
(1979) 10 AHC CK 0033
In the Allahabad High Court
Case No : Second Appeal No. 1561 of 1969

Cholar and others	Vs	APPELLANT
Ram Pyare and others		RESPONDENT

Date of Decision : 17-10-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 49, 5

Citation : (1979) 10 AHC CK 0033

Hon'ble Judges : Deoki Nandan, J

Final Decision : Dismissed

Judgement

Deoki Nandan, J.

In this second appeal which arises from a suit for cancellation of saledeed executed by one Smt. Kalli in favour of her brother Tamai, the only question which arises for determination by this Court is whether the finding of the consolidation authority's that the saledeed was not vitiated by fraud or undue influence or want of consideration, and is good and binding on the plaintiffs, operates as resjudicata. The plaintiffappellants are the collaterals of Smt. Kalli's husband. Originally Smt. Kalli was also a plaintiff but having died during the pendency of the suit, her brother, and on his death his heirs and legal representatives were substituted as defendants.

The determination of the question turns on the answer to the further question whether a saledeed executed by a Hindu widow is voidable on the grounds of fraud or undue influence or want of consideration and is good until cancelled by a decree of Court at the instance of the persons interested, or that it is void ab initio.

Some relevant facts must be noticed now. The plaintiff's case was that Smt. Kalli was a widow of the family, and her name was recorded on the agricultural lands, as a cotenant before the abolition of Zamindari and came to be recorded as a cotenure holder after the abolition of Zamindari, only for her consolidation. She

had no rights in the land was entitled only to maintenance and residence as a member of the family, which she was getting. It was further alleged that the plaintiffs other than herself had obtained bhumidhari rights on payment often times the revenue in the joint holdings with the result that she also came to be recorded as a Bhumidhar. It was then alleged that she was very old and her mental condition was also very bad when she was taken to village Dugduiya in district Gorakhpur for treatment. Her brother Tamai, father of defendant No. 1, lived there and used to visit her while she was under treatment at Dugduiya. The fifth plaintiff was taking her to Gorakhpur for further treatment when while waiting for the train for Gorakhpur at the Railway Station, Tamai sent away the fifth plaintiff on the plea that he should go and eat something in the market as there was no certainty when the train will reach Gorakhpur, and, taking advantage of his absence Tamai took away Smt. Kalli with him whereupon she was recovered with the help of the police on the report of her disappearance being lodged on 12th March, 1962. It was then alleged that the fifth plaintiff was informed by Tamai that he had got a sale deed of her entire property executed in favour of his sons and nephews. A certified copy of the sale deed was applied for on 19th March, 1962 which was received on 23rd March, 1962 when the plaintiff came to know of the facts. The sale deed was dated 2nd March, 1962 and was challenged as invalid on the grounds mentioned in paragraph 23 of the plaint. Some of the important grounds were that Smt. Kalli did not execute any sale deed in favour of the defendants; that the day on which the sale deed is shown to have been executed she was very seriously ill and her mental condition was very bad and she was incapable of understanding anything that she is an illiterate old village woman and entitled to protection of law in these matters; that she was not paid any consideration for the alleged sale and "the consideration shown is entirely fictitious; that the sale deed was never read or explained to her and she had no opportunity to take any advice in the matter; that she had no right or interest in the property and her name was entered only for consolidation. She had no right to execute the sale deed; that the property continues to be in her possession along with plaintiffs Nos. 2 to 5, that is, the plaintiffs other than Smt. Kalli, and possession was never delivered to the defendants and that the defendants got no right, title or interest in the property in suit by the alleged sale. The reliefs claimed were firstly for the cancellation of the sale deed dated 2nd March, 1962; secondly for a declaration that the plaintiffs No. 2 to 5 are the bhumidhars in possession of the land and the owners in possession of the house in suit, and thirdly that if by any chance the Court thought that the plaintiffs were out of possession then in that case a decree for possession may also be passed in favour of the plaintiffs against the defendants.

