

(2004) 02 AHC CK 0097

Allahabad High Court

Case No: Second Appeal No. 1909 of 1984

Angoori Devi

APPELLANT

Vs

Pooran Singh and Others

RESPONDENT

Date of Decision: Feb. 26, 2004**Citation:** AIR 2004 All 273 : (2004) 2 AWC 1312 : (2004) 96 RD 424 : (2004) 1 RD 424 : (2004) 2 UPLBEC 1847**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench**Advocate:** R.D. Khare, Paras Nath Pandey, A.K. Sharma, S.N. Pandey, B.D. Tripathi, J.P. Singh, S.O.P. Shah, M.D. Singh, Kapoor Chand, Faujdar Rat, C.K. Rai and Rohit Agrawal, for the Appellant; R.K. Mishra, N.K. Srivastava and Pramod Jain, for the Respondent**Final Decision:** Dismissed

Judgement

Tarun Agarwala, J.

The plaintiff filed a suit in the year 1978 for cancellation of a sale deed dated 24.9.1959 allegedly executed by her in favour of defendant No. 1 on the ground that it was obtained by fraud. The plaintiff alleged that she is an illiterate villager and her husband died in 1957-58 when she was only 19 years old. Defendant No. 1 is the son of the elder sister of the plaintiff. After the death of the husband, the plaintiff fell ill, and the parents of defendant No. 1 came to look after her and left defendant No. 1 with the plaintiff as there was no male member in the plaintiffs family. The parents of defendant No. 1 requested the plaintiff to execute a Will in favour of defendant No. 1. This idea was relished by the plaintiff because at that time she was under the impression that she was dying. Accordingly, the parents of defendant No. 1 brought her to the Registrar's office where she placed her thumb impression on some papers which she thought was a Will. The plaintiff further alleged that defendant No. 1 remained with her for two or three years. Thereafter the behaviour of defendant No. 1 became unruly towards the plaintiff and the plaintiff sent the defendant No. 1 back to his parents place. In 1978, the plaintiff came to know that

the defendant No. 1 is negotiating the sale of the property with the defendant No. 2. The plaintiff enquired into the matter and then came to know that a sale deed dated 24.9.1959 had been allegedly executed by her in favour of defendant No. 1. It was asserted that the sale deed was obtained by fraud. Hence the suit was filed for cancellation of the sale deed dated 24.9.1959. She also prayed that a permanent injunction be granted restraining the defendant from interfering with her possession on the land in dispute.

2. The defendant No. 1 contested the suit and denied the plaintiff allegations. The defendant contended that the plaintiff executed the sale deed on her own accord. Since the plaintiff was only selling 1/3 of the property, she applied before the Settlement Officer of Consolidation for permission to sell the land in dispute and after getting the permission, she executed the sale-deed. The plaintiff also gave a statement before the mutation court on the basis of which the defendant's name was mutated in the revenue records. Not only this the plaintiff also filed a suit for partition which was decreed in which the plaintiff admitted that the defendant No. 1 had 1/3 share in the property in dispute. The defendant further pleaded that the suit was barred by time ; that the suit was not maintainable in view of Section 49 of U.P.C.L.H Act and was also barred by the principle of res judicata.

3. The trial court dismissed the suit holding that the sale deed was not obtained by fraud that the plaintiff was not ill and that the thumb impression in mutation proceedings was that of the plaintiff. The trial court further held that both the parties were in possession of the land and that the suit was barred by time and also liable to be dismissed on the ground of constructive res judicata.

4. The appellate court also arrived at the same conclusion and dismissed the appeal of the plaintiff.

5. I have heard Sri S.O.P. Agarwal, the learned counsel for the plaintiff-appellant and Sri Pramod Jain, learned counsel for the defendant.

6. The present appeal was admitted on the question as to whether the suit of the plaintiff was not barred by time.

7. The counsel for the plaintiff-appellant has urged that the suit was not barred by time as the plaintiff was not aware of the execution of the sale deed dated 24.9.1959 and only came to know about it in the year 1978 when the defendant No. 1 started negotiating the sale of the land with the defendant No. 2. Hence, the suit was filed within the period of limitation. The counsel for the appellant further submitted that the plaintiff was an illiterate woman and was under an impression that she had executed a Will. She was not aware that she was executing a sale deed in favour of defendant No. 1. The counsel for the appellant submitted that the rule evolved for the protection of pardanashin ladies should equally apply to illiterate ladies such as the plaintiff and the Court has to ascertain that the document which the plaintiff executed was explained to her and that she understood it. It was submitted that the

burden of proof lay upon the defendant and he failed to discharge the burden that the document was entered into by the plaintiff after clearly understanding the nature of the transaction.

