(1979) 04 AHC CK 0016

Allahabad High Court (Lucknow Bench)

Case No: Civil Rev. No. 174 of 1977

Sheopal and Others		APPELLANT
	Vs	
Smt. Lakhpata		RESPONDENT

Date of Decision: April 19, 1979

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Contract Act, 1872 - Section 11
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 331, 5, 5(2)
- Uttar Pradesh Tenancy Act, 1939 - Section 59

Citation: (1979) AWC 524 : (1980) RD 2

Hon'ble Judges: K.S. Verma, J; Gopi Nath, J

Bench: Division Bench

Advocate: Brijesh Kumar and Rajesh Kumar, for the Appellant; Abdul Razzaque Khan and H.S. Sahai, for the Respondent

Final Decision: Allowed

Judgement

K.S. Verma

1. The facts giving rise to this revision application are that opposite party Shrimati Lakhpata filed a suit in the Court of Munsif, Utraula at Gonda for the cancellation of a sale deed said to have been executed by her on 2-6-1966 in favour of the applicants. The sale deed was challenged on the ground that the Plaintiff-opposite party was a minor and the applicants by a fraudulent misrepresentation to her obtained a sale deed which was without consideration. It was alleged that the applicants represented to her that Mangrey played a fraud on her and had got a fictitious entry made in his name over certain land belonging to her and for that she will have to execute a general power of attorney so that they contest her claim against Mangrey on her behalf. The allegations in the plaint are that in this way she executed a document under the impression that she was executing power of

attorney. She subsequently found that instead of power of attorney, she was made to (sic)a sale deed in respect of the property belonging to her in favour of the applicants. The Learned Counsel for the parties have stated that paragraphs of the plaint relevant for purposes of the case are as quoted below :

(A) Yeh ki jis wakt dastawaz bainama likha gaya us wakt wadini nabaligh thi. Uska koi wali nahin mukarrar karaya gaya aur dauran nabalghi mudaiya ko bainama linkhne ka koi huq nahin tha. Mudaiya uski paband nahi hai aur baligh ho jane ke baad usko namanzoor karti hai.

(Ba) Yeh ke aaraziyat mutadawyya par musamme Mangrey ne ek farzi inderaj dakhil kharij zariya parwana amal daramad apne naam kara liya tha halanke jis mukadma ka hawala parwana amal daramad men diya gaya tha us kism ka koi mukadma wadni aur Mangrey ke beech kabhi kisi adalat me nahin chala natu kisi adalat se digree hui thi aur na kisi adalat ne parwana amaldaramad bheja tha balki Mangrey ne lekhpal se saz karke farzi wa jali amaldaramad kagzat men apne nam kara liva tha. Mudaiya aurat zat hai anparh hai aur jahil hai pratiwadigan uske ghar ke karib ke rehne wale hain. Wadni gaon ke logon se shikayat karti rahi ke uske saath jaal kiya gaya hai. Us wakt koi mard wadni ke ghar men uski dekh bhal Karne wala nahin tha. Pratiwadigan ne wadni se yeh kaha ke woh waadni ke taraf se pairwi karenge aur Mangrey ke muqabil men mukadma larenge aur jo jali inderaj Mangrey ne kara liya hain uskko kharij karwa denge lekin aisa karne ke liye wadni ko yah karna hoga ke woh ek mukhtarnama likhkar pratiwadigan ke haq men registri karwa de. Wadni Chunke lachar aurat thi is baat par razi ho gai. Pratiwadigan wadni ko lekar Utraula gaye aur wadni se yeh kaha ke jo kuchh likwayajaega uske bare me jo bhi hakim us se punchhe woh hunkari bharti rahe aur agar usne kahin kuchh doosri bat kahi to mamla kharab ho jaega aur parvi no ho paegi. Utraula pahunch kar pratiwadigan ne ek dastawez likhwaya aur daftar sub registree men wadni ko le gaye aur wahan wadni sirf hunkari bharti gai aur yehi samajhti rahi ke dastawez mukhtarnama likhaya ja raha hai. Usko yeh pata nahin chala ke uski jaedad ka bainema likha ja raha hai,
(Sa) Yek ke wadni ki koi bhi raqam pratiwadigan ne aarazi mutadaweya ke bare men nahin di aur dastawez bainama bila muawza hai. Dastawez bainama ke pahle bhi koi rupiya wadni ko nahin mila....

