

Smt. Bimla Devi Vs. Smt. Sumna and Others

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Court : Himachal Pradesh

Decided On : Aug-09-2011

Judge : V.K. Ahuja

Appeal No. : RSA No. 143 of 2001

Appellant : Smt. Bimla Devi

Respondent : Smt. Sumna and Others

Judgement :

V.K. Ahuja, J.

Oral:

1. This is an appeal filed by the appellant under Section 100 C.P.C., against the judgment and decree of the Court of learned Additional District Judge, Shimla, dated 2.1.2001, whereby he had affirmed the judgment and decree passed by the learned Sub Judge 1st Class, Court No. 1, Shimla, dismissing the suit of the appellant.

2. Briefly stated, the facts of the case are that the appellant hereinafter referred to as the plaintiff, filed a suit for cancellation of sale deed dated 23.5.1991 as against the respondents hereinafter referred to as the defendants. The suit was filed as against the original defendant Govind Ram, now represented by his legal heirs as respondents. The plaintiff alleged that she is owner in possession of land as

detailed in Para-1 of the plaint measuring 99-18 Bighas. She alleged that she is an illiterate woman and the defendant was known to her and he persuaded the plaintiff to sell him 1/4th share of the suit land measuring 24-10 Bighas for consideration of Rs. One Lac. The plaintiff accepted the offer of the defendant and paid her in all Rs. 37,700/- on different dates. The defendant then brought the plaintiff to Shimla and asked the plaintiff to agree to admit the payment of entire amount of sale consideration, but she declined to do so and, therefore, a Pronote of Rs. 26,000/- was prepared by him and handed over to the plaintiff and the defendant assured that amount of Pronote will be paid within 15 days after registration of the sale deed and the remaining amount of Rs. 36,300/- will be paid on the date of registration after 2-3 days. The defendant went to the house of the plaintiff after 2-3 days and assured her that she should admit the payment of the sale consideration and he will arrange money and pay her the balance amount and the sale deed was executed, but the balance amount was not paid and as such, has challenged the sale deed being result of undue influence and fraud, hence, the suit filed by the plaintiff.

3. The defendant took up preliminary objections in regard to valuation etc. On merits, he pleaded that he is owner of the suit land after the registration of the sale deed and delivery of possession, the plaintiff has ceased to be the owner of the suit land and full sale consideration was paid. He also admitted that a Pronote was executed on 17.5.1991 and was handed over to the plaintiff, but when she refused to get the sale deed registered unless she was paid the balance of Rs. 26,000/- and, therefore, the amount was paid to the plaintiff, but the Pronote was not returned on the pretext that she had misplaced the same and the plaintiff is not entitled to any amount or cancellation of the sale deed, since full sale consideration was paid and as such, the suit is liable to be dismissed.

4. On the pleadings of the parties, the following issues were settled by the learned trial Court:-

“1. Whether the sale deed dated 23.5.1990 is the result of fraud, undue influence and misrepresentation etc. as alleged? ... OPP

2. Whether the plaintiff is entitled for the recovery of Rs. 62,300/-, the remaining sale consideration, as alleged? ... OPP

3. Whether the plaint is not properly verified, if so its effect? ... OPD

4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction and if so what is proper valuation thereof? ... OPD

5. Whether the suit is liable to be dismissed on the averments made in the preliminary objection No. 3, as alleged? ... OPD

6. Whether the suit is not maintainable as alleged in additional plea of the written statement? ... OPD

7. Relief."

5. Parties led their evidence and the learned trial Court vide its impugned judgment decided issues No. 1, 2 and 3 as against the plaintiff and in favour of the defendant and consequently, dismissed the suit of the plaintiff in full.

6. On appeal, these findings were affirmed by the learned Additional District Judge.

7. I have heard the learned counsel for the parties and have gone through the record of the case.

8. During the course of arguments, the submissions made by the learned counsel for the appellants were that the learned trial Court had failed to frame material issues, that the defendant has not stepped into the witness box, as such, an adverse inference should be drawn against the defendant. However, a perusal of the record shows that the appeal was admitted on the substantial question of law framed by this Court on 27.5.2002 as under:-

"Whether the courts below have arrived at a perverse conclusion by mis-appreciating and mis-construing the evidence on record particularly the contents of the Promissory Note Ext. PW1/B?"

