(1927) 02 AHC CK 0017

Allahabad High Court

Case No: None

Lachman Das and Another	APPELLANT
Vs	
Ram Prasad and Others	RESPONDENT

Date of Decision: Feb. 28, 1927

Citation: AIR 1927 All 422 : (1927) ILR (All) 680

Hon'ble Judges: Mukerji, J; Ashworth, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Mukerji, J.

This is an appeal by two defendants in a mortgage suit, brought by the Respondent No. 1 under the following circumstances. Three persons, viz., Ram Prasad son of Dhuma Mal, his wife Mt. Barfi Kunwar and the appellant Lachman Das executed the bond in suit for a consideration of Rs. 5,200 in favour of the respondent Ram Prasad son of Gulzari Lal. The plaintiff sought to enforce the mortgage and made parties to it not only the mortgagors but also the transferees from them and one Radhe Shiam, a minor son of Ram Prasad son of Dhuma Mal and his wife Mt. Barfi.

2. The defence of Lachman Das was threefold, so far as we are concerned in this appeal. He said that the mortgage was not properly registered and was therefore, not enforceable, that he received no consideration for the mortgage and that he executed it under an undue influence. He further added that he had no interest in the property at the date of the mortgage and, therefore, the mortgage was not enforceable against the property mortgaged. The Appellant No. 2, Mt. Nanhi, appears to be a transferee from Mt. Barfi and her appeal before us repeats the same arguments which we shall presently notice, on behalf of Lachman Das.

3. It appears that one Kalyan Chand was the owner of a considerable amount of cash and moveable property. He made a Will in 1907 in favour of his wife Mt. Champa Kunwar and his daughter''s son Lachman Das. He gave by this document a

life-interest to Mt. Champa Kunwar and the remainder to Lachman Das. Kalyan Chand and Mt. Champa Kunwar had a daughter Mt. Barfi besides Mt. Kotori, the mother of Lachman Das. Mt. Kotori predeceased her father. Mt. Barfi married Ram Prasad and this Ram Prasad is one of the mortgagors along with Mt. Barfi. By an agreement of 1910 entered into, a date when Lachman Das was still a minor, Mt. Champa Kunwar, Lachman Das and Mt. Barfi agreed that the property in question should go to Mt. Barfi and Lachman Das and Mt. Champa Kunwar should each receive an annuity. We need not consider this agreement as I have already stated it is not binding on Lachman Das. I may add that the property mortgaged was purchased by Mt. Champa Kunwar with the money she received from her husband under the Will and that, therefore, this property partakes of the same character as the cash and moveables bequeathed by Kalyan Chand. The learned Subordinate Judge decreed the suit and we have to consider the several points raised in appeal.

4. The first point urged is that the mortgage is invalid on the ground that its registration is invalid. It appears that Mt. Champa Kunwar purchased by a deed a certain kothri or room belonging to one Radhe Lal. In executing the mortgage-deed in favour of the Respondent No. 1 this kothri or room was included as a property mortgaged. The room is situated in Bareilly, while the mortgaged property, which is a certain entire village of Launda Baheri is situated in the District of Budaun. The argument for the appellants is that the room at Bareilly was purchased with the sole object of including it in the agreement of 1910 and the object was to give jurisdiction to the Sub-Registrar of Bareilly to register the deed. It being granted that the owner Radhe Lal transferred it by a registered deed in favour of Mt. Champa Kunwar, the title to the room did pass to Mt. Champa Kunwar, notwithstanding anything that might have been in the mind of Radhe Lal as to the passing of title. The property in the eye of law belonged to Mt. Champa Kunwar and, therefore, Lachman Das bad the same interest in the property as he had in the cash and moveables bequeathed by his grandfather. Assuming, therefore, that Lachman Das had a title to the village of Launda Baheri he had also a title to the room mortgaged. It follows that the Sub-Registrar of Bareilly had jurisdiction to register the deed. In the case of Mathura Prosad v. Chandra Narayan Chowdhury AIR 1921 PC 8 the property described did exist but the mortgagor had no interest in the property and, therefore, the parties to the transaction never wanted that the mortgage should attach to such property. That case is clearly distinguishable from the case before us. I hold that the registration is without any flaw.

