008, dismissing suit filed by her as not maintainable on the ground of limitation as well on the ground that such a suit is not maintainable.

3. The record of the learned Single would reveal that appellant's statement under Order 10 was recorded on April 12, 2008 in which she admitted being a graduate and able to read and write English.

4. Order dated May 12, 2008 would reveal that the learned Single Judge heard arguments on admissibility.

5. Thereafter, impugned order dated May 28, 2008, was penned.

6. Challenge in the suit being to a sale deed executed by defendant No.1 in favour of defendant No.2 on March 8, 2001, and the suit being filed in September 2004, opinion rendered by the learned Single Judge is that the suit is barred by limitation and therefore not maintainable.

7. In the next paragraph, the learned Single Judge has held that the suit is not maintainable on other grounds, which grounds we can only decipher by inference with reference to paragraph 4, in which paragraph, the learned Single Judge has opined that if registered documents are questioned it would create chaos in society.

8. We highlight that neither were issues settled nor was evidence led.

9. As per appellant's averments in the plaint, she was the owner of property bearing Municipal No.4, Tagore Park, Delhi. Her husband was a business partner of defendant No.1, who was the younger brother of her husband. The two were carrying on business as partners under the name and style of M/s Paris Auto Store.

10. Appellant pleaded that at an accidental fire, her husband got burnt and died in February, 1986, leaving behind, the plaintiff, two daughters and a son.

11. Pleading further that on the death of her husband with respect to the partnership business, the appellant was inducted as a partner in the firm by defendant No.1, who, as noted hereinabove was her brother-in-law. She further pleaded that on the asking of her brother-in-law, upon the representations that for purposes of smooth running of the partnership business she was required to execute some documents, in the year 1998 she executed a Special Power of Attorney and a General Power of Attorney which were duly registered; amongst others a power to sell her home was delegated to her attorney i.e. defendant No.1.

12. She pleaded that in the month of June/July, 2003, she learnt that the defendants were contemplating to sell the first floor of property bearing No.4, Tagore Park, Delhi. This led her to cause inquiries to be made when she learnt that defendant No.1 had executed a sale deed on March 8, 2001, on the strength of the General Power of Attorney which he held. The sale was in favour of his wife, defendant No.2.

13. Pleading that she never received the sale consideration shown in the sale deed in sum of Rs. 4,90,000/-, which as per the sale deed was paid to her on various dates between, August 9, 1996 and December 12, 1996, prayer made was to cancel the sale deed dated March 8, 2001.

14. In the written statement filed by the defendants they asserted having paid Rs. 4,90,000/- to the appellant. It was admitted that the said sale deed was executed by defendant No.1 on the strength of the General Power of Attorney executed by the appellant in favour of his wife, defendant No.2.

15. With reference to the sale deed, wherein sale consideration in sum of Rs. 4,90,000/- is stated to have been paid to the appellant under four cheques dated August 9, 1996, August 11, 1996, October 3, 1996 and December 12, 1996, in sum of Rs. 1,00,000/-, Rs. 1,20,000/-, Rs. 1,50,000/- and Rs. 1,20,000/-, in the replication filed to the written statement, the appellant pleaded that the Saving Bank Account maintained by Canara Bank, Kashmere Gate Branch, was being operated by defendant No.1, in that, he had obtained her signatures on the cheque book and she did so after being told that the said account was in relation to the business of the partnership firm. The money was deposited in said account and withdrawn.

16. The appellant pleaded in replication as under:

"Apart from what have been stated hereinabove it is submitted that the defendant no.1 withdrawn a sum of Rs.85,000/- on 27.6.1996 in the name of defendant No.2 from the account of the plaintiff maintained at Canara Bank, Kashmere Gate and the plaintiff had no knowledge about the same. On 12.8.1996, a sum of Rs.1,00,000/- had been deposited through cheque. However, the same was dishonored and again deposited on 14.8.1996 in her account by the defendant no.1 and on 22.8.1996 the defendant no.1 withdrawn a sum of Rs.1,05,000/- in the name of her daughter Ms. Meena vide cheque no.761057 hence it is clear that the defendant no.1 had withdrawn a sum of Rs.5000/- in excess what was deposited and wanted to take benefit of the sale consideration. Further 2 cheques were deposited on 12.9.1996 and 31.10.1996 for a sum of Rs.1,20,000/- and Rs.1,50,000/- respectively in the account of the plaintiff by the defendant no.1. It is submitted that on 23.9.97 a sum of Rs.25,000/- was withdrawn vide cheque no.761059 in the account of Shri Ashok Kumar, an employee of M/s. Paris Auto Store. And further 4 cheques of Rs.75,000/- each were encashed from the account of the plaintiff in the different account bearing nos. 15727,14743,14723 and 14761 total amount to Rs.3,00,000/-. From the statement of account of Canara Bank, Kashmere Gate it reveal that all the transactions were made by the defendant no.1 himself and the plaintiff is no where related to the transactions. It is submitted that no major or any transaction was being carried out by the plaintiff in the above said account and whatever transactions were carried out, the same were carried out by the defendant no.1 and after withdrawing the alleged Rs.4,90,000/- which was deposited by the defendant no.1 no transaction was carried out by the defendant no.1.Hence it could never said that the plaintiff was never being paid the actual sale consideration and further least to say Rs.4,90,000/- as stated hereinabove as alleged and the same was withdrawn by the defendants as detailed herein above. So there is no sale transaction in the

eyes of law. Rest is false, wrong and therefore denied.”

17. Suffice would it be to state that the learned Single Judge has, on the issue of limitation, completely ignored Section 17 of the Limitation Act, 1963. The said section, makes a departure from the Limitation Act 1908.

18. The departure made by the 1963 Act was to stipulate that in cases of fraud, limitation shall not begin to run until the plaintiff has not only discovered the fraud but had acquired actionable knowledge to sue.

19. As noted by us hereinabove, there are averments in the plaint that the appellant discovered the fraud only in the year 2003 when the defendants made an attempt to sell the first floor of her property No.4, Tagore Park, Delhi. She has thereafter made averment with respect to how she further found out the particulars of the fraud.

20. Thus, on the subject of limitation, an issue had to be settled and decided on the evidence.

21. With respect to the view taken by the learned Single Judge that if registered documents are allowed to be questioned there would be chaos in the society, suffice would it be to state that if law permits a registered document to be questioned, it hardly matters whether chaos is created in the society or not.

22. We have noted hereinabove Proviso 1 of Section 92 of the Indian Evidence Act, 1872 which permits an action to invalidate documents and fraud is one of the various ground on which invalidation of a document can be obtained.

23. Since parties have to go to trial we do not intend to speak much, lest either party is prejudiced at the trial, but would prima facie highlight that what the appellant has stated in the replication, contents thereof have been noted by us hereinabove, would be a good and satisfactory piece of evidence to consider on the subject of fraud.

24. It is trite that fraud vitiates every transaction. On the subject of fraud, being a question of fact and an inference to be drawn based on law, issue had to struck. Parties had to be permitted to proceed for trial.

25. We allow the appeal and set aside the impugned judgment dated May 28, 2008.

26. CS(OS) is restored with a direction that issues would be settled and decision taken on merits after parties have led evidence.

27. Appellant shall be entitled to costs.

28. Since the parties are present, we direct that they shall appear before the learned Single Judge on May, 7, 2012, on which date the Registry shall list the suit in court.

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