

(1972) 02 OHC CK 0015

In the Orissa High Court

Case No : Second Appeal No's. 234 and 235 of 1968

Balaram Agasti and Others

APPELLANT

Vs

Ramesh Chandra Mohanty and Others

RESPONDENT

Date of Decision : 14-02-1972

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1973 Ori 13

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : L.K. Dasgupta and G.N. Sengupta, for the Appellant; G.G. Das, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—These two appeals arise out of a common judgment delivered in two independent suits and, therefore, both the second appeals shall be disposed of by this common judgment.

2. The present appellants were defendants in Title Suit No. 231 of 1967 instituted on 3-11-1962. That suit was one for demarcation of properties and a decree for injunction restraining the defendants from interfering with the property demarcated to belong to the plaintiffs. The plaintiffs claim-ed that by a decree given in this Court in Second Appeal No. 152 of 1951 as reviewed by Civil Review No. 1 of 1955 on 21-12-'57 they obtained 1.40 acres and the defendants got 33 decimals. There were various libations between the parties, and the defendants with a view to harassing the plaintiffs, interfered with the boundaries of the plaintiffs land and cut and removed the demarcating boundary on the east on 28-1-1962. The suit was, therefore, instituted for demarcation and permanent injunction. The defendants in their written statement in the said suit disputed the alienation of interference with the boundary of the plaintiffs. But they indicated that they had no objection to demarcation through court.

3. While that suit was pending it is alleged that on 6-4-1964 parties entered into a compromise in the presence of bhadrals and it was agreed that the disputed property would be sold to the defendants of this suit for a consideration of Rs. 1,300-/. The plaintiffs are said to have purchased the stamp through defendant No. 1 on 6-4-1964. The sale deed was executed on the same day and was registered. It was stipulated that the consideration money would be paid to the plaintiffs on their endorsing the registration ticket in favour of the defendants. The plaintiffs, however, omitted to endorse the ticket even when the payment was offered. On 1-5-1964 the plaintiffs executed and registered a cancellation deed falsely alleging that the consideration was Rs. 3,000/- and not Rs. 1,300/- and the defendants had omitted to offer the consideration money as stipulated. The defendants deposited the amount of Rs. 1,300/- and instituted Title Suit No. 305 of 1964 on 3-10-1964 asking for a declaration of their title to the disputed property (1.40 acres) on the basis of the sale deed dated 6-4-1964 and recovery of possession. The plaintiffs of the earlier suit who are defendants in this suit denied the validity of the sale deed, pleaded that the consideration money was Rs. 3,000/- and not Rs. 1,300/-; the compromise which gave rise to the sale deed was to the effect that all disputes between the parties would be settled and in fact on the self-same day there was a sale deed executed by the plaintiffs of the subsequent suit in favour of the defendants which would go to show that an elaborate arrangement had been envisaged which brought about the sale deed. Since the entire arrangement was not accepted by the plaintiffs of the subsequent suit they were not entitled to claim benefit under the sale deed de hors the other aspects. It was emphatically pleaded that giving effect to the sale deed merely would not reflect the true intention of the parties and as such, the court should not enforce the sale deed.

4. The two suits were tried together. The learned trial Judge as also the Lower Appellate Court accepted the defence of the second suit namely that the compromise was comprehensive in its nature, character and effect and the sale deed did not embody the entire terms of the compromise. The trial Court found that Rs. 3,000/- was the real consideration of the sale deed and not Rs. 1,300/- and, therefore, it did not give effect to the sale deed dated 6-4-1964 and decreed the first suit. The plaintiffs of the subsequent suit having lost in both the cases preferred two appeals. The learned Appellate Judge who disposed of the appeals by a common judgment came to find that the trial Court was wrong in allowing oral evidence to be led about the actual consideration of the sale deed dated 6-4-1964. He held that the consideration was Rs. 1,300/- as indicated in the sale deed. He, however, accepted the trial Court's finding that the sale deed was the outcome of a comprehensive compromise and since the plaintiffs of the second suit were not accepting the compromise as a whole, they could not have the benefit of the sale deed. He accordingly upheld the decree of the trial Court. These two second appeals have been filed in this Court by the plaintiffs of the subsequent suit. Second Appeal No. 234 of 1968 is directed against its decree in the earlier case where the respondents were the plaintiffs and Second Appeal No.

235 of 1968 is directed against the decree in the subsequent suit where the appellants were the plaintiffs.

5. Mr. Dasgupta appearing for the appellants in the two appeals raises a common contention namely that the Courts below were wrong in admitting oral evidence to find that the compromise was comprehensive in its nature and apart from the terms in the sale deed in question there were other terms to be complied with which the plaintiffs of the subsequent suit had not accepted.