The suit was instituted on 2nd April, 1962 While the suit was still pending in the trial Court the village came under consolidation of holding operations and on an application made by defendants (245C), the trial Court ordered on 20th August, 1963 stay of the suit for the reliefs of declaration and possession in respect of the plots in suit, permitting at the same time the rest of the suit to proceed. This

order was made the subjectmatter of a revision in this Court. That was Civil Revision No. 971 of 1963. Smt. Kalli died during the pendency of the revision in this Court, and further proceedings in the suit having been stayed by this Court, Tamai alias Tameshwar was substituted as her heir and legal representative, vide joint Registrar's order dated 27th September, 1965. The revision was dismissed on 5th January, 1966 by the following order:

"It is rather unfortunate that the suit as a whole cannot be stayed. But to pass a decree on some of the points and not all, may be difficult. In case the plaintiff does not have the suit subdivided into two different suits it shall be open to the Munsif to reconsider the matter. In the special circumstances, I find no reason why the Munsif cannot, in exercise of the inherent jurisdiction, treat one plaint to consist of two complaints and to give them two different numbers.

The revision is hereby dismissed. Costs on parties. Stay order is vacated.

Sd. D. S. Mathur.

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After the dismissal of the revision, the suit proceeded in the trial Court and some substitution proceedings were taken. It appears that in the meanwhile the consolidation authorities had adjudicated upon the rights of the parties in respect of the agricultural land and since they had upheld the sale deed, the defendants moved an application (316C) dated 10th April, 1967 stating that the dispute relating to the agricultural land in suit had been decided by the consolidation authorities in favour of the defendants and that, therefore, the plaintiffs suit had abated. It was prayed in that application that the suit may be dismissed in respect of the land in suit. The orders of the consolidation authorities were filed along with another application (317C) of the same date 10th April, 1967. The trial Court admitted the copies of the orders of the consolidation authorities by allowing the application (317C) and passed the following order on the application (316C) for abatement of the suit:

"316C. For the dismissal of the suit by the defendants regarding plots. The suit is proceeding only with regard to cancellation. So far as suit is proceeding there is no question of abatement. The declaration and possession as well depends upon the issue of cancellation of the deed. If the deed is not cancelled, this Court is bound to accept the finding of the consolidation Court. The application can be answered at the time of judgment.

Sd./ Illegible."

The trial Court proceeded and a further issue, which was issue No. 11 "what is the effect of the decision of the consolidation Court?" was also framed.

By its judgment dated 31st July, 1967 the trial Court proceeded to record its finding first on the said issue No. 11, and held that the adjudication of the rights of the parties by the consolidation authorities was final and conclusive on the

issue about the title of the parties, and then held on issues No. 6 and 7 that the saledeed in question was not obtained by fraud as alleged in paragraph 21 of the plaint, nor was it null and void on the grounds alleged in paragraph 23 thereof. The other issues were not decided by the trial Court and in view of its aforesaid findings it dismissed the suit.

Before the lower appellate Court the first point raised for the plaintiffappellants was that the relief for cancellation of the saledeed was the main relief in the suit. The lower appellate Court held that there was no substance in the contention, for Smt. Kalli did not seek a declaration that she continued to be bhumidhar of the land in suit. That declaration was claimed only by the other plaintiffs and in view of this, according to the lower appellate Court, it could not be said that the relief of cancellation was the main relief; but in view of the decision of this Court dated 5th January, 1966 in the said revision, the lower appellate Court held itself bound to hold that the suit for cancellation of the saledeed was not liable to abate. However, on the second point raised before the lower appellate Court as to the effect of the decision of the consolidation authorities it held that it operated as resjudicata, it could no longer be said that the saledeed executed by Smt. Kalli was vitiated by fraud and undue influence or that it was without consideration and not binding on the plaintiffs. In spite of the said finding the lower appellate Court also went into the question itself, and on an appraisal of the evidence on the record it recorded the finding that the saledeed dated 2nd March, 1962 was not duly executed by Smt. Kalli, that she was not of sound mind at the time of execution of the saledeed, that she was not competent to transfer the property and that the story of payment of Rs. 4,000/ as consideration was totally false and further that it was highly probable that the saledeed was obtained by undue influence. However, in view of its finding that the decision of the consolidation authorities operated as resjudicata it held that the plaintiffs were not entitled to challenge the saledeed in the suit and dismissed the appeal.