The applicant denied the allegations in the plaint and pleaded that when the sale deed was executed she was major and the deed was voluntarily executed by her. It was also pleaded by the applicants that the property in suit is under consolidation operations and the controversy between the parties can be decided only by consolidation authorities.

2. A preliminary issue was framed i.e. whether the suit was liable to abate u/s 5(2) of the U.P. Consolidation of Holdings Act, 1953. The trial Court took the view that since the sale deed was challenged on the ground of fraud, the Civil Court had jurisdiction

to adjudicate upon the controversy in dispute and since the relief in regard to cancellation of deed cannot be granted by the Consolidation Courts, the suit will not abate and will be triable by the Civil Court. Against the said order, a revision application was preferred before the District Judge which was also dismissed. Against the order passed by the District Judge, Gonda, dated 2-4-1977 upholding the order of the trial Court that the suit did not abate u/s 5 of the U.P. Consolidation of Holdings Act and was cognizable by the Civil Court, a revision application was perferred in this Court u/s 115 of the Code of Civil procedure.

2a. The revision application came up for hearing before Hon''ble U.C. Srivastava, J. who by order dated 18-4-1979 referred the matter to a larger Bench on the ground that there appeared to be some conflict of opinion in this Court on the question whether a suit of the nature under consideration would abate u/s 5 of the U.P. consolidation of Holdings Act or not. In Mewa v. Baldeo 1966 AWR 597 a question arose whether a suit for possession in respect of the agricultural plots was maintainable in the Civil Court on the ground that the sale deed whereby title was conveyed to the other party was vitiated on the ground of fraud. The question that arose in that case was whether a suit for the cancellation of a document and for relief of possession was maintainable in the Revenue Court only by virtue of Section 331 of U.P. Act I of 1951. A Division Bench while disposing of the case held that the real cause of action for the Plaintiff in that case was the fraudulent act of obtaining a sale deed, the sale deed having been executed by the Plaintiff himself, on account of fraud was voidable and, therefore, valid and binding as long as it was not set aside. The Division Bench observed that on these allegations, the Revenue Court could give no relief so long as the sale deed remained uncancelled. Neither a decree for declaration nor for possession could be passed in favour of the Plaintiff as long as the sale deed stood. According to the learned Judges, the position would be very different if the document which was sought to be cancelled was a document void abinitio, for instance, if it had been executed by the Plaintiff while he was a minor. In that eventuality the document being completely void, it would be unnecessary to avoid it and in that case he could, merely by proving that it was a void document, get a declaration of his title to the property or even possession without cancellation of the sale deed. On the facts of that case, the Division Bench held that since the prayer was for the cancellation of the sale deed, the suit was triable by the Civil Court and not by Revenue Court. On the basis of the aforesaid decision, it was contended on behalf of the opposite party that since the suit filed by her involved the cancellation of a sale deed the suit will not abate as the relief in respect of a declaration of rights or interests in land subject to consolidation operations could be granted by the Civil Court. The title will depend upon the question whether the sale deed is binding or not and as long as the sale deed stands it would not be possible for the Consolidation Courts to grant any declaration in favour of the Plaintiff, Since the relief for the cancellation of a sale deed is a relief which cannot be granted by the Consolidation authorities, the suit will not abate and would be triable by the Civil

Court.

