

(2019) 08 CHH CK 0159

Chhattisgarh High Court

Case No: Second Appeal No. 470 Of 2004

Gangotri Bai And Ors

APPELLANT

Vs

Anand Ram @ Bhagan

RESPONDENT

Date of Decision: Aug. 23, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 100, Order 6 Rule 4

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: A.K. Prasad, Sanjay Patel

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by legal representatives of the defendant is as under:-

Whether in absence of specific finding that the sale deed dated 01-09-1990 was got executed from Mulki Bai by fraud, the lower appellate Court was not justified in reversing the judgment and decree passed by the trial Court ?

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit property was admittedly held by one Mulki Bai. She said to have executed sale deed dated 1.9.90 (Ex.D-1) in favour of the defendant and thereafter on 4.1.91 she and her grandson filed a suit for cancellation of sale deed dated 1.9.90 (Ex.D-1) pleading inter-alia that sale deed has been

obtained by playing fraud in the month of July, 1990 and at that time she was seriously unwell and taking advantage of her serious sickness, the defendant, who is her nephew, on the pretext of getting her treated on 1.9.90 taken her to Ambikapur and got her signature in blank paper, which was informed to son-in- law of plaintiff No.1 and when it was inquired it was found that original defendant got her signature on the sale deed. It was further pleaded that she has become old, her eye-sight is weak and she could not notice the fraud played by the defendant and made her thumb impression on the sale deed and sale consideration has not been paid to her, as such, sale deed dated 1.9.90 (Ex.D-1) deserves to be cancelled.

3. The defendant filed his written statement and denied the averments made in the plaint stating inter-alia that after making payment of sale consideration, sale deed was executed by plaintiff No.1 in his favour, he is bonafide purchaser and from the date of purchase, he is in possession of the suit land, as such, the suit deserves to be dismissed.

4. Upon consideration of oral and documentary evidence available on record, the trial Court by its judgment and decree dated 30.1.95, dismissed the suit holding that sale deed is legal document and it has been validly executed by plaintiff No.1 in favour of the defendant and no fraud has been played in execution of sale deed. On appeal being preferred by plaintiff No.2 as plaintiff No.1 died during the pendency of the suit itself, the first appellate Court reversed the judgment and decree of the trial Court and decreed the suit directing cancellation of the sale deed dated 1.9.90 executed by plaintiff No.1 in favour of the defendant. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by legal representatives of original defendant (original defendant died during pendency of first appeal), in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.A.K.Prasad, learned counsel for the appellants/legal representatives of original defendant, would submit that the first appellate Court is absolutely unjustified in granting the decree in favour of the plaintiff as neither particulars of fraud were pleaded in terms of Order 6 Rule 4 of the

CPC nor it was proved and merely recording finding that sale deed was executed on 31.8.90 and it was registered on 1.9.90 and further finding that

sale consideration has not been passed and stamp paper has been purchased by the defendant and plaintiff No.1 is shown to be resident of Saraitikra,

cancellation of sale deed was ordered, whereas she was residing at village Nawabandh along with her son-in-law, as such, the judgment and decree of

the first appellate Court deserves to be set aside and that of the trial Court be restored.

6. On the other hand, Mr.Sanjay Patel, learned counsel for the respondent/plaintiff No.2, would support the impugned judgment and decree and submit

that the first appellate Court is absolutely justified in granting decree. He would further submit that sale consideration has not been paid to plaintiff

No.1 by original defendant and finding recorded by the first appellate Court is strictly in accordance with law.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

8. The question for consideration would be, whether sale deed executed by plaintiff No.1 in favour of original defendant on 1.9.90 was obtained by

playing fraud upon her ?

9. In order to decide the plea raised at the Bar, it would be appropriate to notice Order 6 Rule 4 of the CPC which states as under:-

4. Particulars to be given where necessary.-In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful

default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid,

particulars (with dates and items if necessary) shall be stated in the pleading.

10. The Supreme Court in the matter of Ranganayakamma and another v. K.S. Prakash (Dead) by LRS. And others (2008) 15 SCC 673 Â has held

that where a contract or settlement is alleged to be vitiated by fraud or misrepresentation, particular thereof must be pleaded specifically and clearly.