5. The next point urged is that Lachman Das had no interest in the property at the date of the mortgage. Lachman Das had a vested right in the property subject to the life-interest of his maternal grandmother. This vested interest was a transferable property and the mortgage-attached to this property. Further, on the death of the grandmother, Lachman Das would be the absolute owner of the property and the grandmother having already died the mortgage attaches to the property, vide, Section 43 of the Transfer of Property Act.

6. The third and last point is that Lachman Das executed the mortgage-deed under undue influence. Not a word has been said to show that the mortgagee Ram Prasad had any influence over Lachman Das. The statement of Lachman Das has been read out to us. All that he does say is this. Ram Prasad the mortgagor was the husband of his mother''s sister, that he, Ram Prasad, was an elderly man and that, therefore, he acted under his uncle''s direction. At the date of the mortgage Lachman Das was a man of 25. He has admitted that there was a shop styled Ram Prasad Lachman Das at Bareilly and he used to visit that shop daily although only for an hour or two. That shop carried on a cloth business. It appears that the plaintiff''s case was that he was a commission agent and the firm of Ram Prasad Lachman Das purchased cloth through him from time to time and that for the balance due to him Ram Prasad, Lachman Das and Mt. Barfi executed the mortgage. In this state of affairs it is difficult to see whence the undue influence comes.

7. There is nothing in the appeal and it must fail.

8. A cross-objection has been filed on behalf of the plaintiff-respondent. It appears that the learned Subordinate Judge has, perhaps through inadvertence, omitted to allow interest after the period of two months allowed by him for payment of the mortgage money. There is no reason why the mortgages should not have the usual 6 per cent. interest on the total amount of the principal sum and the interest due up to the date fixed for payment. I would allow interest at 6 per cent. per annum. I would dismiss the appeal and allow the cross-objection both with costs.

Ashworth, J.

9. I concur in all three findings. I would like to add, however, in respect of the first point that there is nothing in law to render invalid a sale of property by one person to another for the sole reason of giving that other person a right to register a mortgage-deed in respect of other property in a particular place. The motive of purchase is immaterial and the only question is whether there was a valid sale. It is urged in this case that there is evidence to prove that the parties to the sale-deed of the room had no intention that ownership in the room should pass and in the absence of such intention, there was no sale notwithstanding the execution of the sale-deed. Assuming, but not admitting, that there is such evidence, it is, in my opinion, inadmissible. The appellant''s counsel has referred to the following dictum in Woodroffe and Ameer Ali''s well-known commentary on the Indian Evidence Act:

Though evidence to vary the terms of an agreement in writing is not admissible, yet evidence that there is not an agreement at all is admissible.

10. In support of this dictum two English decisions are relied upon, namely, Harris v. Rickett [1859] 28 L.J. Ex. 197 and Pym v. Campbell [1856] 6 El. 370. Harris v. Rickett [1859] 28 L.J. Ex. 197 is no authority for the dictum as stated. It is authority for the rule that where the whole of a contract is not contained in a written document, it may be supplemented by parol evidence of a collateral agreement. Collateral means

in effect not inconsistent with the terms of the agreement in question. Proviso (1) of Section 92 gives effect to this rule, or at least to so much of it as the Indian Legislature desired to incorporate in the Evidence Act. Pym v. Campbell [1856] 6 El. & B1. 370 is authority for the rule that parol evidence is admissible to prove any collateral verbal agreement to the effect that a document apparently complete and operative on its face, should be conditional upon, and not operate, until the happening of a certain event, which has not occurred. This rule is reproduced in proviso (3) of Section 92 of the Evidence Act. They are no authority for holding that evidence in any shape can be admitted for the purpose of showing that there was no agreement at all, or, in other words, that a deed was meant to be inoperative. The dictum criticized, occurring as it does in a well-known commentary, has so often misled the Courts that I have thought it desirable to show that it needs the qualifications expressed in provisos 1,2 and 3 to Section 92 of the Indian Evidence Act. These provisions are to be read independently of English decisions.

11. I, hold, therefore, that the lower appellate Court was right in holding that the fact of the sale of the room being only effected in order to render the mortgage-deed in suit registrable at a certain place does not affect the fact that the room was sold or the consequent legality of the registration of the mortgage-deed.

12. The appeal is dismissed with costs and the cross-objection is allowed also with costs. The Respondent No. 1 will have interest on the total sum of the principal and interest up to the date of payment at 6 per cent. per annum.