3. On the other hand, it was contended on behalf of the applicants that from a perusal of the plaint, it appears that the Plaintiff came to the Court on the ground that there was a fraudulent representation not in regard to the contents of the document but as to the character of the document. The argument advanced on behalf of the applicants is that the fraudulent act alleged in the plaint is that it was represented to the Plaintiff that she was required to execute a power of attorney but instead of that she was made to execute a sale deed. The Learned Counsel for the applicants submitted that on these allegations it is clear that the fraud attributed to the applicants is as to the character of the document and not as to the contents of the document and if the fraudulent act is in regard to the character of the document then the document would be void and it will not be necessary to get it set aside in order to obtain a relief for declaration or possession in respect of ''land'' within the meaning of U.P. Consolidation of Holdings Act, 1953. It was, accordingly, contended that since the document is a void document it can be ignored and the claim for the declaration of rights in regard to the plots in dispute can be entertained by the Consolidation authorities. The Learned Counsel for the applicants in support of this line of reasoning relied upon Ningawwa Vs. Byrappa and Others, , and Baij Nath v. Binda 1978 R.D. 77. The general rule is that a man is estopped by his deed, and although there is no such estoppel in the case of ordinary signed documents, a party of full age and understanding is normally bound by his signature to a document, whether he reads or understands it or not. If, however, a party has been misled into executing a deed or signing a document essentially different from that which he intended to execute or sign, he can raise the plea known in English law as the plea of non est factum. In most of the cases in which the plea of non est factum has been successfully pleaded, the mistake has been induced by fraud. The scope of the plea of non est factum has been considered in detail in Chitty on Contracts, Twenty fourth edition, at page 299.

4. The principle underlying the plea non est factum came up for consideration before Courts in England as far back as the year 1584. In Thoroughgood v. Cole LXXVI English Report, 408, it was held that a deed executed by an illiterate person does not bind him if read falsely either by the grantee or a stranger. If an illiterate man executes a deed which is falsely read, or the scene declared differently from the truth, it does not bind him. A perusal of the said decision would indicate that Thoroughgood brought an action of trespass against the Defendant who pleaded that long time before the trespass, the Plaintiff released to one William Chicken all demands whatsoever whose estate in the land vested in the Defendant. The Defendant on the basis of release justified the trespass. The Plaintiff''s case was that he was a layman, not lettered, and that at the time of the said release made, "diverse a rearages of an annuity were due to him by the said William Chicken, and that the said writing of release was read and declared to him as a writing of acquittance". It was held that although the party to whom the writing was attributed

did not read the writing, but a stranger of his own head read it in other words than in truth it was, the document, shall not bind the party who executed it.

5. Thoroughgood''s case (Supra) came for consideration before Byles, J. in a case reported in Forster v. Mackinnon ILR 1869 CP 704. The case arose out of an action by the Plaintiff as endorsee of a bill of exchange against the Defendant as endorser. The Defendant alleged that the endorsement was obtained from him by fraud. The case presented by the Defendant was that he never made the contract declared on ; that he never saw the face of the bill; that the purport of the contract was fraudulently misdescribed to him, that, when he signed one thing, he was told and believed that he was signing another and an entirely different thing. In substance, the Defendant''s plea was that his mind never went with his act; Byles, J. after relying upon Thorough-good''s case (Supra) observed as follows:

It seems plain, on principle and on authority that, if a blind man or a man who cannot read, or who for some reason(not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different form the contract pretended to be read from the paper which the blind or illiterate man afterwards signs, then, at least if there be no negligence, the signature so obtained is of no force. And it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature ; in other words, that he never intended to sign; and therefore,in contemplation of law never did sign, the contract to which his name is appended.

6. The principle enunciated in Foster v. Mackinnon (Supra) was approved of by the Supreme Court in a decision reported in Ningawwa v. Byrappa Shiddappa (Supra). It might be relevant at this stage to state that the principle enunciated in Foster v. Mackinnon (Supra) came up for consideration before the House of Lords in Saunders (Executrix of the will of Rose Maud Gallie, Deceased) and Angla Building Society 1971 AC 1004. The observations of Lord Wilberforce at page 1026 may be quoted as follows :

In my opinion, a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking; that is, more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended. Many other expressions, or adjectives, could be used "basically" or "redically" or "fundamentally." In substance, the test does not differ from that which was applied in the leading cases of Thoroughgood, (1582) 2 Co. Rep. and Foster V. Mackinnon (1869) ILR C.P. 704, except in moving from the character/contents distinction to an area in better understood modern practice.

