

(2008) 09 AHC CK 0289

Allahabad High Court

Case No: None

Pratap Singh and Indrajeet Singh

APPELLANT

Vs

Matadeen (since deceased) (Smt.
Leelawati, Indrajeet Singh and
Shri Ram Singh)

RESPONDENT

Date of Decision: Sept. 15, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Specific Relief Act, 1963 - Section 20

Citation: (2009) 3 CivCC 69

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prakash Krishna, J.

This is defendants' first appeal u/s 96 of Code of Civil Procedure. It arises out of suit No. 12 of 1973 instituted by Matadin (since deceased) and his son Shri Ram Singh against Pratap Singh and Indrajeet Singh (another person s/o Harnath Singh) for specific performance of contract to sell dated 14th of March, 1973 in respect of agriculture plots described at the foot of the plaint. The suit was instituted on the pleas inter alia that the defendant No. 1, Pratap Singh, agreed to sell agriculture plot nos. 118,239 and 206 area 11.84 acres for a sum of Rs. 12,000/- out of which a sum of Rs. 7,000/- was given in cash on the date of the agreement and it was agreed that the remaining amount shall be paid to the vendors at the time of the registration of the sale deed. Period of six months was fixed to enable the vendor (defendant No. 1) obtain the Bhumidhari Sanad. It was further pleaded that the defendant No. 1 was issueless. He is brother of plaintiff No. 1 Matadin. It was further stated that the defendant No. 2 a resident of different village, has started living for the last 10-12 years with the defendant No. 1. The defendant No. 2 is distantly related to the

parties. A common relation of the parties namely Garib Das approached the plaintiff to permit the defendant No. 2 to reside in a portion of his house and the plaintiff No. 1 keeping in view the relationship, permitted the defendant No. 2 (Indrajeet and his Dai) to reside in a portion of the house of the plaintiff. The defendant No. 1 has sold away the disputed property to the defendant No. 2 on 25.4.1973 for a sum of Rs. 18,000/- after obtaining the Bhumidhari Sanad on the same date. The defendant No. 1 failed to execute the sale deed as they were required, the suit for specific performance of the agreement to sell was filed.

2. The suit was contested by defendants by filing a joint written statement. In the written statement the relationship of the defendant No. 1 with the plaintiffs was not disputed. It was pleaded that no such agreement as alleged by the plaintiffs was ever entered into by the defendant No. 1. The plea that Rs. 7,000/- was received by him as advance on 14.3.1973 was denied. It was pleaded in para 7 of the written statement that the defendant No. 1 is a literate person and he used to sign the documents. As regards the defendant No. 2 it was pleaded that he is distantly related to defendant No. 1 and is living with him since a long time. The defendant No. 1 has no issue and he has sold away the disputed plots for a sum of Rs. 18,000/- on 25.4.1973 to defendant No. 2. It was also pleaded that the plaintiffs after coming to know about the afore stated sale deed in favour of the defendant No. 2 forcibly took away the defendant No. 1 and obtained his thumb mark on blank papers on 9.7.1973. He was put under wrongful confinement and forced to execute a sale deed in favour of the plaintiff No. 2 and another son of the plaintiff No. 1 under threat and coercion. He was threatened, if the fact of the wrongful confinement, threat and coercion is disclosed to any third person his life would be in danger. Somehow, he ran away from the clutches of the plaintiff and gave an application on 10.10.1973 to the District Magistrate, Hamirpuri narrating the entire events vide para 11 of the written statement. It has been further pleaded that he will take steps for cancellation of the alleged sale deed dated 9th of July, 1973 before a competent court.

3. The parties led evidence oral and documentary in support of their respective cases. The trial court framed the following issues on the basis of the pleadings of the parties:

1. Whether the defendant No. 1 had on 13.3.1973 agreed to sell the disputed property in favour of the plaintiffs?
2. Whether the defendant No. 1 had executed agreement deed dated 24.3.73 in favour of plaintiffs? If so, whether the said deed had been obtained by fraud and coercion as alleged in the W.S.?
3. Whether defendant No. 2 is bonafide purchaser for value without notice of the prior agreement to sell in favour of the plaintiffs? If so its effect?
4. To what relief, if any, the plaintiffs are entitled?

