

Smt. Sudama and Others Vs Rakshpal Singh (Deceased) and Others

Court: Allahabad High Court

Date of Decision: May 13, 2013

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 11, 100, 96

Contract Act, 1872 â€” Section 11, 12

Hindu Marriage Act, 1955 â€” Section 13

Succession Act, 1925 â€” Section 59

Citation: (2013) 6 ADJ 714 : (2013) 99 ALR 351 : (2013) 121 RD 157

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Jitendra Nath Singh, Anil Shukla, N.K. Srivastava and Neeraj Agarwal, for the Appellant; M.C. Joshi, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard Sri Neeraj Agarwal, learned counsel for the appellant. This is plaintiff's appeal u/s 100 C.P.C. The substantial

question of law, formulated by this Court, while hearing this appeal under Order XLI, Rule 11 is as under:

Whether the finding of the lower appellate Court on the mental capacity of Mohar Singh at the time of executing the sale-deed is vitiated by error

of law.

2. The plaintiff instituted Original Suit No. 252 of 1970 in the Court of Munsif, Budaun for cancellation of sale-deeds dated 21.9.1969 executed in

favour of defendants 1 and 2 and defendants 3 to 5 in respect of property, details whereof were given in relief clause of plaint:

3. The trial Court framed following six issues:

1. Whether the sale-deed in favour of defendant Nos. 1 and 2 dated 21.9.1969 is void on the grounds given in para 10 of the plaint?

2. Whether the sale-deed in favour of defendant Nos. 3 to 5 dated. 21.9.1969 is void on grounds given in para 10 of the suit?

3. Whether the suit is bad for misjoinder of causes of action and parties?

4. Whether the plaintiff Mohar Singh was mad at the time of executing the sale-deed in favour, of defendant Nos. 1 to 5?

5. Whether the suit is bad on the ground alleged in paras 3 and 7 of the was of defendant Nos. 1 and 2?

6. To what relief if any is the plaintiff entitled?

4. Issues No. 4 and 5 were in respect to the mental condition of plaintiff, inasmuch as, he claimed that he was mad (mentally unsound) when

aforesaid deeds were got executed and the same are, therefore, void and illegal. These issues were decided in affirmative holding that Mohar Singh

(plaintiff) was of unsound mind and suffering from mental disease at the time of execution of sale-deed. He was not mentally fit to execute the

same.

5. That being so, issues No. 1 and 2 were also decided in affirmative and in favour of plaintiff. As a result thereof, suit was decreed by Trial Court

vide judgment, and decree dated 12.4.1975.

6. It is worthy to mention that before Trial Court, only defendants 1 and 2 contested the suit and filed appeal u/s 96 C.P.C. i.e. Civil Appeal No.

29 of 1975 assailing judgment and decree, dated 12.4.1975 of Trial Court. The Lower Appellate Court (hereinafter, referred to as "LAC"),

however, allowed appeal and set aside judgment and decree of Trial Court and dismissed the suit.

7. The admitted facts borne out from record, are that sale-deeds in question were executed at the residence on a commission. The said

commission was directed founded on a medical certificate of sickness, of Mohar Singh, certifying that he was suffering from T.B. The certificate

was issued by one Dr. S.K. Govind, a Retired Civil Surgeon. He also appeared witness box as DW-2. He has admitted not to have examined

mental condition of Sri Mohar Singh. His medical examination was confined only to requisite oral examination relating to T.B. i.e. temperature,

lungs etc. There was another witness Dr. K.D. Jain, who had examined Mohar Singh though after sometime from the date of execution of sale-

deed. He verified his sickness as "schizophrenia". He explained that this disease normally begins in early adolescence. However, this disease does

not result in complete disintegration of in personality at initial stage but when reaches to its height, it results in loss of interest in outside world from

which one withdraw himself. The Trial Court co-related this statement of witness with certain circumstances of execution of sale-deeds to record a

finding in favour of plaintiff. The LAC, on this aspect, has considered Dr. Jain's statement at length and noticed that he did not find illness of Mohar

Singh at matured stage.

8. Dr. Jain though stated that stage of maturity result in complete loss of power of understanding and thinking and patient also become violent. He,

however, did not work out Intelligence Quotient (I.Q.) of Mohar Singh. In paras 7, 8 and 9, LAC has discussed entire aspect relating to alleged

disease of schizophrenia at length and has found that statement of Dr. Jain cannot be read so as to prove that Mohar Singh was of "unsound mind

at the time of execution of sale-deeds and thus, findings recorded by Trial Court have been reversed by it.

