
Ashiq Husain Vs Chhotey Khan

2nd Appeal No. 773 of 1998

Court: Allahabad High Court

Date of Decision: Sept. 1, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Section 96(3)

Citation: (2014) 107 ALR 285 : (2015) 126 RD 209

Hon'ble Judges: Dinesh Gupta, J

Bench: Single Bench

Advocate: G.K. Srivastava, B.N. Asthana, Ranjan Srivastava and Santosh Kumar, Advocate for the Appellant; Vinod Swarup, Advocate for the Respondent

Judgement

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Dinesh Gupta, J.

This second appeal is preferred against the judgment and decree dated 31.3.1998 passed by Civil Judge (Senior

Division), Shahjahanpur in Civil Appeal No. 20 of 1974 arising out of judgment and decree dated 31.1.1974 passed by Munsif, Shahjahanpur in

Original Suit No. 301 of 1970. The brief facts, which give rise to this appeal are that the plaintiff-respondent (hereinafter called as the

respondent") filed a suit for the relief of cancellation of sale-deed dated 9.4.1969 and for possession. The suit was decreed for cancellation of

sale-deed. However, so far as the suit regarding possession was concerned, the suit was dismissed.

2. The respondent filed first appeal before the learned District Judge, which was registered as Civil Appeal No. 20 of 1974 and was transferred to

the Court of Civil Judge (Senior Division) and the Civil Judge initially allowed the appeal vide order dated 31.1.1974 and also granted the relief of

possession in favour of the respondent.

3. The defendant-appellant (hereinafter called as the "appellant") aggrieved with the judgment, preferred second appeal before the High Court and

the High Court vide its order dated 10.1.1997 remanded back the matter to the Appellate Court to decide the appeal afresh in the light of the

observations made by the Court.

4. After remand from the High Court, the Appellate Court after hearing the argument of both the parties, again allowed the appeal and decreed the

suit of the plaintiff-respondent for the relief of possession also.

5. Feeling aggrieved, the appellant preferred this second appeal before this Hon"ble High Court.

At the time of admission of this appeal, Lower Court record was requisitioned and notices were also issued to the respondents and respondents

put-in appearance.

6. Heard Shri Santosh Kumar, learned Counsel for the appellant and Shri Vinod Swarup, learned Counsel for the respondent at the time of

admission.

Learned Counsel for the appellant submitted that from the facts narrated in the appeal, it is clear that one sale-deed was executed on 9.4.1969 by

Smt. Bismillah Begam, who was mother of Mohd. Shamim Khan claiming that Mohd. Shamim Khan was minor and she executed the sale-deed as

guardian after accepting Rs. 800/- as sale consideration in favour of the appellant.

7. Another sale-deed was executed by Mohd. Shamim Khan on 18.8.1969 claiming himself to be a major after accepting Rs. 4,000/- in favour of

the plaintiff-respondent. Thereafter, again 3rd sale-deed was executed by Mohd. Shamim Khan on 9.7.1974 in favour of the appellant.

8. After the execution in favour of the respondents, respondents filed a suit for cancellation of sale-deed dated 9.4.1969 on the ground that Mohd.

Shamim Khan was major at the time of alleged sale-deed and his mother Smt. Bismillah Begam had no right to transfer the property as guardian on

behalf of Mohd. Shamim Khan and also claimed possession on the basis of sale-deed dated 18.8.1969 in his favour.

9. The suit was contested by the appellant as well as by Mohd. Shamim Khan. Both the defendants have alleged that the sale-deed executed on

18.8.1969 was without consideration and on outcome of fraud.

10. The Trial Court cancelled the sale-deed on the ground that Mohd. Shamim Khan was major at the time of execution of alleged sale-deed.

So far as the possession is concerned, the Trial Court recorded a finding that since the sale-deed dated 18.8.1969 was without consideration,

therefore, the suit for possession was dismissed.

11. The respondent filed an appeal. The appeal was allowed and the plaintiff's suit was decreed for possession also. In the meantime, Mohd.

Shamim Khan entered into a compromise and admitted execution as well as receipt of sale consideration of sale-deed dated 18.8.1969 and after

considering the same and other facts, the Appellate Court allowed the appeal and decreed the suit for possession also.

12. Mohd. Shamim Khan also filed a second appeal, which was registered as Second Appeal No. 315 of 1976 and the same was dismissed vide

order dated 10.1.1997 holding that no appeal under section 96(3), C.P.C. is maintainable against consent decree.