4. Under Issue Nos. 1 and 2 the trial court has found that the agreement Ex. 7 was executed in favour of Matadin Singh and his son Ram Singh (plaintiffs) by the defendant No. 1 and it has been further found that the said agreement is valid and was not obtained by fraud or coercion. Under Issue No. 3 it has been found that the defendant No. 2 had the notice of the prior agreement to sell at the time of the sale deed dated 25.4.1973. The defendant No. 2 is not a bona fide purchaser for value without notice of the prior agreement and as such is bound by the agreement dated 14th of March, 1973. Under Issue No. 4, the trial court has found that the plaintiffs are entitled to get the sale deed executed in their favour on deposit of Rs. 5,000/-. Feeling aggrieved by the aforesaid judgement, the present appeal has been filed.

5. Heard Shri V.K.S. Chaudhary, learned senior Counsel for the appellants. None was present on behalf of the defendant-respondents. The matter was listed in the weekly cause list. In the earlier dates also, none appeared on behalf of the plaintiff-respondents.

6. Shri V.K.S. Chaudhary, the learned senior Counsel for the appellants submits that the court below was not justified on the facts and circumstances of the present case in holding that the agreement in question is a genuine document. Elaborating the argument he submits that there is voluminous evidence on the record to show that the agreement in question is a forged and fictitious document. Apart from the above, the facts of the case do not justify for grant of a decree of specific performance of contract to sell in favour of the plaintiffs. The plaintiffs are not entitled for discretionary relief in view of Section 20 of the Specific Relief Act. He submits that forgery is writ large and can be detected with naked eyes. The case, according to him, from the very beginning is that the defendant No. 1 is a literate person and he used to execute the documents by putting his signatures. The fact that the agreement in question Ex. 7 contains thumb mark is itself indicative of the fact that the thumb impression was obtained on the blank paper due to exertion of coercion and by playing fraud. Assailing the findings recorded by the court below, he submits that suspicious circumstances surrounding the document have not been explained satisfactorily and the court below has passed the decree under appeal mechanically simply on the ground since the attesting witnesses have deposed the execution of the document in question and the report of the handwriting expert, the thumb mark of the defendant No. 1 as per report of the handwriting expert, the execution of agreement in question stands proved.

7. Considered the above submissions of the learned Counsel for the defendant-appellants and perused the record. The following two questions fall for determination in the appeal:

1. Whether the plaintiffs have proved the agreement dated 14th of March, 1973 allegedly executed by the defendant No. 1 in their favour?

2. Whether on the facts and circumstances of the case if it is found that the agreement dated 14th of March, 1973 is established, a discretion to grant decree for specific performance of contract to sell should or should not be exercised in favour of the plaintiffs?

8. Taking the first question first, it may be noted that to prove the agreement in question, the plaintiffs have examined five witnesses in addition to the filing of the documentary evidence. Madho Ram Chandra Maratha PW/1 is the witness who deposes that he had taken the photographs of both the admitted and disputed thumb marks of the defendant No. 1. J. Alexander is handwriting and finger prints expert who enlarged the photographs of the disputed and admitted thumb marks and submitted report (Ex. 9 to 12) and proved them. He stated in the witness box that the disputed thumb mark is that of the defendant No. 1 on the document in question. In my considered view the depositions of PW/1 and PW/3 are not of much significance in as much as the defendant No. 1 has come out with a case that his thumb marks were obtained by the plaintiffs on blank paper and agreement in question has been manufactured on the said blank paper which had already his thumb impression. In other words, there is no serious dispute with regard to the existence of the thumb mark or the defendant No. 1 on the document in question. It is another aspect of the matter whether the said document was blank when the defendant No. 1 had put his thumb mark or it was duly written. The material witnesses are Shri Ram Singh, PW/2 who is also plaintiff No. 2, Raghuraj Singh, PW/5 in whose presence, it is alleged that the defendant No. 1 entered into the agreement for sale and executed the agreement in question Ex. 7 and Ram Prakash, PW/4, the scribe of the agreement in question. All these witnesses in their depositions have supported the case of the plaintiffs that the deed in question was executed by the defendant No. 1 in their presence. 1 he said deed was scribed by Ham Prakash in the presence of Kaghuraj Singh and Sukhdev Singh, attesting witnesses. The trial court has preferred to believe the statements of these witnesses. The only infirmity which could be pointed out in the appreciation of the evidence, as done by the in. A court, by the learned Counsel for the appellant is that the defendant No. 1 used to put his signatures on the documents as he was a literate person and the trial judge has ignored this vital aspect of the matter. The document in question does not contain the signature of the defendant No. 1 and it contains thumb mark instead. On examination of the oral depositions of these three witnesses, it is evident that the PW/2 in his cross examination has stated in so many words that Pratap Singh is not a literate person and he used to put his thumb marks and has never put his signatures. The court was taken through the sale deed dated 25.4.1973 Ex. A3 executed by Pratap Singh in favour of the defendant No. 2 wherein Pratap Singh has put his signatures in token of the execution of the sale deed. At this juncture, it may be noted that the learned senior Counsel for the appellant argued that Pratap Singh used to sign documents under his signatures. The Court is of the considered opinion that nothing much can be turned upon the said circumstance to disbelieve the case

