(1958) 08 CAL CK 0026

Calcutta High Court

Case No: Appeal from Appellate Decree No. 168 of 1952

Pushpabala Majhi		APPELLANT
	Vs	
Sarat Chandra Das		RESPONDENT

Date of Decision: Aug. 12, 1958

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 7

Citation: (1959) 2 ILR (Cal) 756

Hon'ble Judges: Renupada Mukherjee, J

Bench: Single Bench

Advocate: Amarendra Mohan Mitra and Hiron Kumar Roy, for the Appellant;Shyamadas Bhattacharjya, for the Respondent

Final Decision: Allowed

Judgement

Renupada Mukherjee, J.

The facts which have given rise to the present appeal lie within a narrow compass. The only persons who are interested in this appeal are Pushpabala Majhi, daughter and heir of Soudamini Deyee, the original Plaintiff of the trial court, and Respondents Nos. 1 and 2 of this appeal, Sarat Chandra Das and Jatindra Nath Das, Defendants Nos. 2 and 3, respectively, of the trial court. Soudamini instituted the suit in the trial court for a declaration that a certain kobala purporting to have been executed by Defendants Nos. 2 and 3 of the trial court in favour of Defendant No. 1 on May 18, 1943, is a void and fraudulent document, and it has not affected her title to the disputed properties which she purchased from Defendants Nos. 2 and 3 on May 30, 1943. Certain prayers were also made which are ancillary to the main prayer. Prayer gha of the plaint shows that an alternative relief was asked for against Defendants Nos. 2 and 3 of the trial court if they created any hindrance in the way of Plaintiff''s success.

2. The main contestant in the trial court was Defendant No. I who alleged that Defendants Nos. 2 and 3 had sold the disputed property to his father for valuable consideration before the sale was affected in favour of Soudamini. This Defendant further alleged that his father had purchased the property in his benami.

3. Defendants Nos. 2 and 3 filed separate written statements in the trial court contending that they had never executed any kobala in favour of Defendant No. 1''s father.

4. Upon the above pleadings two principal points arose for the determination of the trial court. The first question was, which of the two rival kobalas, viz., the kobala executed in favour of Defendant No. 1''s father on May 18, 1943, and the kobala executed in Soudamini''s favour on May 30, 1943, would prevail. The other question was whether the Plaintiff was entitled to get a refund of the consideration money from Defendants Nos. 2 and 3 if her kobala was found to be inoperative as against the other kobala.5. Upon a consideration of the evidence and circumstances of the case, the trial court came to the conclusion that the kobala executed in favour of Defendant No. l''s father Priyanath Jana being of an earlier date and having been executed for consideration would take precedence over the other kobala relied on by the Plaintiff. That court further passed a decree for refund of Rs. 1,300 in favour of the Plaintiff and against Defendants Nos. 2 and 3. The original Plaintiff died during the pendency of the suit in the trial court, and the present Appellant was substituted in her place.

5. Against the above judgment and decree of the trial court an appeal was preferred by Defendants Nos. 2 and 3 of the trial court, and Plaintiff also filed a cross-objection which was dismissed as it was not pressed. The lower appellate court allowed the appeal of Defendants Nos, 2 and 3 and set aside tie decree for refund of Rs. 1,300 which was passed against them by the trial court. This appeal has been preferred by the substituted Plaintiff from the judgment and decree of the lower appellate court and the appeal is being resisted by Defendants Nos. 2 and 3 of the trial court. The other Defendants of the trial court have also entered appearance, but they have no interest in the present appeal.

6. Mr. Mitra, appearing on behalf of the Plaintiff Appellant, contended before me that the decree for refund which was passed against Defendants Nos. 2 and 3 of the trial court have been reversed by the lower appellate court on a narrow and erroneous interpretation of Order VII, Rule 7 of the Code of Civil Procedure. That rule runs in the following terms:

Every plaint shall state specifically the relief which the Plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the Defendant in his written statement.

