Sishir Kumar Choudhury and Others Vs Tarangini Debya and Others

Court: Calcutta High Court

Date of Decision: May 5, 1937

Final Decision: Dismissed

Judgement

Ghose, J.
This is a second appeal by the Plaintiffs in a suit for a declaration that the Plaintiffs are the reversioners of the Original Defendant

Brojokishori Dasya and for a declaration that the deed of surrender executed by her in favors of her son Sarat Ranjan now deceased is a forged

document. The Plaintiffs who have been substituted in place of their father Harikumar, the Original Plaintiff, are the descendants of one Bejoy

Krishna. Brojo Kishori is the widow of his brother Hare Krishna. The deed of surrender in question vide. Ex. A. 2 purports to have been executed

on the 27th February, 1922, in favour of her only son Sarat Ranjan. On the 11th March, 1922, the document was presented for registration by a

third person. Before the registration was effected Sarat Ranjan died on the 22nd March, 1922, after having executed a Will. On the 7th April,

1922, the; document Ex, A 2 was registered on the admission of Brojo Kishori. On the 23rd February, 1928, the present suit was brought against

Brojo Kishori as Defendant No. 1 and Tarangini the widow of Sarat Ranjan as Defendant No. 2. Brojo Kishori subsequently died on the 10th

December, 1929, and a prayer for khas possession was added to the plaint. The material question which is now at issue between the parties is

comprised in issue No. 6 which runs as follows:-

Is the muktipatra deed a valid and genuine document? Has the Defendant No 2 acquired a valid title and been in possession there under? If EO,

does the suit lie?

The trial Court held that the deed is not genuine. On appeal, the learned Judge reversed that finding and held that the deed is genuine. In that view

he decided that the Plaintiffs have no title to the property in question and so he dismissed the suit. Hence this second appeal by the Plaintiffs.

2. The first point that is raised in support of the appeal is that there is no finding that the gift had been accepted by or on behalf of the donee before

registration and so the document was not a completed one, and that as the donee was dead at the time of the registration no title passed. This is

not altogether a question of law. It involves a question of fact but the point is not raised at all in the Courts below. It would appear from the

judgment of the learned Judge below that the position of the parties before him was thus:-

It is admitted that if this document be genuine and was actually executed before Sarat Banjan"s death the present Plaintiff, who are heirs of Hari

Kumar who died in January 1932, would be excluded from the succession. The sole question in the case therefore is whether the muktipatra is a

genuine document,

3. It is on that basis that the case was argued and decided in the lower Court. It is contended in this Court that the pleader for the Plaintiffs

Appellants in the lower Court misconceived the position, but there is no reason why the pleader should not have raised the question of fact,

namely, whether the gift had been accepted by the donee. The trial Court found, as a fact, that the donee had possession of the property after the

gift. He was the sole surviving son of the lady and it is also found that even before the gift he was in actual possession of the property. It stands to

reason that this fact of possession itself is evidence of acceptance and no reason whatsoever was suggested as to why acceptance should not have

taken place. On the other hand, it is found that it was Sarat Ranjan who sent the document to the Registrar"s office through one Jitendra and the

Sub-Registrar made an endorsement on the back of the document as also on the petition which was filed before him. In these circumstances, we

do not consider that there is any force in the contention that there is an omission to find that the deed had been accepted by the donee.

4. It is further contended for the Appellants that the document would not be valid because Sarat Ranjan was dead at the time of the registration.

Under the provisions of sec. 47 of the Indian Registration Act, the time from which a registered document operates is the time of its execution and

not the time of its registration. It has been held in a number of cases that out of two registered documents the one which is executed first has

priority over the other, although the former was registered subsequently to the latter. Jadunandan Prosad Singh v. Deo Narain Singh 16 C. W. N.

612 (1911),Rajani Nath Das v. Offajuddi Molla 22C. W. N. 318 (1916) and Surendra Nath Ghose v. Haridas Biswas I. L.R. 60 Cal. 225

(1932). Similarly it has been held that where a deed of gift of the property was delivered over to the donee and subsequently a son was adopted

after which the deed of gift was registered, the gift becomes effectual subject to its registration. Kalyanasundaram Pillai v. Karuppa Mooppanar L.