of the plaintiffs for the reason that a person who is semi or little educated sometimes puts his thumb mark and sometimes puts signatures on the document. The signing of the sale deed 9.7.1973 by Pratap Singh, defendant No. 1, the Ex. A3 may be as a design to overcome the agreement in question which is anterior in point of time. This tact is further fortified from the fact that the Vakalatnama filed along with the appeal when presented in the Court by Pratap Singh contains his thumb impression. Except the aforesaid sale deed dated 9th of July, 1973 Ex. A3, no other document or evidence was referred to support the plea that Pratap Singh used to put his signatures on documents. The said plea, therefore, does not carry any weight.

9. The other circumstance which was highlighted by the learned senior Counsel for the appellant is that on a bare look of the original disputed agreement of the sale dated 14th of March, 1973 it would show that the document is forged one as from the middle to the bottom of the first page shorter spacings have been provided among the words and the letters are dense and smaller in size than before. It was submitted that the plaintiffs were in possession of a blank paper containing the thumb impression of the defendant No. 1 and the alleged agreement was prepared thereafter. At a first flash the argument appears to be attractive. Undoubtedly, on the upper half of the page of agreement in question the letters are bigger in size and in the remaining half the letters are smaller and they have been put densely and closely also. This circumstance in my opinion has to be considered along with the other attending facts and circumstances of the case. The plaintiff No. 1 and the defendant No. 1 were real brothers. The defendant No. 1 was the younger brother and had no heirs, being issue-less. He was aged about 73 years. Both the brothers jointly fought a litigation against one Jagbhan Singh and Kallu in Revenue Suit No. 238/118 in Court of S.D.O., Maudaha u/s 229 13 read with Section 176 of U.P.Z.A & L.R. Act for declaration and partition. The plots in question in that suit were held to be exclusive Sirdari of Pratap Singh, the defendant No. 1. The plots in question presently involved in suit, were found to be of Pratap Singh by the judgement and order dated 19th of March, 1973 i.e. shortly before the agreement in question. There appears to be cordial relationship between the two brothers i.e. plaintiff No. 1 and defendant No. 1. The defendant No. 1 had no heir or legal representative except the plaintiff No. 1, being the brother. The case of defendant No. 1 as set out in the written statement denying the agreement in question, is that the plaintiffs on coming to know about the sale deed dated 25th of April, 1973, Ex. A3, executed in favour of Indrajeet, the defendant No. 2, forcibly confined him to Maudaha and got a sale deed executed and registered on 9th of July, 1973 before the Sub-registrar in favour of the plaintiff No. 2 and his brother in respect of other plots. He has further deposed that he will file a suit for cancellation of the said sale deed. The defendant No. 1, Pratap Singh, was alive and expired during the pendency of the present appeal. But there is nothing on record to show that during his life time he has taken any steps for the cancellation of the sale deed dated 9th of July, 1973 which

