Satgur Parsad Vs Har Narain Das

Court: Bombay High Court

Date of Decision: Jan. 18, 1932

Acts Referred: Contract Act, 1872 â€" Section 65
Trusts Act, 1882 â€" Section 88

Citation: (1932) 34 BOMLR 771

Hon'ble Judges: George Lowndes, J; Dinshah Mulla, J; Blanesburgh, J

Bench: Full Bench

Judgement

George Lowndes, J.
These are consolidated cross-appeals against a decree of the Chief Court of Oudh dated May 2, 1928. The

appellant in the one case, Satgur Prasad, was the principal defendant in a suit instituted on the original side of the Chief Court, which was decided

against him both by the trial Judge and the Court of Appeal. In the other the plaintiff, Mahant Har Narain Das, is the appellant, raising subsidiary

questions on which the Court of Appeal had decided against him.

2. The main issue in the suit was as to the validity of a deed, dated November 25,1924, by which the plaintiff purported to make over a valuable

estate and other property to the defendant-appellant subject to certain conditions. The object of the suit was to set aside this deed on the ground

that it was procured by undue influence and fraud. There are concurrent findings of both the Courts in India that this has been established, and they

are undoubtedly findings of pure fact. It is not disputed that if they are to stand the appellant cannot escape the decree which has been passed

against him.

3. The practice of this Board with regard to concurrent findings of fact is well established. Such findings will not be disturbed unless it is shown that

there has been a miscarriage of justice or the violation of some principle of law or procedure: Moung Tha Hnyeen v. Moung Pan Nyo (1900) L.R.

27 IndAp 166 : 2 Bom. L.R. 985 (1904) L.R. 31 I.A. 127 (Privy Council) cited and followed in Robins v. National Trust Co. [1927] A.C. 515

4. This does not necessarily imply that their Lordships make the findings their own, for, almost ex hypothesi, they have not considered them in

detail: but only that where matters of fact have been fairly tried by two local courts, which are often in a better position to conclude upon them than

this Board, and the same conclusion has been reached by both, it is not in the public interest that the facts should again be examined in the ultimate

Court of Appeal.

5. Nothing has been suggested, during a two-days argument for the defendant-appellant, which would bring the case within the principles so laid

down, the learned Counsel confining themselves to a searching criticism of the reasons assigned by the learned Judges in the Courts below for the

conclusions to which they had come. Their Lordships think that no useful purpose would be served by following their argument through the

somewhat unsavoury details so disclosed. They will only record their opinion that no sufficient reason has been shown for disturbing the concurrent

findings to which they have referred.

6. The cross-appeal of the plaintiff raises a question of greater difficulty. Under the decrees of both Courts he is entitled to possession of all the

properties sued for. The details were set out in three schedules annexed to his plaint. These are embodied in the decree of the trial Judge, which in

this respect was confirmed by the Court of Appeal.

7. He also claimed by his plaint mesne profits accruing during the possession of the defendant-appellant (hereinafter for convenience referred to as

the defendant), the amount of which he estimated at five lakhs of rupees. There seems to have been no discussion upon this question in the trial

Court, the learned Judge merely reciting an agreement of the parties that the issue as to the defendant''s liability to account should be left to be dealt

with in execution proceedings.

8. In the Court of Appeal, however, it was urged on behalf of the defendant that the account should only go from the date of suit (February 21,

1927), and not from the date when the defendant got possession, i.e., approximately November 25, 1924. The learned Judges of the appellate

Court accepted this contention assigning as their reason for so doing ""that the document of November 25, 1924, was only voidable at the option of

the plaintiff, and the plaintiff did not exercise that option earlier than the date of the suit.

9. It is against this finding only that the cross-appeal of the plaintiff has been pressed and it is contended on his behalf that, having regard to the

conclusion, now established, that the deed under which the defendant got possession was procured by undue influence and fraud, the plaintiff is

entitled to the amount which he has claimed.

10. The defendant supports the finding of the Court of Appeal on this question. Mesne profits, it is said, under the definition contained in Section 2

(12) of the Civil Procedure Code, can only be awarded for the period during which the defendant was in wrongful possession, and until the plaintiff

elected to avoid the contract under which possession was made over to him, his possession was not wrongful.