R. 54 I. A. 89: s. c. 31 C. W, N. 509 1926 Again where a deed of gift has been handed over by the donor to the donee and accepted by the

latter, the donor cannot revoke the gift, although at the date of the purported revocation the deed has not been registered. Venkatasubba Shrinivas

Hedge v. Subba Rama Hedge I. L. R. 52 Bom. 313 (1928) Therefore in the present case the contention that the deed of gift must fail because at

the time of registration, the donee was dead is not supported by the authorities and cannot be accepted.

5. The next point urged in support of the appeal is that the learned Judge was wrong in relying on additional evidence, because it was taken

contrary to the provisions of or 41, r. 27 of the Code of Civil Procedure. This additional evidence was taken under the following circumstances.

The judgment of the trial Court observes:

From the evidence of D. W. 15 we get that there was a criminal case at the time of the marriage at Nawadwip. Some papers relating to that

criminal case could have been proved to show the time when the marriage took place.

6. During the tendency of the appeal in the Court of the District Judge an application Was filed in behalf of the Defendants Appellants for taking in

additional evidence on the above point. The learned Judge made an order on the 26th April, 1933, in which he reviewed the arguments of both

sides and finally said:

I think commission for the examination of the two witnesses may be issued on condition that the evidence on commission shall not be read as

evidence unless at the hearing of the appeal, the court is satisfied that such evidence would be taken for the ends of justice or to enable the court to

pronounce judgment or for substantial cause.

7. Accordingly the evidence was taken. There was no further objection on the point, nor was any further order made recording the reasons as to

why the additional evidence should be considered. But the learned Judge dealt with the evidence in his judgment in the following manner. He dealt

with the question as to whether Sarat Ranjan and Brojo Kishori were absent from home on the 15th Falgun as held by the learned Subordinate

Judge. The learned District Judge says:

the learned Subordinate Judge was of opinion that there was reason to suppose that the Nabadwip marriaga took place not on the 19th Falgun but

on the 9th although the actual bridegroom of the marriage came and swore that his marriage took place on the 19th

8. From this it is quite clear that the learned Judge disagreed with the opinion of the Subordinate Judge and held that the marriage took place on

the 19th. Then he added the following observations:

The learned Sub-Judge''s conclusion in this matter which was initially unreasonable has been shown to be incorrect by production in Ibis court of a

petition before the Sub-Divisional Magistrate of Nadia filed on the 3rd March, 1922, by the father-in-law of the bridegroom by a previous

marriage attempting to stop the wedding.

9. It is this petition which is proved by additional evidence. The contention for the Appellants in this Court is that, in the first place, the learned

Judge should not have called for additional evidence before hearing the appeal and examining the evidence already on the record and, secondly, he

should not have omitted to record the reasons for taking in the additional evidence. The answer to this is that as a matter of fact the learned Judge

did not rely on the additional evidence altogether for the purpose of deciding the question of fact before him. In the second place the order of the

26th April, 1933, shows that the learned Judge decided that the evidence would not be read unless at the hearing of the appeal the Court found

that it was necessary. As to the recording of reasons there was no doubt a technical defect, but it seems to us that such reasons do appear from

the order which was actually recorded on the 26th April. Considering all these circumstances we do not think that the objection under or. 41, r. 27

of the CPC should prevail.

10. The next point urged in support of the appeal is that the judgment of the learned Judge below was not a proper judgment of reversal, inasmuch

as he has not referred to all the points of fact decided in the trial Court. For instance, he has not dealt adequately with the question of pilgrimage

being the motive for the execution of the deed on the part of the lady and he has also not dealt adequately with the point that in the copy of the

deed which was taken from the registration office the pencil endorsement of the Registrar does not appear. It may be that the learned Judge has

not recorded distinct finding on each of the points of fact, but the judgment shows that he has considered the evidence for himself. For instance, the

learned Judge says:

I do not understand why the Subordinate Judge Bays so and the learned Advocate in this court could not explain it.

11. From this it is clear that he does not agree with the learned Subordinate Judge. It seems to us that the learned Judge below has considered the

questions of fact before him in the light of the evidence and has decided those questions which must be accepted by us in second appeal.

The appeal therefore fails on all the points and it is dismissed with costs.

Patterson, J.

I agree.