according to him was executed under duress in favour of the plaintiff No. 2 and his brother. The defendant No. 1 has also deposed that he has lodged a first information report as also made a complaint to the District Magistrate and the police officials, but has failed to file any document in this regard. The excuse given by him in the cross-examination is that he has handed over the documents to his Counsel for producing them in the court, does not inspire any confidence. Apart from the above, it has been deposed that his forcible confinement by the plaintiffs was witnessed by number of villagers. But none of them has been examined to prove the said incident. It follows that there is no evidence documentary or oral in support of the above plea as set out in the written statement with regard to the execution of another sale deed under coercion by him in favour of the plaintiff No. 2 and his brother. The facts of the case if are taken in its totality, it is evident that the agreement in question was executed by the defendant No. 1 in favour of the plaintiffs and subsequently, he for certain reasons executed the sale deed of the plots in question in favour of the defendant No. 2. The agreement in question is on a stamp paper of Rs. 2.50. It is one page document and was purchased by the defendant No. 1, as is evident from the endorsement made by the stamp vendor on the back of the paper. At that time, it is axiomatic that there was mutual respect and confidence. The scribe who happens to be a clerk of an advocate might have thought it appropriate to write down the agreement on a single paper. When the plaintiffs insisted for execution of the sale deed in their favour in the light of the agreement dated 14th March, 1973, Ex. 7 in question, the defendant No. 1 executed a sale deed in favour of the plaintiff No. 2 and his brother subsequently in respect of the other plots. This appears to be so and that is why the plaintiffs' witnesses were not cross-examined on this point. They should have been asked to explain as to why the document in question is densely written in the second half of the page. It appears that the above plea as put forth in the present appeal was not placed before the trial judge. Even otherwise also it may be noted that the agreement in question was scribed by Ram Prakash, a clerk of some advocate who does not appear to be professional deed writer. The parties were on good terms as being brothers, approached the said clerk who prepared the agreement in question. At that point of time, there was no lack of mutual trust and confidence between them. Had there been any cross-examination of the witnesses on the above noted circumstance, they would have explained the same.

10. The other aspect of the case on which emphasis was laid by the learned senior Counsel is that no receipt of Rs. 7,000/- which was allegedly given as advance, was executed separately and no notice was given by the plaintiffs asking the defendants to execute the sale deed in pursuance of the agreement in question, are not of much relevance, keeping in view the relationship between the parties and the background of the case and in the agreement in question receipt of Rs. 7,000/- has itself, been acknowledged. So far as the other aspect of the notice is concerned, the suit was filed on 10th of August, 1973 shortly after the execution of the sale deed

dated 25.4.1973 by the defendant No. 1 in favour of the defendant No. 2. it has been stated that the plaintiffs came to know about the sale deed dated 25th of April, 1973 in the month of May, 1973. In respect of other plots a sale deed was executed by the defendant No. 1 on 9th of July, 1973 in favour of the plaintiff No. 2 and his brother. The said plots were mutated in favour of the defendant No. 2 on 21.7.1973, it has been stated by the plaintiffs that they after coming to know about the sale deed dated 25th of April, 1973 they requested the defendant No. 1 to execute the sale deed in pursuance of the agreement dated 14th of March, 1973. A notice does not necessarily means "a notice in writing". On the facts of the present case the conduct of the parties would show that the plaintiffs protested , the action of executing the sale deed in favour of the; defendant No. 2 and it was followed by the suit giving rise to the present appeal.

11. Plea of the defendants that the agreement in question was got executed under duress and compulsion has been rightly rejected by the trial court in absence of any supportive material. In para 11 of the written statement, it has been pleaded that a complaint was made with regard to forcible confinement of defendant No. 1 to the District Magistrate, Hamirpur on 10th of October, 1973. Copy of such complaint, as noticed above, has not been filed. Even otherwise also, the said complaint has got no evidentiary value in as much as the present suit was already instituted on 10th of August, 1973. There is another circumstance against the defendants to discard the above plea. According to the defendant No. 1 (DW/1) in the cross-examination, he on 9th of July, 1973 executed the sale deed in favour of the plaintiff No. 2 and his brother under duress, coercion and compulsion. His statement was recorded on 12th December, 1973 but till that date he did not file any suit for cancellation of the said sale deed and in his deposition it was admitted that he has not filed any suit for its cancellation and he will do it now. There is no evidence to show that any such suit was filed thereafter during his lifetime.

12. Taking into consideration that the thumb mark is not denied specifically by the defendant No. 1 and the circumstance as pleaded by him under which his thumb mark on the document was taken, having not been proved, it necessarily follows that the execution of the agreement in question is established.