There is apparently an inconsistency in the finding of the lower appellate Court on the first two points. If the suit for cancellation of the saledeed was not liable to abate as found by the lower appellate Court, it may apparently seem that the findings of the consolidation authorities could not operate as resjudicata on the issue about the ground on which the cancellation of the saledeed was claimed. Further, both the Courts below have not discussed or expressly considered the fact that a house was also one of the properties involved in the suit.

The solution of the problem in the present case has been rendered somewhat difficult on account of the change in the law during the pendency of the suit by amendment of the Consolidation of Holdings Act, and also the shift in the interpretation of the scope of Section 5 of U. P. Consolidation of Holdings Act. On the rulings of this Court and in the light of the law declared by the Supreme Court, it is not easily possible to say that the order passed by the Munsif staying the suit for declaration and possession in respect of the agricultural land, as confirmed by this Court, for the reasons given in the order dismissing the

revision therefrom, completely shuts out the controversy as to the effect of the orders of the consolidation authorities and I think the trial Court was right when it held on 10th April, 1967 in its order on the application. (316C) that the suit for cancellation had yet to be decided by the Civil Court, but the decision would largely depend on the decision of the further issue which it specifically raised as issue No. 11, as to the force and effect of the decision of the consolidation authorities.

According to the latest decision of the Supreme Court on this point is. *Corakh Nath v. M.N. Singh* (A. I. R. 1973 S.C, 2451), the law settled is, at page 2453, paragraph 5;

"There is no decision of this Court directly on the question whether a suit for cancellation of a sale deed which was pending on the date of the notification under Section 4 of the Act, abates under Section 5 (2) of the Act. A decision of a Division Bench of the Allahabad High Court, in *Jagranath Shukla v. Bita Ram Pandey* (1969 A.L.J. 768), directly dealing with the question before us, was then cited before us. Here, we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court, the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale deeds, gift deeds and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or interests in land which, are the subject matter of consolidation proceedings. We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any Court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void, such a claim could be adjudicated upon by consolidation Courts. We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in *Jagarnath Shukla's* case, (*supra*), that it is to the substance of claim and not its form which is decisive."

The upshot of this decision of the Supreme Court read with decision of this Court in Jagarnath Shukla's case (supra), if the document requires to be cancelled by a decree of the Civil Court, in the sense that it is binding on the plaintiff unless it is so cancelled, the suit for cancellation of such an instrument in a Civil Court cannot be said to be not maintainable liable to be abated under Section 5 of the U. P. Consolidation of Holdings Act on coming into force of consolidation of holdings operations in the village in which the agricultural land involved in the instrument is situate, but in case the plaintiffs claimed that they are not bound by the instrument or that it is void altogether so as to be of no legal effect in spite of its execution, by the plaintiffs themselves, and even as against them, filing of such a suit for cancellation as a prelude to the declaration of the plaintiffs rights in the property affected by the instrument appears to be wholly unnecessary, and if the property affected by such an instrument is in the nature of rights in agricultural land, the revenue Courts and the consolidation Courts can both adjudicate upon the rights claimed by the plaintiffs in proceedings before them and in the course of doing so also decide the question whether the instrument is not binding on the plaintiffs or void altogether. The mere factual existence of an instrument is no bar to the exercise of their jurisdiction by the revenue authorities of adjudicating upon the rights of the parties in agricultural land.