8. It was submitted that on account of the plaintiff's ignorance in understanding the true import of the document, a fraud has been played upon her and the sale deed was therefore, liable to be cancelled on the grounds of fraud.

9. The appellant contended that if the plaintiff is able to prove that the document was executed by playing a fraud upon her, in which case, it would be presumed that she had no knowledge about the execution of the document and therefore, the suit could not be dismissed on the ground of being barred by limitation.

10. In support of his submission, the learned counsel for the appellant has drawn my attention to a decision of the Supreme Court in [Mst. Kharbuja Kuer Vs. Jangbahadur Rai](#), wherein it was held :

"The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the documents was explained to her and that she understood it, but also by other evidence, direct and circumstantial."

11. The same view has been reiterated in [Bibi Jaibunnisa Vs. Abdul Ghafoor and Others](#), and in [Rankanidhi Sahu Vs. Nandakishore Sahu](#),

12. The learned counsel for the appellant has also relied upon a decision of our Court in [Ashok Kumar and Another Vs. Gaon Sabha, Ratauli and Others](#), for the proposition that the benefit available to a pardanashin lady is equally applicable to a case of an illiterate village woman.

13. This Court has no quarrel with the proposition submitted by the learned counsel for the appellant. The benefit available to a pardanashin lady is equally applicable to an illiterate woman. It is also true that if the Court finds that a fraud was played upon the plaintiff in the execution of the sale deed, her suit would be well within the period of limitation because it will be presumed that she had no knowledge about the execution of the sale deed in 1959 and that she come to know about it in the year 1978.

14. Thus this Court, has to see as to whether the defendant has discharged the burden to the effect that the plaintiff had executed the sale deed after fully understanding the contents of it.

15. It has come on record that before executing the sale deed the plaintiff sought permission from the Settlement Officer of Consolidation to sell 1/3 of her share in

the land in favour of the defendant No. 1. The sale deed was executed after permission was granted. After the execution of the sale deed in 1959, the plaintiff gave a statement before the mutation court on the basis of which the name of defendant No. 1 was mutated in the revenue records. Not only this the plaintiff filed a suit for partition which was decreed in which she admitted that the defendant No. 1 had 1/3 share in the property in dispute. Both the courts below have given concurrent findings that the thumb impression in the mutation proceedings was that of the plaintiff. Thus it has been conclusively proved by direct and circumstantial evidence that the plaintiff had knowledge about the execution of the sale deed in the year 1959 and that the plaintiff fully understood the contents of it. If the plaintiff was unaware of the execution of sale deed or was unaware of the contents of the sale deed, in which case there was no occasion for her to appear in the mutation proceedings, which occurred after the execution of the sale deed, or to file a suit for partition. Thus the defendant No. 1 has successfully discharged the burden, which lay upon him.

16. It may be stated here that when fraud is alleged, the burden is upon the person who alleges it. The onus was upon the plaintiff to prove fraud. In 89 Ind. Cas. 649 (Privy Council) Lord Sumner pointed that fraud, duress and actual undue influence are separate matters and applies to pardanashin ladies.

17. The said view was fortified by the Supreme Court in [Mst. Kharbuja Kuer Vs. Jangbahadur Rai](#), holding that :

"It is, therefore, manifest that the rule evolved for the protection of pardanashin ladies shall not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardanashin ladies or not."

18. In the present case the plaintiff has failed miserably in proving that fraud was played upon her in the execution of the sale deed in 1959. On the other hand, both the courts below have found that the plaintiff was fit enough to go to the Registrar's office for the execution of the sale deed and thereby implied that she was in a proper mental frame of mind and that she had voluntarily executed the document, namely, the sale deed. I see no reason to differ from the view taken by the courts below.

19. To sum up, I find that the plaintiff executed the sale-deed with a true understanding mind and that she had voluntarily executed the sale deed after clearly understanding the nature of the transaction. No fraud was played upon her. The plaintiff had knowledge about the execution of the sale deed in 1959 and the suit filed by her in the year 1978 for cancellation of the sale deed dated 24.9.1959 was clearly barred by time. The appeal fails and is dismissed with cost.