6. Section 92 of the Evidence Act provides as follows:

"Exclusion of evidence of oral agreement:-- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives-in-interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1)

(2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

(3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

(4)

(5)

(6)"

Mr. Dasgupta contends that none of the provisos applies and, therefore, oral evidence should have been excluded by applying the provisions of the section itself. According to him, the sale deed itself contains the entire terms of the settlement. It is possible that there was negotiation before the actual settlement was brought about but the true intention of the parties was reflected in the terms contained in the sale deed itself. On the other hand, Mr. Das for the respondents contends that provisos 2 and 3 which are by way of exceptions to the ban imposed u/s 92 itself are applicable and the lower appellate Court has rightly used those provisions to justify the reception of the oral evidence in support of the defence plea in the second suit.

Law is well settled that when there is a document in writing which does not contain the entire agreement between the parties but embodies only some of the conditions, oral evidence to prove some other terms which had been agreed

upon and which are not inconsistent with the written instrument is clearly admissible in evidence.

7. It would be useful to refer to the terms of the sale deed (Ext. A) now. It had been stated there:

"We the vendors purchased the property in question being the highest bidders in Court auction in rent execution No. 902 of 1940-41 and we obtained possession through court and have been in possession in our own right of this property. But in relation to the aforesaid property, between us the vendors and you the vendees there have been a series of litigations some of which have been before the original courts and some have even gone upto the High Court; as a result thereof both of us have been subjected to lot of difficulties and expenses. Common friends and well wishers like Sri Bishnu Mohan Naik and Shri Judhisthir Naik and others mooted a settlement between us and have been successful to bring about the sale as a result whereof we the vendors are to sell the property to you for a consideration of Rs. 1,300/-. We have accepted their decision and in order to meet our legitimate expenses we have decided to sell the property to you and receive the entire consideration at the time of endorsing the registration ticket....."

Mr. Dasgupta's contention is that the entire compromise is revealed in the narrative portion of the sale deed as extracted above and, therefore, parole evidence was not available to be led which would have the effect of contradicting, varying or adding to the terms of the sale deed. In support of his contention Mr. Dasgupta relies upon a decision of the Madras High Court in the case of Valipireddy Papi Reddy v. Valipireddy Narayana Reddy, AIR 1936 Mad 841 and another decision in the case of Harichand Mancharam V. Govind Laxman Gokhale, AIR 1923 PC 47. On the other hand it is contended on behalf of the respondents that provisos 2 and 3 are applicable and as such the evidence as led of giving an account of the entire matter of settlement is admissible. I think the learned Appellate Judge was right when he took into account the oral evidence as also the other sale deed (Ext. C) to find out what was the real intention of the parties. The only question is as to whether Section 92 stands as a bar to admissibility of such evidence. The second and third provisos have limitations on the ban contained in Section 92. The second proviso makes such evidence admissible which really does not have the effect of contradicting, varying, adding to or subtracting from the terms of the document under consideration. The third proviso makes the separate oral agreement constituting a condition precedent to the attaching of any obligation under disposition of the property admissible.

Lord Wright delivering the judgment of the Board in AIR 1938 198 (Privy Council) observed:--

"Their Lordships are of opinion that the accompanying or collateral agreement which was the condition of the execution of the promissory note was a written agreement and, therefore outside Section 92. But even if the collateral

agreement was an oral agreement so as to come within Section 92, they are of opinion that it would fall within proviso 3 of the section which states the Indian Law in terms which are in accordance with the English law. It is necessary to distinguish a collateral agreement which alters the legal effect of the instrument for an agreement that the instrument should not be an effective instrument until some condition is fulfilled, or, to put it in another form, it is necessary to distinguish an agreement in defeasance of the contract from an agreement suspending the coming into force of the contract contained in the promissory note."

Here indeed lies the true distinction. The plaintiffs of the earlier suit did not take the stand that Ext. A was not a sale deed conveying title but they have contended that it was not to take effect until certain other events happened. The effectiveness of the sale deed was contingent upon the other events and since the sale was a part of a large arrangement, its partial enforcement which would certainly be inequitable would not be enforced.

8. In my view there is substantial force in the contention of Mr. Das that in the facts of this case, the courts below were right in allowing such evidence to come in under these two provisos. It is true that the two provisos cover different aspects but in the present case, the matter is such that either of them applies. The decision of the Bhadrals which has been found as a fact to be comprehensive was indeed an arrangement constituting a condition precedent to the obligation under the sale deed. Similarly if those arrangements are taken into account, they indeed do not have the effect of introducing anything inconsistent with the terms of the sale deed. The true intention of the parties to the sale deed has been found out by the Lower Appellate Court by referring to various circumstances including conduct of parties both before and subsequent to the transaction. He has found out that the parties were rich and were capable of paying the consideration money forthwith. But that had been deferred so that there may be reasonable time to give effect to the terms of the entire settlement. The view taken in the Lower Appellate Court does not seem to be contrary to law. I would accordingly uphold the affirming decision of the Lower Appellate Court and dismiss second appeal No. 235 of 1968.

9. So far as Second Appeal No. 234 of 1968 is concerned, the defendants had actually not resisted the relief asked for by the plaintiffs and the courts below were right in granting the relief of demarcation through court and permanent injunction against the defendants of that suit. That appeal also, therefore, fails. In the peculiar circumstances of the case, however, I think it appropriate that the parties should bear their costs of the litigation throughout.