9. Learned counsel appearing for appellant could not dispute that onus to prove that Mohar Singh was of unsound mind lay upon plaintiff. Having

gone through reasoning given by LAC however, he could not point out any irregularity or illegality therein or lack of consideration of any relevant

aspect or consideration of any irrelevant aspect so as to hold that LAC has not considered the matter on valid and correct perspective.

10. On this aspect the entire things can further be looked into in a little detail. Even if assumed that Mohar Singh suffered ""schizophrenia"", can this

itself would justify an inference that he was a person of "unsound mind" so as to render him incapable of understanding the things as are perceived

by a person of ordinary prudence and understanding.

11. Section 11 of Indian Contract Act, 1872 (hereinafter referred to as ""Act, 1872"") talks of a capacity of a person, who may enter into a

contract. Besides other, it contemplates that he must be of ""sound mind"". Section 12 of Act, 1872 provides as to what is a sound mind for the

purpose of contracting, and reads as under:

12. What is a sound mind for the purposes of contracting.--A person is said to be of sound mind for the purposes of making a contract if, at the

time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

12. Requirement u/s 12 is that incumbent must be capable of understanding the contract and of forming a rational judgment as to its effect upon his

interest at the time of making the contract. There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must

prove it sufficiently to satisfy this test.

13. The phrase ""sound mind"" does not mean a mind without a flaw, or a memory without a fault. In Ryali Kameswara Rao Vs. Bendapudi

Suryaprakasarao and Others, , the Court observed that the word ""sound mind"" does not mean that the testator should have his mental faculties in

their fullest vigour, but he should have the capacity to understand nature of his property, the memory to remember the relations and persons

normally having claims on his bounty and also a judgment of his own in making the dispositions. The above observations came in the context of

Section 59 of Succession Act, 1925 but with appropriate modification, the same can be applied to a case of contract also.

14. In any case, requirement for the purpose of entering into a contract vis-a-vis capacity of contracted parties is that he must be a person of such

prudence that he can understand what he is doing and its consequences. The real test is that the incumbent is capable of understanding the business

and able to form a rational judgment as to its effect upon his interest. In *Mohammad Yakub and Others Vs. Abdul Quddus and Others*, a

Division Bench said:

.....the test of soundness of mind is that he is capable of understanding the business and of forming a rational judgment as to its effect upon his

interest. There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy this

test.....Mere weakness of mind is not sufficient.....

15. In *Musammat Amina Bibi and Another Vs. Saiyid Yusuf and Others*, this Court said, if a person is not in a position to understand or to

determine rationally, whether a transaction undergoing, for giving effect to or his contracting, is likely to operate to his benefit or otherwise by

reason of his mental condition, it would mean that he is not a person of sound mind.

16. The above two authorities have also been followed by a Division Bench in *Indar Singh and Others Vs. Parmeshwardhari Singh and Another*, .

17. In *Clara Auroro de Brangenca and Others Vs. Sylvia Angela Alvares and Others*, a Division Bench of Bombay High Court took the view

that a person suffering "schizophrenia" of violent nature to the extent that he was admitted in Mental Hospital and was released on Parole, if has

done something when he was on Parole, it cannot be said that act, was that of a person of sound mind, for the reason that incumbent is in the

period of lunacy and was on Parole and not discharged u/s 34 of the Lunacy Act, 1912. Therefore in view of Section 12 of Act, 1872, his

transaction would not be valid.

18. Mere old age does not result in making a person of unsound mind. In the context of requirement of soundness of mind by a testator, in *Den v.*

Vancleve, (2 Southard at page 600 cited in *Banks v. Good fellow*, (1870) Er 5 Qb 549, it was said:

By the terms a sound and disposing mind and memory it has not been understood that the testator must possess these qualities of mind in the

highest degree; otherwise, very few would make testaments at all neither has it been understood that he must possess them in as great a degree as

he may have formerly done, for even this would disable most men in the decline of life; the mind may be in some degree debilitated the memory

may have become in some degree enfeebled and yet these may be enough left clearly to discern and discreetly to judge of all those things and all

those circumstances which enter into the nature of a rational fair, and just testament. But if they have so far failed as that these cannot be discerned

and judged of then he cannot be said to be of sound and disposing mind and memory.