The defendant-appellant, Ashiq Husain also filed second appeal, which was registered as Second Appeal No. 2219 of 1975 and the same was

allowed by the order dated 10.1.1977 and the matter remanded back to decide afresh whether the sale-deed dated 18.8.1969 was without

consideration or not.

13. After remand the matter, the Appellate Court after considering the facts available on record, allowed the appeal and held that the sale-deed

dated 18.8.1969 was for consideration and payment of Rs. 4,000/- as sale consideration, was proved and again suit for possession was decreed

in favour of the plaintiff-respondent.

14. Learned Counsel for the appellant submitted that sale-deed dated 18.8.1969 was without consideration and this fact was admitted by Mohd.

Shamim Khan in his written statement. Later on Mohd. Shamim Khan colluded with the plaintiff-respondent and entered into a compromise. The

plaintiff-respondent has failed to prove the payment of Rs. 4,000/- as sale consideration, and as such, the sale-deed was without consideration and

the suit for possession on the basis of sale-deed dated 18.8.1969 would not be decreed.

The Counsel further submitted that the Appellate Court solely based its findings on the compromise filed between the parties i.e., appellant and

Mohd. Shamim Khan, which has no binding effect on the defendant-appellant.

The Counsel further submitted that Appellate Court has wrongly misread and misinterpreted the receipt for Rs. 4,000/- alleged to have been

executed by Mohd. Shamim Khan, which was nothing but a forged document.

15. Learned Counsel for the respondent submitted that so far as the cancellation of sale-deed dated 9.4.1969 is concerned, the finding recorded

by both the parties as well as the Trial Court is concurrent in nature.

16. Admittedly, Mohd. Shamim Khan was major at the time of alleged execution of sale-deed dated 9.4.1969, and hence, the sale-deed executed

by his mother was a void document and no right passed to the appellant on the basis of above said sale-deed.

17. So far as the sale-deed dated 18.8.1969 is concerned, the defendant-appellant has never challenged the sale-deed by filing suit for its

cancellation. The execution of sale-deed has been admitted by Mohd. Shamim Khan and also a receipt of Rs. 4,000/-, the defendant-appellant has

no right to challenge the receipt of Rs. 4,000/- as sale consideration by Mohd. Shamim Khan.

18. So far as the compromise entered into by Mohd. Shamim Khan is concerned, the compromise was fully valid and even the decree was

challenged by Mohd. Shamim Khan by way of second appeal, the same was also dismissed.

The finding recorded by the Appellate Court on the fact of payment of sale consideration is based on evidence on record. Hence, there is no

ground for interfering in the said finding.

19. I am unable to accept the contention raised by the learned Counsel for the appellant.

Admittedly, the sale-deed dated 9.4.1969 was held to be a void document and the learned Counsel for the appellant has also admitted this fact.

20. So far as the sale-deed dated 18.8.1969 is concerned, admittedly no suit for its cancellation either by Mohd. Shamim Khan or by defendant-

appellant was filed. It was only in the suit filed by the respondent for cancellation of sale-deed dated 9.4.1969 by way of defence, the defendant-

appellant and Mohd. Shamim Khan challenged the sale-deed dated 18.8.1969 by stating that it was a outcome of fraud and no sale consideration

was passed.

21. Later on Mohd. Shamim Khan admitted the execution of sale-deed as well as the receipt of sale consideration. The Appellate Court on the

basis of evidence available on record, recorded a categorical finding that Mohd. Shamim Khan has received sale consideration.

22. The Court is of the view that the payment of sale consideration whether paid or not available only to Mohd. Shamim Khan and not to the

defendant-appellant. It is true that appellant is not bound by the compromise entered into by Mohd. Shamim Khan and plaintiff-respondent.

However, it was only in the personal knowledge of Mohd. Shamim Khan whether the sale consideration was paid to him or not. The Appellate

Court after considering the documentary as well as oral evidence on the fact of payment of sale consideration by plaintiff-respondent to Mohd.

Shamim Khan recorded a categorical finding that sale consideration paid to Mohd. Shamim Khan and this is a finding of fact. Learned Counsel for

the appellant failed to show me that there is any perversity in the judgment passed by the Appellate Court. He further failed to show me that any

evidence is misread, misinterpreted or left to be considered. No substantial question of law is involved in the appeal.

The appeal is liable to be dismissed and the same is accordingly dismissed.