7. The other Judges agreed with the principles enunciated by Lord Wilberforce. However, in the said case it was held that the plea of non est factum was not

available to the executant of document. Lord Pearson after considering the entire case law on the point observed as follows:

The judgments in the older cases used a variety of expressions to signify the degree or kind of difference that, for the purposes of the plea of non est factum, must be shown to exist between the document as it was and the document as it was believed to be. More recently there has been a tendency to draw a firm distinction between (a) a difference in character or class, which is sufficient for the purposes of the plea and (b) a difference only in contents, which is not sufficient. This distinction has been helpful in some cases, but, as the judgments of the Court of Appeal have shown, it would produce wrong results if it were applied as a rigid rule for all cases. In my opinion, one has to use a more general phrase, such as "fundamentally different" or "radically different" or "totally different"

8. In Rasool Ahmad v. Beni Prasad 1965 ALJ 70 , Gangeshwar Prasad, J. while deciding the question whether the suit was cognizable by the Civil Court or by the Revenue Court, held that the true grievance of the Plaintiff and not what he professes to be aggrieved by, has to be seen. What has to be determined is whether he can get redress in the revenue court or not. According to the learned Judge, if the Plaintiff is in possession of the land in suit and wants to establish that his rights as tenant are unaffected by the (sic) or the decree, a suit for declaration u/s 59 of the U.P. Tenancy Act would provide a complete and effective remedy. This will be on the principle that if a deed or decree has legal force and precludes the grant of a declaration without having been cancelled, it would be necessary for him to invoke the jurisdiction of the Civil Court and to clear the ground for obtaining that relief which may be available to him in the revenue court but where, according to the Plaintiff himself, the deed or the decree is devoid of all legal force and effectiveness, it cannot constitute an impediment in the way of the Plaintiff in getting a declaration as to his rights or in recovering possession through the revenue Court. In the instant case the Plaintiff''s case is that she intended to execute a Mukhtarnama but fraudulently she was made to execute a deed of sale. The allegation in the plaint is in regard to the nature of the document and not in regard to the contents. Having regard to the principles enunciated in the decisions referred to above, the conclusion that is reached is that since the fraudulent act alleged by the Plaintiff relates to the character of the document and not to the contents, the sale deed would be void. If the deed is void then it can be ignored and the Consolidation authorities can go into the question of title and so called deed of sale would not be an impediment in granting relief to the Plaintiff. In Gorakh Nath Dube Vs. Hari Narain Singh and Others, , the Court was required to decide the question whether having regard to the allegations in the plaint, the suit would abate u/s 5(2) of the U.P. Consolidation of Holdings Act. M.H. Beg, J. (as he then was) at page 2435 pointed out distinction between cases where a document can be ignored and where it has to be set aside before any relief can be granted. His observations may be quoted as follows:

We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect.

9. However, on the facts of the case the Hon''ble Judges held that the claim could be adjudged upon by Consolidation Courts keeping in view the allegations in the plaint.

10. A close analysis of various cases decided by Courts in England and in India indicates that if a party has been misled into executing a deed or signing a document essentially different from one he intended to execute or sign, he can plead non est factum in an action against him. It is invalid on the ground that the mind of the signer did not accompany the signature and that he never intended to sign the transaction to which his name is appended.

11. The question that now arises is whether the suit which has given rise to this revision application will abate u/s 5(2) of the U.P. Consolidation of Holdings Act or the relief can be granted by the Civil Court. The settled view of this Court is that the allegations in the plaint determine the jurisdiction of the Court. A close scrutiny of the plaint would indicate that the allegations made are in regard to fraudulent representation as respects the nature of the document and not in regard to the contents of the document. If the fraudulent act alleged was in respect of the contents of the document then the document will hold the field unless it was set aside. In that event the suit would lie in the Civil Court as the relief for the cancellation of the sale deed cannot be granted by the Consolidation Courts. If on the other hand, the relief claimed is in regard to the fraudulent act as respects the nature of the document, the document would be void as in the eye of law no such document was executed by the executant. Since the element of consent to the document set up is lacking, the deed can be ignored as the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended. In such an eventuality, the sale deed can be ignored on the ground that it is void and the Consolidation Courts can ignore the document and determine the rights of the parties. In our opinion, the allegations in the plaint are such that the relief can be granted by the Consolidation Courts. We find support for our view from a Full Bench decision of this Court in Ram Nath v. Smt. Munna 1976 AWC 412. The observations of the Full Bench may be quoted as follows:
We are, therefore, of the opinion that the Supreme Court has laid down the law in Gorakh Nath Dube Vs. Hari Narain Singh and Others, that suits in respect of void documents abate by reason of Section 5(2) of the U.P. Consolidation of Holdings Act, but the suits for cancellation of voidable deeds do not abate.

