
(1955) 11 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 458 of 1951

Bidyadhar Mohanty and Another	Vs	APPELLANT
Ananta Hota and Another		RESPONDENT

Date of Decision : 22-11-1955

Acts Referred:

Specific Relief Act, 1877 — Section 31

Citation : AIR 1956 Ori 83 : (1956) 22 CLT 112

Hon'ble Judges : Panigrahi, C.J.; P.V.B. Rao, J

Bench : Division Bench

Advocate : Asok Das, for the Appellant; P. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C. J.

1. This is a second appeal filed by the defendants in a suit for declaration of title and confirmation of possession, or in the alternative for recovery of possession of the suit lands.

2. The plaintiff's case is that the defendants agreed to sell 1.10 acres of land appertaining to Khata No. 94, in Plot No. 334/969 in Sambara Chaka in Mouza Anlapatta within the sub-division of Khandapara and received Rs. 300/- as consideration therefor. The defendants who took upon themselves the responsibility of executing a proper sale deed fraudulently inserted some other lands, which were of inferior quality, in the deed.

The plaintiff therefore prays for a declaration of his title to the lands agreed to be sold, and for possession of the same. The sale deed was executed by the defendants on 9-10-1948. The fraud was discovered on 27-1-1949 when the plaintiff got the sale deed from the Registration office. Soon afterwards he filed the suit, out of which this appeal arises.

3. The defendants' case is that they neither agreed to sell the lands in Sambara

Chaka, nor had they received the sum of Rs. 1300/- as consideration from the plaintiff. They also denied that the plaintiff was put in possession of the lands in Sambara Chaka.

4. The question before the Courts was whether the registered kabala dated 9-10-1948 executed by the defendants correctly represents the intention of the parties and if it does not, what is the appropriate relief that should be granted to the plaintiff. Both the Courts below held that the defendants had in fact agreed to sell 1.10 acres of land in Sambara Chaka and that they received full consideration as alleged by the plaintiff.

The trial Court directed the dismissal of the suit. Though it came to the finding that the sale deed was executed fraudulently, it refused to grant a declaration of title or confirmation of possession as, in its view, the contract between the parties could not be specifically enforced in the present suit.

The learned Additional District Judge, who heard the appeal, while recording his concurrence with the findings of the learned Munsif, held that the plaintiff was not under an obligation to seek a rectification of the sale deed and that the Court itself could grant the relief by way of putting him in possession in this very suit.

Accordingly, the point that has been urged before us in this second appeal is whether the plaintiff should be driven to file another suit for rectification of the sale deed in question, or whether in this very suit the Court can grant equitable relief by way of a declaration of the plaintiff's title to the lands which had actually been agreed to be sold.

Mr. Das, appearing for the defendants-appellants contended that as the second defendant is a minor no relief by way of specific performance should be granted to the plaintiff, but in my opinion there is no substance in this plea when the concurrent findings of the two Courts is that the minor has been benefited by receipt of consideration money and has executed the sale deed along with defendant 1 conveying these properties.

5. It is well established that Courts of equity will interfere in cases of written agreements where there has been innocent omission or insertion of a material stipulation contrary to the intention of both parties. Where the contract has been executed and the defendant has done all that he was bound to do it would be wholly otiose to require the defendant to execute a fresh deed or rectify the deed that he has already executed.

There would be no use in reforming an agreement when it is wholly executed and nothing remains to be done by either party; and in such cases the relief that the Court grant must be absolute and unconditional -- "*Steele v. Haddock*" (1885) 156 ER 597 (A).

6. In "*Mahendra Nath v. Jogendra Nath*" 2 Cal WN 260 (B), the plaintiffs brought a suit to recover possession of some lands on the allegation that it was covered by a conveyance executed in their favour by the defendant. The defence was that

the homestead land which was included in the conveyance was not expressly excepted because of a mutual mistake.

The Court held that oral evidence could be let in to prove the terms of the contract, and that it would interfere to have the deed rectified so that the real Intention of both parties may be carried into effect and it will not drive the defendant to file a separate suit to rectify the instrument. This case was followed in -- "Asltulla v. Sadatulla" AIR 1918 Cal 809 (C), and it was held there that his title may be established without rectification of an instrument, even though the time to secure rectification of the instrument has elapsed, and that it is open to a party to give evidence to prove that his name has been omitted from the document by fraud or mistake.

In Tetali Sooramma Vs. Kovvuri Venkayya (died) and Others, , the suit was to enforce a mortgage executed by the defendant and the defence taken was that the plaintiff was riot entitled to ask for the sale of one of the items of property, viz.. Survey No. 172/2 on the ground that the property actually described in the deed of mortgage as having been mortgaged was Survey No. 172/4.

The plaintiff stated that the description 172/4 was a mistake for 172/2, and prayed for the sale of Survey No. 172/2 on the basis of the mortgage. The prayer for rectification was barred by limitation, but the High Court held that the relief could be granted even though a suit for rectification has not been filed, following -- "Mahadeva Iyer v. Gopala Iyer", 34 Mad 51 (E), and -- "C. Mellayya v. K. Veeriah" AIR 1916 Mad 795 (1) (F).

Reliance was placed on "Mahendranath"s case (B)", cited above, and on Mr. Justice Mookerjee"s judgment in AIR 1918 Cal 809 (C)", as laying down the correct principle. There it was held that rectification in such a case is not necessary. As was observed in -- "Dagdu v. Bhana" 28 Bom 420 (G), by Sir Lawrence Jenkins C. J., the Court administering equitable principles permits a mistake to be proved and if such a mistake be established, then the Court can give the relief of rectification, but what is rectified is not the agreement but the mistaken expression of it.

The rectification consists in bringing the document into conformity with the prior agreement. It is an adjustment of the machinery to its proper end. In that case the defendants pleaded that the clause to the effect that they would bear the previous burden on the land was fraudulently made without their knowledge and consent. The learned Chief Justice observed:

"It is true that rectification is not claimed in this suit as a relief by the defendants for the rules of procedure by which mofussil Courts are governed do not permit of a counter-claim in the suit for that purpose, nor is there a cross-suit for rectification. But as a Court guided by the principles of justice, equity and good conscience we can give effect, as a plea, to those facts which in a suit brought for that purpose would entitle the plaintiff to rectification."

7. It will be found, therefore, that the Courts have consistently applied the equitable principle of giving relief to a party entitled to it, without driving him to file a separate suit for rectification of a mistake fraudulently inserted in a conveyance.

8. Section 31 of the Specific Relief Act was pressed upon our attention but the very language of that Section indicates that it is not obligatory upon a person interested in a contract, to have it rescinded by a suit. There is nothing in the rules of procedure making it obligatory upon a party to ask for rectification of a contract, before claiming declaration of title to the property agreed to be sold.

No authority has been placed before us, laying down a contrary principle and the only point that was urged with some vehemence was the fact that One of the defendants is a minor. I do not think that this fact makes any difference so far as the applicability of the equitable principle is concerned. Defendant 2 acting through his guardian received the consideration money and executed the sale deed. I fail to understand why he should be permitted to retain the benefit he has received without complying with the terms of the contract.

9. In my opinion, therefore, the view taken by the lower appellate Court is correct and must be affirmed. I would, therefore, dismiss this appeal with costs and grant a decree to the plaintiff declaring his title to 1.10 acres of land in Sambara Chak and direct that he be put in possession of the same. The plaintiff shall also have the costs of this litigation throughout.

P.V.B. Rao, J.

10. I agree.