
Smt. Vijay Kunwar Vs Deputy Director of Consolidation and Another

Civil Miscellaneous Writ Petition No. 1578 of 1973

Court: Allahabad High Court

Date of Decision: July 31, 1986

Acts Referred:

Constitution of India, 1950 " Article 226#Contract Act, 1872 " Section 16(3)#Evidence Act, 1872 " Section 111#Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 48, 9A(2)

Citation: (1987) 1 AWC 580

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: V.K.S. Chaudhary, B.N. Agarwal and Yatindra Singh, for the Appellant; R.C. Srivastava and S.C., for the Respondent

Final Decision: Allowed

Judgement

B.L. Yadav, J.

The present petition under Article 226 of the Constitution of India is directed against order dated 16-12-72 passed by the

Deputy Director of Consolidation allowing the revision filed by the Respondent No. 2 u/s 48 of the U.P. Consolidation of Holdings Act (for short

the Act).

2. Plot Nos. 43/3, 186/1, 131, 134 and 195 contained in Khata No. 3 are in dispute. In the basic year these plots were entered in the name of the

Petitioner and Respondent No. 2, who were the real sisters. An objection u/s 9-A(2) of the Act was filed by Respondent No. 2 alleging that she

was the real sister of the Petitioner who was married and was residing with her husband in Village Kaithi. It was further alleged that the Petitioner

was in the need of money and wanted to dispose of the plots. Consequently, the Petitioner sold her half share by a sale deed in 1967 in favour of

Respondent No. 2. The name of Respondent No. 2 must be entered and the name of the Petitioner may be expunged.

3. The Petitioner on the other hand, filed another objection alleging that she was married and resides in village Kaithi with her husband and her half

share in the plots was managed by Respondent No. 2, her real sister, in whom she has reposed full confidence. It was alleged that Respondent

No. 2 told her that Bhumidhari Sanad may be acquired and for that purpose the Petitioner would have to come to Tahsil and make signatures on

different papers so that the plots may also be actually divided between the Petitioner and Respondent No. 2. But instead of obtaining Bhumidhari

Sanad, Respondent No. 2 being a clever lady, obtained thumb impressions of the Petitioner on a number of papers and maneuvered to convert it

into a sale deed and the same was fraudulently obtained and may be set aside and her name may continue to be entered over half share. Oral and

documentary evidence were led.

4. The Consolidation Officer by his order dated 26-4-72 decided the case against Respondent No. 2. The appeal filed by Respondent No. 2 was

also dismissed by order dated 21-8-72. But her revision was allowed by the impugned order dated 16-12-72.

5. Learned Counsel for the Petitioner urged that Respondent No. 2 was the real sister of the Petitioner and she was worldly wise, whereas -the

Petitioner was a simple and illiterate lady and was entitled to protection extended to a Pardanashin lady. Further in view of the provisions of

Section 111 of the Indian Evidence Act, 1872, the burden was on Respondent No. 2, as she was in a position of active confidence, to prove the

bonafide of the transaction. But she failed to prove it. Further a number of documentary and oral evidence was led. The Petitioner examined herself

in the witness box and on her behalf Matadin, Dhani Ram and Ballu, three witnesses were examined. But the Deputy Director of Consolidation did

not consider their statements. The statements of witnesses of the Petitioner were relied upon by the Consolidation Officer and the Deputy Director

of Consolidation has no advantage of watching the demeanour of witnesses.

6. On behalf of the contesting Respondents it was urged that the burden of proof has correctly been placed on the Petitioner, Respondent No. 2

was not in active confidence It was further urged that oral evidence has correctly been ascertained and that the Petitioner was also a wise lady and

she did not require protection of a Pardanahsin lady and that she willingly and voluntarily executed the sale deed, which was legal and valid.

7. The first point for determination is as to whether the good faith of the transaction has been proved and as to whether the burden of proof was on

the Petitioner or on Respondent No. 2. The next point to be determined is as to whether the Petitioner required protection of a Pardanashin lady

and whether the transaction was liable to be cancelled.

8. Respondent No. 2 could succeed only if she could prove good faith of the transaction and that she was not in active confidence and that the

burden of proof was on the Petitioner. The Petitioner was the real sister of Respondent No. 2. As stated by the Petitioner herself and also by her

three witnesses namely, Matadin, Dhani Ram and Ballu that the Petitioner did not receive any sale consideration and she came to know about the

sale deed when she came to the village of her parents and demanded her share of crops; and was told by Respondent No. 2 that the Petitioner had

executed a sale deed in her favour and she was not entitled to any portion of yield. As the Petitioner was residing with her husband she could not

be expected to know day to day development in the village where the plots were cultivated under the supervision of Respondent No. 2. Further

the Consolidation Officer has discussed in detail the statement of the Petitioner and her three witnesses and relied upon them. Similarly in appeal

also the statements of witnesses were relied upon. But the Deputy Director of Consolidation without discussing the oral evidence, allowed the

revision. It has come in the statement of witnesses including the statement of the Petitioner that she was taken to the Tahsil on the assurance that

after depositing twenty times rental Bhumidhari Sanad would be obtained so that the plots may be partitioned. But the thumb impression of the

Petitioner on the document was converted into sale deed. The Petitioner was reposing confidence in Respondent No. 2 who was her elder sister.