12. R.M. Sahai, J. in Baij Nath v. Binda 1978 AWC 52 , relying upon Ningawwa Vs. Byrappa and Others, has held that if the fraudulent act alleged is in regard to the character of the document, the document would be void and the proceedings will abate u/s 5(2) of the Act but if the allegations are in regard to fraudulent

representation as to the contents of the document, the document would be voidable and the suit will not abate as the relief for cancellation of the document would be the appropriate relief which can be granted only by the Civil Court.

13. One of the allegations in the plaint is that at the time of the execution of the so-called sale deed the Plaintiff was a minor. During the period of her minority no guardian was appointed and without a guardian any deed executed by her is not binding upon her. Section 11 of the Contract Act provides that every person is competent to contract who is of the age of majority according to the law to which he is subject. This provision contained in Section 11 of the Contract Act if converted into a negative proposition would mean that no person is competent to contract who is not of the age of majority according to the law to which he is subject. In Mohari Bibee v. Dhurmodas Ghose 30 IA 114, the Privy Council held that under the Contract Act, the contracting parties should be competent to contract. A person who by reason of his minority is incompetent to contract cannot make a valid contract. Since the transaction of sale is the result of a contract such a transaction if entered into by a minor would be void. At page 123, their Lordships discussed various provisions of the Contract Act and at page 124 of the above report, they remarked as follows:

Their Lordships are satisfied that the Act makes it essential that all contracting parties should be "competent to contract", and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act.

Their Lordships further observed as follows:

The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant.

Their Lordships further remarked as follows:

It is beyond question that an infant falls within the class of persons here referred to as incapable of entering into a contract ; and it is clear from the Act that he is not to be liable even for necessaries, and that no demand in respect thereof is enforceable against him by law....

14. For the reasons stated above, we are of the view that the allegation in the plaint that at the time of the execution of the so-called sale deed the Plaintiff was a minor and hence could not execute the contract, is an allegation about the transaction being void and not voidable. In Nawab Sadiq Ali Khan v. Jai Kishore AIR 1928 PC 152, at page 156, their Lordships of the Privy Council held that a deed executed by a minor is a nullity and is incapable of founding a plea of estoppel.

15. It has also been averred in the plaint that the deed is without consideration. A contract which is without consideration is void and can be ignored.

16. One of the questions referred to by U.C. Srivastava, J. was as to what would be the position if the cancellation of a sale deed is challenged on the ground that the same is void as well as voidable. The question posed was whether in such an eventuality the Civil Court or the Consolidation authorities will be competent to decide the rights and title of the parties. It is unnecessary to answer this question as for the reasons stated above, we are of the view that the allegations in the plaint clearly indicate that the fraudulent action is in respect of the nature of the document. Such a document is void and it need not be set aside to give relief to any party. Such a deed can simply be ignored. If the deed is not required to be cancelled in order to grant relief to the party but it has to be ignored then the Consolidation authorities would have jurisdiction to adjudicate upon the rights of the parties ignoring the sale deed. We, therefore, refrain from expressing any opinion on the second question posed by U.C. Srivastava, J.

17. For the reasons stated above, we allow the revision application, set aside the order passed by the Courts below and direct that the suit abates u/s 5(2) of the U.P. Consolidation of Holdings Act. In the circumstances of the case, there will be no order as to costs.