19. Similarly in A.E.G. Carapiet Vs. A.Y. Derderian, , Hon"ble P.B. Mukharji, J delivering the judgment in a Division Bench, in the context of

soundness of mind of a testator, observed, that, it does not mean that incumbent must be of a very intelligent mind-set. The test of a sound mind

cannot be stretched to an absurdity. It is not the test of a perfectly healthy and perfect mind. The test of a sound disposing mind is, in law, a

workable test. It means, in plain language, an appreciation of fact that the man is making a will, an appreciation of the contents of that will and an

appreciation of the nature of disposition that he is making having regard to the claim of affection and family relationship and claims of the society or

community to Which"" he belongs. It is not a hypothetical nor an impracticable test. It is not the test of a psychologist or a psycho-analyst or a

psychiatrist who in the modern age is prone to consider all human mind to be inherently unsound by nature and abnormal. Nor is it the too

Scientific test which would satisfy the highest technical medical examinations.

20. In another decision of Calcutta High Court, a learned Single Judge in Ramesh Chandra Das Vs. Lakhan Chandra Das, , which is also a case

arising under the provisions of Succession Act, 1925, relying on Gordhandas Nathalal Patel Vs. Bai Suraj, , quoted the following passage

therefrom:

It is well-settled now that it need " not be proved that a testator, in order that his will may be found good by a Court, was in a (perfect state of

health, or that his mind was so clear as to enable him to give complicated instructions. It is sufficient if it is proved that he was able to give the

outlines of the manner in which his estate was to be" disposed of, and was able, when the result of the lawyer"s efforts was read out to him, to

understand that his instructions in the main had been complied with.

21. AIR 1932 69 (Privy Council) , the Council concurred-with the decision of Calcutta High Court so as to affirm the same by observing that if a

person at the time of execution of document was capable of sufficiently understanding what he was doing, it cannot be said that he was not of

sound mind.

22. All these decisions need not be multiplied but suffice it to mention that in the present case there is a statement of a doctor that Sri Mohar Singh

is suffering from schizophrenia. It has already been noticed referring to the decision of Court below that expertise of doctor is not on record and in

what manner and to what extent he had tested the patient is also not clear. It appears that testing of patient was superficial, as is evident from

discussion made by LAC that Intelligence Quotient etc. of the patient was not examined. For the time being, I presume that Sri Mohar Singh

suffered schizophrenia, still the question would be, whether mere sufferance of schizophrenia would justify inference that an incumbent suffering the

aforesaid problem is a person of unsound mind or that he is not a person of sound mind. That would require this Court to look into as to what

schizophrenia is. I am benefited on this aspect by a detailed discussion made by Hon^{ble} Apex Court in Ram Narain Gupta Vs. Rameshwari

Gupta, . Though context therein was Section 13 of Hindu Marriage Act but the discussion about nature of normal mind and this disease at length. It

would be useful to refer following observations from the judgment:

The answer to the apparently simple-and perhaps misleading-question as to who is normal? runs inevitably into philosophical thickets of the

concept of mental normalcy and as involved therein, of the mind" itself. These concepts of "mind", "mental-phenomena" etc., are more known

than/understood and the theories of "mind" and "mentation" do not indicate any internal consistency, let alone validity, of their basic ideas.

Theories of "mind" with cognate ideas of perception" and "consciousness" encompass a wide range of thoughts, more onto-logical than

epistemological. Theories of mental phenomena are diverse and include the dualist concept-shared by Descartes and Sigmund Freud-of the v

separateness of the existence of the physical or the material world as distinguished from the non-material mental-world with its existence only

spatially and not temporally. There is, again, the theory which stresses the neurological basis of the "mental phenomenon" by asserting the

functional correlation of the neuronal arrangements of the brain with mental phenomena. The "behaviourist"-tradition, on the other hand, interprets

all reference to mind as "constructs" out of behaviour. "Functionalism", however, seems to assert that mind is the logical or functional state of

physical systems. But all theories seem to recognise, in varying degrees, that the psychometric control over the mind operates at a level not yet fully

taught to science. When a person is oppressed by intense, and seemingly insoluble moral dilemmas, or when grief of loss of dear ones etch away

all the bright colours of life, or where a broken-marriage brings with it the loss of emotional-security what standards of normalcy of behaviour

could be formulated and applied? The arcane infallibility of science has not fully pervaded the study of the non-material dimensions of being".

Speaking of the indisposition of science towards this study, a learned author says:

...We have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in

the seventeenth century. Descartes divided the world into two kinds of substances; mental substances and physical substances.

Physical substances were the proper domain of science and mental substances were the property religion. Something of an acceptance of this

division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And

this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about

objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of

them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

...the use of the noun "mind" is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is

a kind of a thing, or at least an arena, or at least some kind of black box in which all of these mental processes occur.