In case the oral evidence was relied upon by the Consolidation Officer after discussion in detail, the Deputy Director of Consolidation cannot shut

his eyes to that part of important evidence without discussing it, unless it was shown that some important aspect of the evidence has escaped

attention of the trial court. But that was not done. The Deputy Director of Consolidation erred in not taking into account the oral evidence on

behalf of the Petitioner which was of conclusive nature, particularly, when the same was relied upon by the Consolidation Officer.

9. As regards the active confidence and the burden of proof, the same has been provided u/s 111 of the Indian Evidence Act. It is better to set out

the relevant portion of Section 111 of the Indian Evidence Act as follows:

111. Proof of good faith in transactions where one party is in relation of active confidence. Where there is a question as to the good faith of

transaction between the parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of

transaction is on the party who is in a position of active confidence.

10. In fact, every human being is supposed to be honest unless the contrary is proved. Similarly in respect of human affairs also the law presumes

good faith and absence of fraud and undue influence etc. in view of the maxim "Omnia Praesumuntur Rite Esse Acta". To this rule, however, there

is an exception, and that is enacted u/s 111. If any confidential or fiduciary relation subsists between the parties, the Courts so far presume against

the validity of the document or the transaction, as to require some proof of the absence of some undue influence or unconscionable advantage. It is,

in fact, a principle of equity which has been enacted u/s 111. Where a fiduciary or quasi-fiduciary relation has existed, in that event the Courts of

equity in England have always placed the burden of sustaining the transaction upon the party benefited by it, requiring him to prove that it was of an

unobjectionable character, and that the transaction was of such a nature that Courts of equity need not disturb. This Section enacts that where

there is a transaction between two persons where they are in a position of active confidence, the burden of proving the good faith of the sale deed

etc. is on the person who stands in active confidence. In fact, the word "active" connotes "in actual operation", "practical", "as opposed to

speculative", "effective". The words "active confidence" means the confidence in actual operation, the effective confidence, or in other words the

practical confidence. In the present case Smt. Kishori Devi, Respondent No. 2 was in effective confidence or the practical confidence of the

Petitioner.

11. Furthermore, the Petitioner was illiterate lady. On the spot the affairs were managed by Respondent No. 2 who was taking lead in getting the

Bhumidhari Sanad so that the partition could be effected. But as a matter of fact, the nature of land must be Bhumidhari was not a condition for

partition. May be, that this was set up as an excuse by Respondent No. 2 to obtain the sale deed in her favour.

12. The provisions of Section 16(3) of the Indian Contract Act contain somewhat similar provision that if a person who is in a position to dominate

the will of another, enters into a contract with the latter and the transaction, on the face of it, on the evidence adduced, appears to be

unconscionable, the burden of proof that such contract was not induced by undue influence, shall lie on the party who was in a position to dominate

the will of the latter. Whereas in case the transaction between the parties, who are in fiduciary relation to the other, and the transaction appears

unconscionable, in case good faith of the transaction is to be proved, in that event the burden to prove good faith of the transaction would be on

the party who was in a position or active confidence as in the present case. In view of these facts the burden was certainly on Respondent No. 2,

Smt. Kishori Devi, but she failed to discharge it.

13. Now adverting to the other aspect of the matter as to whether the Petitioner must be given benefits of a Pardanashin lady. In such matters, the

Petitioner may not be actually a Pardanashin lady, but the concept of Parda is that when a person is so incapable on account of ignorance, illiteracy

or lack of knowledge about the court proceedings, to understand the nature of transaction, in that case even though a person may not be

Pardanashin lady, but that person is afforded protection just with a view to ascertain that a particular transaction has been fairly and correctly

entered into by the parties and that the same was not dominated by the cunningness or wisdom of one party and illiteracy or ignorance of the other.

See Paras Nath Rai v. Tishra Kuer 1965 ALJ 1080.

14. I have perused the entire evidence. As the statement of witnesses of the Petitioner has not been discussed even by the Deputy Director of

Consolidation and considering his other findings in respect of which no reference to the evidence on record has been made, I would have normally

remanded the case back to him, but keeping in view the facts that the real elder sister of the Petitioner being in a position of active confidence

obtained the sale deed from the Petitioner and that Section 111 of the Indian Evidence Act clearly indicates that where good faith of a transaction

was to be proved, the burden of proof will be on the person who was in active confidence and the Deputy Director of Consolidation having taken

such a perverse view without considering the real controversy involved, the order of Respondent No. 1 deserves to be quashed. I do not think that

any useful purpose would be served by remanding the case, rather it would be prolonging the proceedings and creating the harassment to the

Petitioner who is simple, illiterate and ignorant younger sister of Respondent No. 2. The Petitioner was legally entitled to one upon half share in the

land in dispute.

15. In the result, the petition succeeds and is allowed. The impugned order dated 16-12-72 is hereby quashed. There shall, however, be no order

as to costs.