7. It is with reference to Order VII, Rule 7 of the Code that the lower appellate court has held that no specific relief by way of refund of the consideration money was prayed for in the plaint and so the decree for refund passed against Defendants Nos. 2 and 3 is not justifiable in law. Mr. Mitra contends that the lower appellate court committed an error in law in putting such a rigid construction on the above rule, and that there are cases in which a decree for refund has been passed against the contracting party on the failure of the contract, although no such prayer was made in the plaint.

8. In support of the above argument Mr. Mitra relied on a case, AIR 1943 29 (Privy Council) . That was a case for enforcement of a mortgage. No prayer was made for the refund of the amount lent if the mortgage turned out to be void. Still their Lordships of the Judicial Committee passed a decree for refund of the amount lent by reversing the decree of the Chief Court of Oudh. While setting aside the decree, their Lordships of the Judicial Committee observed that the attitude of the learned Judges of the Chief Court towards the question of pleading was unduly rigid. A Defendant who when sued for money lent pleads that the contract was void can hardly regard with surprise a demand that he restores what he received thereunder. If the principle laid down in this case be followed, then there can be no doubt that the Plaintiff Appellant is entitled to get a decree for refund against Defendants Nos. 2 and 3.

9. Mr. Bose who appeared on behalf of Defendants Nos. 2 and 3 of the trial court who are Respondents Nos. 1 and 2 of this appeal tried to distinguish the Privy Council case by pointing out that in the present case the main prayer of the Plaintiff Appellant was to get a declaration that the kobala executed in favour of Priya Nath was a void one and that his clients had put the Appellant''s mother in possession of the property concerned after having executed a sale deed in her favour. Mr. Bose contended that in these circumstances, his clients cannot be held responsible if the Plaintiff Appellant fails to enforce her kobala as against the kobala in favour of Priya Nath. In my opinion, the Privy Council case cannot be distinguished from the present case in this manner. From the facts proved in the courts below it would appear that Mr. Bose''s clients executed two sale deeds in respect of the same property, one in favour of Priyanath and another in favour of Appellant''s mother Soudamini. It has further been found by the courts below that consideration was taken by Mr. Bose''s clients for both these kobalas. It is, no doubt, true that in their written statement Mr. Bose''s clients denied having executed the kobala in favour of Priyanath. It was, however, their clear duty to support their defence by appearing in court and giving evidence in support of their case. This was not done in spite of the fact that they were cited as witnesses by the Plaintiff Appellant. The result was that on account of their non-appearance in court, the Plaintiff lost her title to the disputed property by reason of the existence of the earlier kobala. Respondents Nos. 1 and 2 cannot be allowed to retain the consideration money for both the kobalas and they are bound in law and equity to return the moneys which they

subsequently took from Appellant''s mother by way of consideration. The lower appellate court refused to pass such a decree in favour of the Appellant on the ground that no such prayer was specifically made against these Respondents in the plaint. If the Privy Council case is to be followed, which I am bound to follow, then there will be no room for doubt that such a decree could have been passed even though the plaint did not contain a prayer for any relief against Respondents Nos. 1 and 2. As a matter of fact, however, prayer gha of the plaint shows that an alternative relief was asked for as against these Defendants. The relief was not described or mentioned specifically, but the relief was left to the discretion of the court.

10. The lower appellate court has referred to the first portion of Rule 7 of Order VII of the CPC which lays down that every plaint shall state specifically the relief which the Plaintiff claims either simply or in the alternative, but it has overlooked the other portion which says that it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. In the present case, the only appropriate relief which the court can give to the Plaintiff Appellants is a decree for refund of the consideration money of Rs. 1,300 against Respondents Nos. 1 and 2 of this appeal. These Respondents were made parties in all the courts, and it has been held in spite of their defence that they executed two kobalas within an interval of a few days and received consideration for both of them. On a consideration of these facts and circumstances I am of opinion that in the present case the Appellant is entitled to get a decree for refund of the consideration money and the decision of the lower appellate court to the contrary is erroneous, in law.

11. On grounds set forth above this appeal is allowed and the judgment and decree of the lower appellate court are hereby set aside and those of the munsif restored. The Appellant will get her costs from Respondents Nos. 1 and 2 both in this Court and the lower appellate court. Respondents Nos. 3 to 6 will bear their own costs in this Court.