(See: John Searle "Minds, Brains And Science" 1984 Reith Lectures, p. 10 and 11)

Lord Wilberforce, referring to the psychological basis of physical illness said that the area of ignorance of the body-mind relation seems to expand

with that of knowledge. In *McLaughlin v. O'Brian*, 8:25 (1983) 1 LR 410 the learned Lord said, though in a different context:

...Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted

by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses,

of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It

is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the Courts....

But the illnesses that are called "mental" are kept distinguished from those that ail the "body" in a fundamental way. In *Philosophy and Medicine*,

Vol. 5 at page-X the learned Editor refers to what distinguishes the two qualitatively:

.....Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears,

obsessions, compulsions, and anxieties....

...This is captured in part by the language we use in describing the mentally ill. One is an hysteric, is a neurotic, is an obsessive, is a schizophrenic,

is a manic-depressive. On the other hand, one has heart disease, has cancer, has the flu, has malaria, has smallpox...

(emphasis supplied)

12. "Schizophrenia", it is true, is said to be difficult mental-affliction. It is said to be insidious in its onset and has hereditary pre-disposing factor. It

is characterised by the shallowness of emotions and is marked by a detachment from reality. In paranoid-states, the victim responds even to

fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of

kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench

from reality and brings about a lowering of the higher mental functions.

Schizophrenia"" is described thus:

A severe mental disorder (or group of disorders) characterised by a disintegration of the process of thinking, of contact with reality, and of

emotional responsiveness. Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts,

sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of

schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which starts in

adolescence or young adulthood (see hebephrenia); paranoid; characterised by prominent delusion; and catatonic, with marked motor

disturbances (See catatonia).

Schizophrenia commonly-but not inevitably-runs a progressive course. The prognosis has been improved in recent years with drugs such as

phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and

environmental stress can precipitate illness. (See Concise Medical Dictionary at page 566: Oxford Medical Publications, 1980)

But the point to note and emphasise is that the personality-disintegration that characterises this illness may be of varying degrees. Not all

schizophrenics are characterised by the same intensity of the disease. F.C. Redlich & Daniel X. Freedman in The Theory and Practice of

Psychiatry"" (1966 Edn.) say:

...Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many

aspects of everyday living....

Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both?

Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need

not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but none-the-less

favourable psychosocial stimuli other than specific therapeutic activity....

(Emphasis Supplied)

23. In the above case, the Court also approved decision of Calcutta High Court on this aspect in Smt. Rita Roy Vs. Suresh Chandra Bhadra Roy, .

The above decision, in the context of "schizophrenia" has subsequently been followed in B.N. Panduranga Shet Vs. S.N. Vijayalaxmi, , Vinita

Saxena Vs. Pankaj Pandit, and Mst. Lakshmi Vs. Dr. Ajay Kumar and Others, :

24. Going through the reasons in the aforesaid authorities and discussion, it cannot be doubted that the mere fact that Mohar Singh was stated to

have suffered ""schizophrenia"" was enough to hold that he was not of sound mind at the time of execution of sale-deeds in the context of test of

sound mind"" as required u/s 12 of Act, 1872.

25. Reliance is placed by Sri Neeraj Agarwal, learned counsel appearing for appellant on a decision of Apex Court in Chacko and Another Vs.

Mahadevan, . However, I do not find that aforesaid decision may help him in any manner for the reason that therein Chacko was found a person of

unsound mind on the basis of a certificate of Mental Hospital, Trichur where he had been under treatment for sometime. Therein both the Courts of

fact had recorded finding that Chacko was a person of unsound mind. Besides there was another circumstance that, a land which actually fetched

Rs. 18,000/- for an area of one cent, thrice more area thereof was sold by Sri Chacko just for Rs. 1,000/- though the corresponding amount

would have been Rs. 54,000/-. The Court found this fact itself to show that no person of sound mind and in his senses would have acted in such a

manner. Applying the maxim ""res ipsa loquitur"" the Court said that the matter speaks for itself.

26. No such apparent insensible transaction or circumstantial fact could have been pointed out in the case in hand. Minor discrepancies or certain

aspects which may raise a little bit suspicion by itself would not satisfy requirement that no person of ordinary prudence would have acted in such

manner unless proved otherwise.

27. In these facts and circumstances, I return the question in negative holding that findings of LAC in respect of mental capacity of Mohar Singh

was not vitiated by any error of law. The appeal thus, is devoid of any merit. Dismissed with costs throughout.