11. But in the first place their Lordships are unable to regard the deed of November 25, 1924, merely as a contract voidable at the option of the

plaintiff, but good until avoided. It was in effect a conveyance, under which the title to the properties passed to the defendant, and which had to be

formally set aside. Before the institution of the suit the defendant could no doubt have made a valid transfer to an innocent purchaser, but it by no

means follows from this that as between him and the person he had defrauded his possession was not wrongful. To admit of such an assertion

would be to allow him to take advantage of his own wrong, which no Court of equity will permit.

12. If the matter could be regarded as one of contract, their Lordships think that it would fall within the terms of Section 65 of the Indian Contract

Act, which provides that "" when a contract becomes void ""-and their Lordships would have no difficulty in holding these words sufficient to cover

the case of a voidable contract which had been avoided-any person who has received any advantage under such contract is bound to restore it to

the person from whom he received it, or make compensation therefor.

13. Regarding the transaction, however, as one that has passed out of the realm of contract, it would seem to be met by Section 88 of the Indian

Trusts Act, which has always applied to the province of Oudh. Both Courts in India have found that the defendant stood in a fiduciary relation to

the plaintiff, and that he procured the conveyance by taking advantage of this relationship. He would, therefore, be bound under the terms of the

section to hold any advantage so gained for the benefit of the plaintiff.

14. But apart from either of these statutory provisions, their Lordships think that the plaintiff is entitled to succeed in his claim upon general

principles of equity. So it is stated in Kerr on Fraud and Mistake (6th Edition, p. 469), dealing with the doctrine of restitutio in integrum, that ""a

party exercising his option to rescind is entitled to be restored as far as possible to his former position."" For this proposition there is ample

authority. In Reg. v. Saddlers" Co. (1863) 10 H.L.C. 404 Lord Blackburn says (p. 420) :-

Fraud, as I think, renders any transaction voidable at the election of the party defrauded 5 and if, when it is avoided, nothing has occurred to alter

the position of affairs, the rights and remedies of the parties are the same as if it had been void from the beginning;...

15. In Dally v. Wonham (1863) 33 Beav. 154 where a purchase by the agent of a vendor was set aside upon much the same grounds as here, the

vendor-plaintiff was given an account of rents and profits received by the defendant, from the date of the conveyance, the defendant being allowed

credit in the account for all moneys properly expended by him on repairs and lasting improvement?, and all sums paid to the plaintiff on account of

an annuity which was, as in the present case, part of the consideration for the conveyance.

16. In Mulhallen v. Marum (1843) 3 Dr. & W. 317 the Lord Chancellor (Lord Lyndhurst) in setting aside a lease which had been obtained by

fraud and undue influence, said (p. 386): ""I shall give an account against the Defendant from the time of filing the bill, but not before, on account of

the delay."" In this case eleven years had elapsed since the date of the lease before the bill was filed.

17. Reference might also be made to the form of decree proposed by Lord Westbury L.C. in Tyrrell v. Bank of London (1862) 10 H.L.C. 26 and

to Erlanger v. New Sombrero Phosphate Company (1878) 3 App. Cas. 1218

18. Their Lordships think that in the case now before them, where there is no difficulty in putting the parties back in the position which they

occupied respectively on November 25, 1924, and where there is no proof of undue delay on the part of the plaintiff in bringing his suit, he should

have an account of the rent and profits of the Immovable properties from that date, the defendant being entitled to credit in the account for all

payments made by him to the plaintiff. Interest should be allowed at the usual rate upon both sides of the account,

19. For the reasons given their Lordships will humbly advise His Majesty that the appeal of Satgur Prasad should be dismissed, and that of Mahant

Har Narain Das allowed; and that the decree of the Chief Court of Oudh dated May 2, 1928, should be varied by substituting for the words "" date

of the suit"" the words ""twenty-fifth of November, 1924,"" and by adding after the words ""possession by him"" the words ""the defendant-appellant

being entitled to credit in the account so to be taken for all sums paid by him after that date to respondent No. 1, and interest being allowed at the

usual rate on both sides thereof."" In other respects the decree of the Chief Court will stand.

20. The appellant, Satgur Prasad, must pay the costs of Mahant Har Narain Das before this Board.