
Bibi Jaibunnisa Vs Abdul Ghafoor and Others

A.F.A.D. No. 560 of 1979

Court: Patna High Court

Date of Decision: Feb. 17, 1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 96#Evidence Act, 1872 " Section 101, 102, 103, 104, 111

Citation: AIR 1984 Patna 257

Hon'ble Judges: Ashwini Kumar Sinha, J

Bench: Single Bench

Advocate: Bindeshwari Prasad Sinha and Chitra Gupta Prasad, for the Appellant; Lakshman Saran Singh, Devendra Prasad Sharma and Ramanugrah Prasad Singh, for the Respondent

Final Decision: Allowed

Judgement

Ashwini Kumar Sinha, J.

This second appeal is by the plaintiff against a judgment of reversal.

2. The plaintiff filed a suit for declaration of title and for cancellation of a sate deed dated 18-5-1962 executed by her in favour of Abdul Gafoor

(defendant No. 1) which deed according to the plaintiff, was fraudulent, fabricated, concocted and illegal. The plaintiff also prayed her title to be

confirmed and for partition according to her share (one-third).

3. The plaintiff's case was that she had two brothers and three sisters. There was a partition between the brothers and sisters and in that partition

the disputed holding came in possession of the three sisters including the plaintiff and the same was in joint possession of all the three sisters.

According to the plaintiff, one of her sisters (Amna Khatoon) sold her share but she wrongly described that the shares of the sisters were divided.

Abdul Gafoor (defendant No. 1) is the husband of plaintiff's another sister Jaitunnisa (defendant No. 2) who, according to the plaintiff, used to

collect rent on behalf of all the sisters and was handing over the rent to the plaintiff also.

4. Further case of the plaintiff was that she took Ijara of the land of Jaitunnisa (defendant No. 2), her sister, and a registered deed was executed on

18-5-1962, the same day on which the alleged sale deed is said to have been executed. The plaintiff's case was that it was Abdul Gafoor,

husband of Jaitunnisa (defendant No. 2) who brought her to the Registration Office and it was on his instruction that she put her L. T. I. over the

papers. The main case of the plaintiff was that she was a Pardanasin lady and the alleged sale deed was never read over to her and she could not

understand the same. Her case was that her husband was a contractor and a well-to-do man and she got enough money from her first husband.

According to the plaintiff, it was only on 1-4-1974 that Abdul Gafoor (defendant No. 1) started putting some construction on the disputed plot to

which she protested and then she got the news that a sale deed was executed by her in favour of Abdul Gafoor (defendant No. 1). Thereafter she

obtained the certified copy of the sale deed and then she knew that the same was executed fraudulently. According to the plaintiff. Gulam Rasool

(brother-in-law) of Abdul Gafoor, defendant No. 1) and the scribe were in collusion with defendant No. 1.

5. In short, the plaintiff's case was that she was a Pardanasin illiterate lady and she never executed the sale deed dated 18-5-1962 and that she

only executed the Ijara deed on that date. Her further case was that she never received any money towards consideration regarding the same. On

these averments the suit was instituted.

6. The defendant contested the suit. The defendant's case was that his father-in-law Ghasitu Mian had two sons and three daughters, Ghasitu Mian

died leaving the disputed holding and all the brothers and sisters got joint possession over it. Thereafter in 1961 there was a partition in the family

in which the two brothers got the house and the three sisters got joint shares over the disputed holding and after 15 days all the three sisters divided

their shares in three parts and Bibi Amna got the share towards the east. According to defendant, the Plaintiff Jaitunnisa got her share in the west

and Jaitunnisa got share in the middle. Thereafter two falls were raised and accordingly the shop was divided into three pieces and three daughters

got possession over their shares.

7. According to the defendant, after 7 or 8 months thereafter the plaintiff sold her share to him and executed the sale deed in his favour on 18-5-

1962. According to the defendant, she executed the sale deed with full knowledge and the deed was neither fraudulent nor illegal. According to the

defendant, he got the possession over the disputed holding after the sale deed and thereafter he gave the land to Chhotu in Ijara in 1965 and this

Ijara was redeemed also. Similarly the land was again given in Ijara to another person and the same was redeemed. Further case of the defendant

was that it was essential for the plaintiff to take agricultural land in Ijara and so she sold her share in the disputed holding and Gulam Rasul never

took any money from her and hence the sale deed executed by the plaintiff was genuine and, therefore, she had no share left in the disputed

holding.

8. The trial Court decreed the suit. It held, on a proper consideration of the evidence on record, that the plaintiff was an illiterate and Pardanasin

lady. Having held as such it further held that the onus lay upon the person who wanted to enforce any agreement against the Pardanasin lady to

prove that the deed was the result of free and independent act of the lady. It also held that the plaintiff could not have sold that land and shop of

her share situated in the town for having an Ijara which was redeemed only after three years. The trial Court also held that the plaintiff had ready

money to take Ijara with her own money and there was no necessity to sell her land and shop of her share situate in Biharsharif town. It is pertinent

to quote the finding of the trial Court:--

So from the above documents, evidence and circumstances of the case it is clear that the plaintiff was relation of defendant Abdul Gafoor also on

a good faith of her at the time of taking the Ijara gift from the wife of Abdul Gafoor he (Abdul Gafoor) committed a fraud and became able to get

execution of the impugned document of sale deed dated 18-5-1962 from the plaintiff in her favour particularly as the plaintiff is a Pardanasin

illiterate lady. Therefore, this issue is decided in favour of the plaintiff and against the defendants.