In the present case the plaintiff appellants who alone remained as plaintiffs in the suit after the death of Smt. Kalli, have claimed a declaration that they are the tenure holders in possession of the agricultural land in suit in spite of the sale deed executed by Smt. Kalli in favour of the defendants on the ground among others, that Smt. Kalli was not the owner of the property transferred and had no capacity to transfer the same. The other ground on which the relief is sought is the allegation that the sale deed in question was not duly executed, that it was void for being without consideration and was otherwise too vitiated by fraud and undue influence. The suit in respect of the house could, of course, go on because the jurisdiction to grant any relief in respect of the house is not possessed by the consolidation authorities. That jurisdiction vests in the Civil Court only. On the finding of fact recorded by the lower appellate Court which could not be assailed before me, as it is a finding of fact based on an appraisal of the evidence on the record, the sale deed was not duly executed by Smt. Kalli that it was without consideration and that it was also vitiated by undue influence. The plaintiffs could therefore, be said to be entitled to a decree for the declaration that they are the owners in possession of the house and that the sale deed in so far as it relates to the house is liable to be delivered up and cancelled. But as observed by D. S. Mathur, J. in his order dismissing the revision, the difficulty is that the sale deed and the suit are both composite, and the difficulty is further heightened by the fact that the sale deed has been found by the consolidation authorities to be duly executed and valid. Not that such a situation is impossible in law, for the jurisdictions of the Civil Courts and the consolidation authorities are entirely distinct and separate but the whole thing does look rather odd and unpalatable.

The point raised was that the sale deed is void altogether and not that it is voidable at the instance of the plaintiffs. The consolidation authorities had the jurisdiction to decide that point in the course of adjudicating upon the rights of the parties to the agricultural land which was involved in the suit and in respect of which the suit was filed. The claim of the plaintiffs in so far as the agricultural land was concerned was accordingly liable to be abated in the light of the present view of the jurisdiction of the consolidation authorities as enunciated by the Supreme Court in *Gorakh Nath's case*, (supra).

The consolidation authorities have already decided that point in favour of the defendants. The real question now is whether their finding operates as *res judicata*. The consolidation authorities had jurisdiction to decide the question in respect of rights to agricultural land. They are tribunals of exclusive jurisdiction and have no jurisdiction to decide that in relation to the house.

The decision of the consolidation authorities cannot operate as *res judicata* on the language of Section 10 of the Code of Civil Procedure inasmuch as the consolidation authorities had no jurisdiction to decide the question in relation to the house in suit. But as held by the Supreme Court in *Srimati Raj Lakshmi Dasi and others v. Banamali Sen and others* (A.I.R. 1953 S.C. 33), "the test of *res judicata* is the identity of the title in the two litigations and not the identity of the actual property involved in the two cases.....The condition regarding the competency of the former Court to try the subsequent suit is one of the limitations engrafted on the general rule of *res judicata* by Section 11 of the Code and has application to suits alone. When a plea of *res judicata* is found on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. A plea of *res judicata* on general principles can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts etc".

In the present case the plaintiffs did not claim their title to the land or to the house in suit on the basis of the sale deed which was sought to be cancelled. They were only seeking to displace the defendants' claim to the land and the house in suit which was based entirely on the sale deed. If the sale deed was good and binding on the plaintiffs they had no title to the land or the house in suit. The consolidation authorities held the sale deed to be good and binding and consequently that the plaintiffs had no title to the land. The question on which the parties are at issue is the validity and the binding effect of the sale deed in question. If the sale deed is good and binding the plaintiffs' claim for cancellation must fail. In this sense it can be urged that the title to the land and the house in question is identical and that being so the finding of the consolidation authorities therein must be held to operate as *res judicata* even in respect of the house. In view of the finding recorded by the lower appellate Court on an appraisal of the evidence led in the suit, that the sale deed is invalid, it may be regarded to be

unfortunate that the matter was decided finally by the consolidation authorities before the Civil Court could finally decide the suit. But the rule of res judicata is founded on the higher principle of public policy that a matter which has already been litigated between the parties and finally decided after contest should not be allowed to be litigated again between the same parties or their successors in interest. It has, therefore, to be held that the finding of the consolidation authorities that the sale deed was valid and binding on the plaintiffs operates as res judicata in the present suit and that being so the Court has no jurisdiction to hear and decide it afresh. The judgment under appeal is accordingly correct. The appeal fails and is dismissed but in the circumstances there will be no order as to costs.