11. Reverting to the facts of the present case, it would appear that sale deed was executed by plaintiff No.1 in favour of the defendant on 1.9.90 and

suit was filed on 4.1.91 stating that they are resident of village Saraitikra and possessed the suit land jointly. In the month of July, 1990, plaintiff No.1

was seriously ill, she was allegedly taken by her nephew on the pretext of getting her treated from village Nawabandh to District Hospital, Ambikapur

on 1.9.90 and got her thumb impression in blank paper and when it was inquired, it was found that he has taken signature of plaintiff No.1 on the sale

deed as she was physical unable to execute the sale deed on account of old age, weak eye-sight and week understanding on date of alleged sale and

sale deed was obtained by playing fraud.

12. A bare perusal of the plaint would show that the plaintiffs have simply made averments with regard to her sickness as well as on account of old

age and weak understanding, she was taken by the defendant on the pretext of treatment and she has not been paid consideration of alleged sale,

which the defendant has denied and stated that it is registered document and sale deed was executed in is favour in lieu of consideration of ₹ 10,000/-

in presence of two witnesses Santaruram (DW-2) and Raghunath (DW-3). Santaruram (DW-2) and Raghunath (DW-3) were examined before the

trial Court on behalf of the defendant, they have clearly admitted the fact of sale made by plaintiff No.1 in favour of the defendant and payment of

consideration of ₹ 10,000/- to plaintiff No.1. The trial Court after appreciating oral and documentary evidence available on record clearly reached to

finding that sale was made for valid consideration to plaintiff No.1 and therefore, title has been conferred in favour of the defendant, which the first

appellate Court has reversed only on the ground that sale deed was executed on 31.8.90, whereas it was registered on 1.9.90 and he could not satisfy

the Court about the source of purchase money which he has collected for payment to plaintiff No.1 and stamp paper was purchased by defendant-

Ramnath, whereas it was purchased by plaintiff No.1-Mulki Bai and there is some discrepancies about the residents of the parties.

13. Sale deed is admittedly registered sale deed. Witnesses to sale deed have been examined as DW-2-Santaruram and DW-3- Raghunath Ram.

They have clearly stated that sale deed was executed by plaintiff No.1-Mulki Bai in favour of the defendant and consideration amount was paid by the

defendant to plaintiff No.1- Mulki Bai. Different dates of execution and registration of sale deed cannot be a ground to disbelieve the sale made for payment of consideration to plaintiff No.1. It is not unusual act and it is common act which is permissible in law. Likewise, source of consideration amount which was paid by the defendant to plaintiff No.1-Mulki Bai cannot be questioned as admittedly two witnesses Santaruram (DW-2) and Raghunath Ram (DW-3) have clearly deposed about the payment of consideration to plaintiff No.1. Even otherwise, if the consideration has not been paid, remedy of plaintiff No.1 would be to sue for consideration, if any, but that cannot be a ground to declare the sale as void.

14. The Supreme Court in the matter of Vidhyadhar v. Manikrao and another (1999) 3 SCC 573 Â has held that even if the whole of the price is not paid, but sale deed is executed and thereafter registered, if the property is of value of more than Rs.100, the sale would be complete.

15. Recently, the Supreme Court in the matter of Jamila Begum (Dead) Through legal representatives v. Shami Mohd. (Dead) Through Legal Representatives and another (2019) 2 SCC 727 Â has held that registration of the sale deed reinforces valid execution of the sale deed. It was observed as under:-

16. Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. In Prem Singh v. Birbal (2006) 5 SCC 353, it was held as under:-

27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.

The above judgment in Prem Singh case has been referred to in Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale (2009) 12 SCC 101.

16. Finally, reverting to the facts of the present case in light of legal analysis made hereinabove, it cannot be held that the first appellate Â Court is

justified in reversing the well merited judgment and decree of the trial Court holding the sale deed dated 1.9.90 to be obtained by playing fraud by the defendant as sale deed is registered document executed by plaintiff No.1 in favour of the defendant on payment of consideration of ₹ 10,000/- and in presence of two witnesses namely, Santaruram (DW-2) and Raghunath Ram (DW-3) and therefore, title has been conveyed to the defendant.

Therefore, finding recorded by the first appellate Court that sale deed is obtained by playing fraud cannot be accepted by this Court.

17. For the foregoing reasons, the judgment and decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered in favour of the defendant and against the plaintiffs.

18. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

19. Decree be drawn-up accordingly.