9. Therefore, the other questions raised by the learned counsel for the appellant in regard to non-framing of issues or non-examination of the defendant do not arise for consideration. The only point worth consideration is as to whether the Courts below have arrived at wrong conclusion by misconstruing the evidence, particularly the contents of promissory note Ext. PW1/B. A perusal of the record shows that the plaintiff had alleged that the whole amount of sale consideration was not paid and as such, she has filed the suit for cancellation of the sale deed being the result of undue influence and fraud. Both the Courts below have clearly considered the evidence and held that there is nothing on record to substantiate the pleas of fraud and undue influence, which was neither specifically alleged in the plaint nor was proved. The only point worth consideration is in regard to the misconstruing the evidence on record particularly the promissory note Ext. PW1/B.

10. A perusal of the promissory note Ext. PW1/B shows that it was executed on 17.5.1991 and it was mentioned therein that the defendant has received this sum of Rs. 26,000/- and had executed the Pronote in favour of the plaintiff. The fact that this Pronote was executed on that date finds corroboration from the testimony of PW-1 Smt. Bimla Devi, who stated that this Pronote was executed and the defendant had stated that he will pay the amount within 10-15 days. She admitted that at that time one Jai Kishan Sharma and 2-3 other persons were present there. A perusal of the sale deed shows that it was also written on 17.5.1991, which substantiates the claim of the defendant that a Pronote was executed on that date, since he did not have the balance sale consideration. However, the sale deed was postponed to a later date and he paid the balance consideration and registered sale deed was executed. The sale deed had been attested on 23.5.1991. A perusal of the statement of PW-1 Bimla Devi also substantiates this plea that a Pronote was written, but the registered deed was not executed on that date. Thereafter, the sale deed was executed on the next date and there is a plea raised by the defendant that a Pronote was not returned by the plaintiff, though she received the balance sale consideration also. A perusal of the statement of PW-1 Smt. Bimla Devi shows that she admitted that she made a statement before the Tehsildar that she has received the full consideration and the registered deed is Ext. PW1/C. She further stated that the defendant had assured to pay the amount at the time of mutation, but there were no assertions in the plaint nor they stand

substantiated from the sale deed Ext. PW1/C. She stated that she stated before the Tehsildar that she does not want Pronote, but still the Tehsildar did the registry, which fact was not pleaded by her nor it stands substantiated, since there is no mention of the balance amount having been received by way of a Pronote. She also stated that she did not protest at the time of mutation before the Tehsildar that the amount has not been paid. She denied the suggestion that she received a sum of Rs. 26,000/- also on that date and executed the sale deed. PW-4 Beli Ram has stated that he is a marginal witness to the sale deed and he appeared before the Tehsildar where the plaintiff admitted having received Rs. One Lac as sale consideration. She did not state before the Tehsildar that she will not accept the Pronote and stated that the sale deed was read over by the Tehsildar. He is a witness to the sale deed. PW-5 Uma Ram, is also a witness to the sale deed, who stated that at the time of registration, the amount was paid to the plaintiff, but he cannot say how much amount was paid. He clearly stated that at the time of sale deed, the plaintiff received a sum of Rs. One Lac from the defendant and she was told that a sum of Rs. One Lac has been received by the plaintiff.

11. It is clear from the above discussion that the plaintiff herself had failed to prove that the amount in question of sale consideration was not paid to her in full or that she is entitled to the balance amount, if any. Both the marginal witnesses have not substantiated her statement and even her own statement is not sufficient to raise a doubt in the mind of the Court that her version may be correct. In case, she had taken any plea that a Pronote was executed or it was in lieu of the consideration received by her, the defendant would have been at liberty to take the plea that it was without consideration and no claim was made on the basis of the Pronote by the plaintiff in the plaint and as such, she was not entitled to any balance amount also. The Pronote in question had been rightly appreciated by the Courts below, who have come to the conclusion that there is evidence of the defendant that the amount was paid before the Tehsildar and nothing is due to the plaintiff. The plea of the defendant that a Pronote was executed since he did not have the balance money on that day stands substantiated, since both the marginal witnesses have stated that sale deed was postponed to a later date. She admitted having received the full consideration and did not protest before the Sub Registrar that she has not

received the amount in cash or that a Pronote had been executed and, therefore, it is clear that the sale consideration was paid to the plaintiff. Her statement that she is an illiterate or that the defendant had committed fraud with her or harassed her with undue influence, do not stand substantiated from her own statement or other evidence. Both the Courts below had come to a right conclusion that the sale deed was not liable to be cancelled for any such reason.

12. In view of the above discussion, I accordingly hold there is no merit in the appeal filed by the appellant, which is dismissed accordingly. However, parties are left to bear their own costs.

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