13. Now, I take up the second point for determination in the appeal. The contention of the learned senior Counsel for the appellant is that in view of the provisions as contained u/s 20 of the Specific Relief Act, the court should exercise its discretion on the facts of the present case, not to pass a decree for specific performance of contract to sell. Elaborating the argument, the learned senior Counsel submits that if a decree for specific performance of contract to sell is allowed to stand the defendant No. 2, Indrajeet Singh who is appellant in the appeal will stand nowhere. He has migrated to the family of the defendant No. 1 during his childhood as is admitted even by the plaintiffs in their deposition. The attention of the court was invited in this regard to the statement of Ram Singh, PW/2, who has stated that

Indrajeet is a resident of village Gurha Semariya, District-Jalaun and has been residing at the present place for the last 14-15 years. The statement of PW/2 was recorded on 7th of October, 1976. He has further stated that Indrajeet Singh (defendant No. 2) was brought up and educated by Pratap Singh, defendant No. 1. Indrajeet Singh (defendant No. 2) is distantly related to Pratap Singh, is also admitted by plaintiff No. 2, Ram Singh, in his deposition, Shri V.K.S. Chaudhary, the learned senior Counsel submits that remaining property of the defendant No. 1 which was joint with plaintiffs has gone to them after death of the defendant No. 1. Only a very small portion of the property was left by the defendant No. 1 which is hardly sufficient for survival specially in Bundelkhand region where lands are not fertile, in general. The defendant-appellant No. 2 is admittedly in cultivatory possession of the land in question since the year 1973 and it would be great injustice if he is evicted. At this distance of time it is not possible for him to go back to to his native place at Jalaun.

14. Considered the aforesaid plea. The case of Indrajeet Singh, defendant No. 2, was that he was a bonafide purchaser of the property in question from the defendant No. 1 for valuable consideration of Rs. 18,000/- and had no notice of the agreement in question dated 14th of March, 1973. This plea was not accepted by the trial court. The trial court has found that the defendant No. 2 had the knowledge of the agreement in question. The said finding has not been disputed or challenged by the learned senior Counsel for the appellant before me. On making an analysis of the evidence with regard to the payment of consideration of Rs. 18, 000/- by the defendant No. 2 to defendant No. 1, it is evident that the evidence is not consistent to the point. The defendant No. 1 in his deposition has stated that a sum of Rs. 18,000/- was given by the defendant No. 2 which he had borrowed from one Smt. Batasia, the grandmother. She was getting pension of Rs. 35/- per month on account of death of her husband who was in military service and was widowed for the last about 50 years. Batasia was the sister of his grandmother. Indrajeet Singh, the defendant No. 2, who has examined himself as DW/2 has admitted that Smt. Batasia had no agricultural land or property. On the point of consideration of Rs. 18,000/-, he states that he got Rs. 6,000/- from Smt. Batasia and had brought Rs. 12,000/- from his father. At the time of his deposition he was only 28 years old and his father had died when he was of 18-19 years. The statement was recorded on 19th December, 1977. It means that his father had died about 10 years ago and as such he brought the remaining Rs. 12,000/- from his father, is incorrect. The statement of DW/1 and DW/2 on the point of payment of consideration of Rs. 18,000/- for the sale deed dated 25.4.1973 does not appear to be natural. Pratap Singh, DW/1, in his deposition has stated that Indrajeet Singh, the defendant No. 2, was student before the execution of sale deed dated 25.4.1973 in his favour. Strangely enough, Indrajeet Singh, DW/2, has a different story to tell. He in the very opening of the cross-examination states that he never resided along with the defendant No. 1, Pratap Singh, at Poorajahan. He is firm in the cross-examination

that he has been residing and still residing with Garib Dass for the last 10-15 years and pleads total ignorance as to how his name has been registered in the Kutumb Register of Pratap Singh. All these lead to a conclusion that the defendant No. 2, Indrajeet, who has filed the above appeal has not come to the Court with clean hands and does not deserve any sympathy. 1 he defendants have taken a shifting stand. It is not a fit case where any discretion in favour of such person be exercised.

15. No other point was pressed. There is no merit in the appeal. The appeal is dismissed. Since none has appeared to oppose the appeal, no order as to costs.