

(2008) 06 CAL CK 0067
In the Calcutta High Court
Case No : S.A. No"s. 63 and 64 of 1992

Atul Krishna Mongal and Another

APPELLANT

Vs

Smt. Alokelata Mondal

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 101, 102
Registration Act, 1908 — Section 58

Citation : (2008) 3 CALLT 499

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Anit Kumar Rakshit, for the Appellant; I.B. Sahoo and Samiran Giri, for the Respondent

Final Decision : Dismissed

Judgement

Sailendra Prasad Talukdar, J.—The judgment and decree dated 15.02.1988 passed by learned Assistant District Judge. 2nd Court. Midnapore in T.S. No. 10 of 1983 gave rise to two appeals, being T.A. No. 157 of 1988 and T.A. No. 173 of 1988.

2. Being aggrieved by the judgment and decree dated 20th April, 1989 passed by the learned 6th Court of Additional District Judge, Midnapore, the instant two appeals were filed. The factual backdrop of the present cases is as follows:

Plaintiffs claimed that the suit land was purchased by them on 25th June, 1970. Apart from excavating a doba and taking steps for improvement of such land, they constructed one storied pucca building on Plot No. 408. They possessed the same till 26th January, 1983. They inducted two tenants in such dwelling house.

3. Debasis Mondal, son of the plaintiffs, got married to the defendant on 29th June, 1981 and leaving aside her occasional temporary stay outside; she started living in the house of the plaintiffs at Village - Jalkhanbarh. Discovering that she

was older than her husband by six years, she became extremely unhappy - not only with her husband but with the members of his family as well. She was a teacher and her husband, though a law graduate, was unemployed at the relevant time. She started demanding more and more properties of her in-laws for herself, rather out of vengeance. On 1st October, 1982, being accompanied by her own family members, she compelled her husband, Debasis Mondal and his father to put his signature on a document wherein they agreed to return an amount of Rs. 20,000/-, which they allegedly took as dowry. This was followed by demand for payment of the said amount on 8th October, 1982. On 9th October, 1982, plaintiffs being accompanied by their son, Debasis Mondal and two grand daughters left the place leaving one room, one kitchen and one privy-cum-bath open for the use of the defendant. Complaint was lodged before various authorities over such illegal action of the defendant and her men. Defendant thereafter removed the padlock from the two rooms left by the plaintiffs and put on her own lock. On 23rd January, 1983, plaintiffs were assaulted by members of the defendant. Plaintiffs and their daughter were kept wrongfully confined in a room.

4. On 24th January, 1983, some persons including one Nandadulal Jana came to the plaintiffs and produced one blank paper with revenue stamp affixed and three blank stamp papers. Plaintiffs were then asked to put their signatures on the same. On 25th January, 1983 they forced to sign three written deeds in presence of the Sub-Registrar, who accompanied the defendant and her people. Plaintiff were rescued thereafter and subsequently came to know that one of those deeds was the deed of gift dated 1st January, 1983 and the other two purported to be deeds of sale dated 25th January, 1983. Plaintiffs thereafter filed the suit praying for declaration that the said deeds are void, inoperative and not binding on them. They prayed for cancellation of the same as well as for other reliefs.

5. Defendant contested the said suit by filing written statement, inter alia, denying all the material allegations made by the plaintiffs. She claimed that she used to treat her in-laws with utmost respect and used to take care of them. An amount of Rs. 5,000/-, which she got from her parent, was kept with the plaintiffs. Since the plaintiffs spent the amount for their personal use, they could not repay the same to the defendant. Plaintiffs executed a deed of gift in her favour and the defendant accepted the same. Defendant purchased 12 decimals of bastu ghar by two deeds of sale executed on 10th and 11th Magh, 1389 B.S. at a consideration of Rs. 8,000/- each. The said amount of consideration money was paid before the Sub-Registrar at the time of registration. She managed to collect the aforesaid amount by selling out her ornaments as well as by taking loan from her father. The registration was done on commission and the Sub-Registrar came to the place of execution of the deeds and registered the same.

6. Upon the pleadings, learned Trial Courts framed as many as nine issues.

7. By judgment dated 15.2.1988, learned Trial Court held that the deeds in

question were void and inoperative and consequently not binding upon the plaintiffs. Learned Court, however, did not grant any relief by way of recovery of possession since the defendant as daughter in law had been in uninterrupted possession of the disputed property since her marriage.

8. Defendant by preferring an appeal challenged the finding of the learned Trial Court that the deeds under reference are void and not binding upon the plaintiffs. Plaintiffs again by filing an appeal challenged the judgment on the ground that learned Trial Court was not justified in refusing to grant the relief by way of recovery of possession.

9. Learned 1st Appellate Court by the impugned judgment allowed the Title Appeal No. 173 of 1988 and dismissed the other one i.e. T.A. No. 157 of 1988.

10. The present appeals are directed against the judgment dated 20th April, 1989 passed by the learned 1st Appellate Court.

11. By order dated 15th October, 1967, the following points were formulated for adjudication:

1. Onus of proof to rebut the presumption of validity of execution of the registered deeds under challenge being upon the plaintiffs, whether the said presumption could be rebutted?

2. In view of the finding of the Lower Appellate Court that the plaintiffs failed to prove the alleged coercion, whether there is any scope for interference with the impugned judgment in this second appeal?

3. Whether the learned Lower Appellate Court committed substantial error of law in not considering the reason given by the learned Trial Court for Its finding and in not assigning its own reason for the different findings while reversing the finding of fact?