It further held that though the defendant Abdul Gafoor got possession over the property of the plaintiff after the execution of the sale deed, it did

not affect in any way the title and possession of the plaintiff because the plaintiff was neither the party nor the executant or in any way concerned

with Exts. J to J/21 and Ext. B, C to C/50, E, F, I, W/1 and I. It categorically held that the plaintiff had valid title and interest in the suit property,

as claimed. The trial Court negated the defendant's case of prior partition and it held that the plaintiff had a perfect title to her undivided one-third

share in the disputed holding and the sale deed dated 18-5-1962 was a forged and fabricated document. With these findings the trial Court

decreed the suit.

9. Being aggrieved by the judgment and decree of the trial Court the defendant preferred appeal the Court of appeal below allowed defendant's

appeal and held that the sale deed (Ext. A) was knowingly and purposely executed by the plaintiff in favour of defendant No. 1 and it was not a

fraudulent document, rather it was a legal and valid one.

10. On a perusal of the judgment of the Court of appeal below it seems that the lower appellate Court thought that the main question to be

answered in the appeal was whether the plaintiff had enough money to take the agricultural land in mortgage or not and the Court of appeal below

taking this question to be the crux of the case proceeded in deciding this question and held that the plaintiff failed to prove her case that she had

enough money at her disposal out of which she paid the consideration for the mortgage deed executed in her favour. It further held that the plaintiff

had failed to prove that her first husband was Thikedar at Jharia and that he used to give her sufficient money out of which she saved Rs. 1600/-

which she utilised for the purpose of execution of the mortgage deed in her favour. The lower appellate Court ultimately held that the plaintiff's

case that she took agricultural land in mortgage out of the money which she had saved during the subsistence of her marriage with her first

husband was totally false. Having held that she had not enough of money at her disposal out of which she could pay the consideration amount for

the mortgage deed executed in her favour, the lower appellate Court abruptly came to a finding that the sale deed (Ext. A) was knowingly and

purposely executed by the plaintiff in favour of defendant No. 1 and that it was not a fraudulent one, rather it was a legal and valid document.

11. Learned counsel for the parties have placed before me the judgment of the lower appellate Court as a whole. In my opinion, the entire

approach of the lower appellate Court was erroneous in law. Here was a case in which the sale deed is said to have been executed by a

Pardanasin lady. The plaintiff, who claims to be a Pardanasin lady, categorically pleaded that the sale deed was neither read over to her nor she

understood the same and that it was fraudulent one. This being the specific case of the plaintiff, the Court of appeal below should have been aware

of the law as is applicable in such a case.

12. Pardanasin ladies have been given a special protection in view of the social conditions of the time and they are presumed to have imperfect

knowledge of the work. In cases where documents are taken from Pardanasin ladies, the Court has to ascertain that the party executing the

document has been a free agent and duly informed of what the document was about. The general presumption is that a person understands the

document to which he has affixed his name but this presumption is not applicable in the case of Pardanasin ladies. It is well settled that the burden

of proof always rests upon the person who seeks to sustain a transaction entered into with a Pardanasin lady to establish that the said document

was entered into by her after carefully understanding the nature of the transaction. It must be established that it was not her physical act but also her

mental act. This burden of proof can be discharged not only by proving that the document was explained to her and that she understood it but also

by other evidences, direct and circumstantial. This special rule in a deal with Pardanasin lady, which is evolved for the protection of Pardanasin

lady, should not be confused with other doctrine such as fraud, duress, undue influence which apply to all persons whether they be Pardanasin

ladies or not. This being the settled law in case where the document is executed by a Pardanasin lady and in a case where the Pardanasin lady

categorically pleads that it was neither read over to her nor explained nor was understood by her; the Court of appeal below should have given a

correct approach to the case in accordance with law specially in view of the fact that the trial court Categorically held that the plaintiff was a

Pardanasin lady and illiterate as well and that it also dealt with the question of onus in such a case:

13. The Court of appeal below has reversed the judgment of the trial Court and in that view of the matter, it was necessary for the Court of appeal

below to have considered all the reasonings given by the trial Court for coming to a contrary conclusions. The Court of appeal below should have

known that the legislature has entrusted a very important duty to the first appellate Court and it is for that Court to decide finally all the questions of

fact on which the dis-posal of the suit might depend. It must also be apparent from the judgment of the first appellate Court that it has made an

honest endeavour to make a proper appraisements of the merits of the case put forward by the parties. In a case of reversal, it is all the more

important for the Court of appeal below to consider the evidence and also the reasons of the trial Court and only thereafter to give its own reasons

for not agreeing with the findings of the trial Court.

14. In the instant case, as I have already stated above, the Court of appeal below started looking at the appeal with absolutely an erroneous

approach of law. The Court of appeal below in the nature of the case that was before it should have proceeded with a correct approach; that is, as

to on whom was the onus. Was the onus upon the plaintiff herself or, on the facts of the case, on the defendant, and having decided the question of

onus should have proceeded to give its other findings on consideration of the materials on the record. The Court of appeal below has totally failed

to consider whether the plaintiff was a Pardanasin lady and art illiterate one. It also totally failed to consider the question of onus in such a case.

These considerations were important to be considered by the Court of appeal below specially when the trial Court considered these aspects.

15. I hold that the judgment of the Court of appeal below is not in accordance with the law and in that view of the matter, the judgment and decree

of the Court of appeal below are set aside and the appeal is allowed. The case is sent back to the lower appellate Court for deciding the appeal

afresh, after hearing the parties, on the materials already on the record. The parties will, be at liberty to argue all the points available to them. In the

circumstances of the case, however, there will be no order as to costs.