12. Mr. Rakshit, as learned Counsel for the appellants, submitted that the learned 1st Appellate Court failed to appreciate the evidence on record in the proper perspective. It was submitted that the evidence on record could not be appreciated properly and the finding of fact of the learned Trial Court was unreasonably interfered with and this was due to misappreciation of evidence. It was then submitted that having regard to the kind of relationship the plaintiffs had with their daughter in law. the defendant, there could be no occasion for any transfer or execution of a deed of gift in her favour. Mr. Rakshit expressed his wonder while submitting that in absence of any evidence of love and affection, how could there be a deed of gift? On the other hand, Mr. Sahoo, appearing as learned Counsel for the respondent, submitted that the parties to the instant legal battle are literate. Execution of the deeds is not disputed. In such circumstances, Mr. Sahoo contended that it is. for the appellants to establish that the said deeds were executed under coercion and by practice of fraud.

13. In this context, Mr. Sahoo referred to Section 101 and Section 102 of the

Evidence Act.

14. It was then submitted by Mr. Sahoo referring to the three deeds under challenge that those do not give any scope for suspicion. Referring to the registered deed of gift dated 25th January, 1983, it was submitted that the stamp was purchased on 31st December, 1982. Attention of the Court was invited to the deeds of sale dated 25.1.1983. In respect of one of those deeds, stamps were purchased on 10th January, 1983 and for the other, the same were purchased on 25th January, 1983. Mr. Sahoo laid emphasis on the fact that all such deeds were duly endorsed by the Sub-Registrar.

15. In course of submission, Mr. Sahoo mentioned that though there was no specific formulation of substantial points of law at the time of admission of the second appeal, it could very well be presumed that all the grounds as indicated in the Memorandum of Appeal were taken into consideration.

16. This aspect was, however, subsequently settled in response to submission made by learned Counsel for both parties.

17. Mr. Sahoo on behalf of the respondent contended that it is for the plaintiffs to discharge the burden of proving alleged threat/coercion. Since this is the factual aspect and appeal Court reversed such finding of fact, Mr. Sahoo submitted that this Court in this second appeal has no reason to deal with the same. It was further submitted that the case as made out in the plaint is significantly different from the evidence adduced in Court.

18. In this context, Mr. Sahoo referred to the decision in the case of Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., , wherein it was held that there is a presumption of correctness of the endorsement made by the Sub-Registrar u/s 58 of the Registration Act. This can be rebutted only by strong evidence to the contrary.

19. Referring to the evidence of some of the witnesses examined on behalf of the plaintiffs, Mr. Sahoo contended that such evidence suffers from inherent improbability and could not establish any coercion. It was further submitted that the deed of gift refers to the payment of dowry as claimed by the defendant. Attention of the Court was invited to Section 58 of the Registration Act and the endorsement of the Sub-Registrar in the deeds.

20. Mr. Rakshit relying upon the decision in the case of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., , submitted that an opportunity should have been given to the plaintiff/appellant to formulate the substantial question of law. This aspect having been substantially taken care of, nothing is left to be dealt with in this regard.

21. Much was submitted by learned Counsel for the parties in regard to the scope of second appeal. The Apex Court while deciding the case of Santosh Hazari (supra) held that "substantial in context of Section 100 of the CPC means having substance, essential, real, of sound worth, important or considerable." It was

further held that "to be substantial, a question of law must be debatable, one which has not been settled earlier by statute or binding precedent, and must have a material bearing on the outcome of the case."

It was then submitted that there is no scope for evaluating factual details in a second appeal.

22. It cannot be disputed that even prior to the amendment of the C.P. Code, the settled position of law was that the Court should not ordinarily interfere with the concurrent findings of facts. After 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. In the case of Gurdev Kaur and Others Vs. Kaki and Others, , the Apex Court held that "the High Courts would have jurisdiction of interfering u/s 100 of the CPC only in a case where substantial questions of law are involved and those questions have been clearly formulated in the Memorandum of Appeal."

23. I find it difficult to resist the temptation and I am inclined to hold that certain observations made by the Apex Court in the said case deserve to be reproduced. The same are:

It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was : (i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved; (ii) The substantial question of law to precisely state such question, (iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal; (iv) Another part of the section is that the appeal shall be heard only on that question.

24. The Apex Court in the said case further held that "in judicial hierarchy finality is absolutely important because that gives certainty to the law. Even in the interest of litigants themselves it may not be unreasonable to draw a line in respect of the two different categories of litigation where procedure will say at a certain stage that questions of fact have been decided by the lower Courts and the matter should be allowed to rest where it lies without any further appeal. This may be somewhat harsh to an individual litigant; but, in the larger interest of the administration of justice, this view is juristically sound and pragmatically wise."

25. Having regard to the discussion as made above, this Court has no hesitation to hold that the appellants/plaintiffs miserably failed to rebut the presumption that the registered deeds under challenge are valid and having regard to the finding of the learned 1st Appellate Court in that regard, there can be hardly anything left for adjudication by this Court. It also cannot be said by any stretch of imagination that the learned Appellate Court while dealing with the findings of the learned Trial Court failed to assign reasons.

26. In such circumstances, I do not find any scope for interference and the two appeals being S.A. No. 63 of 1992 and S.A. No. 64 of 1992 fail and be dismissed. The judgment and order dated 20th April, 1989 passed by the learned 6th Court of Additional District Judge, Midnapore in Title Appeal No. 157 of 1988 and Title Appeal No. 173 of 1988 stands affirmed.

There is no order as to costs.

Send a copy of this judgment along with the L.C.Rs to the learned respective Courts for information and necessary action.

Urgent xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.