
(2008) 02 AHC CK 0067
In the Allahabad High Court

Daya Ram

APPELLANT

Vs

Smt. Lakshmina and Others

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Citation : AIR 2008 All 123 : (2008) 2 AWC 1316 : (2008) 104 RD 415

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present second appeal is directed against the judgment and decree dated 12.2.1992, passed by the Special Judge, Gorakhpur arising from the order of the trial court dated 24.11.1988, passed in Civil Suit No. 859 of 1983.

2. The plaintiffs filed suit for the cancellation of the sale deeds dated 8.11.1982 and 4.3.1982 which were executed by plaintiff No. 2, the mother of plaintiff No. 1. By the sale deed dated 8.3.1982 Araj No. 137K Rakba 42 decimal and Araj No. 256 Rakba 36 decimal total 78 decimal land were sold, while against sale deed dated 8.11.1982 Araj No. 23 Rakba 52 decimal Araj No. 136 Rakba 6 decimal Araj No. 165 Rakba 62 decimal total Rakba one acre 20 decimal were sold. It was claimed that plaintiff No. 2 was illiterate lady and intended to sell only 42 decimal land to the defendants. By committing a fraud and misrepresentation, the sale deed for 78 decimal was got executed on 8.3.82 and for other land sale deed was got executed on 8.11.82. After the sales, no land was left. The interest of the minor was involved in the land. It was mentioned that the sale consideration has already been paid and the same was not paid before the Registrar and the possession of the property in dispute is still with the plaintiffs. The trial court vide order dated 24.11.1988 decreed the suit and also declared the document dated 4.3.82 partially invalid and confined it to 42 decimal land and the appeal filed against the said order has been allowed by the impugned order and the order of the trial court has been set aside. The present

appeal has been admitted on the following substantial questions of law:

1. Whether in view of the fact that the plaintiff No. 2 mother of the plaintiff appellant was illiterate and rustic woman, the burden to prove the genuineness of the sale deed was on the defendants-respondents?

2. Whether the judgment and decree of the lower appellate court is against the weight of evidence on record?

3. Heard Sri J.S. Pandey, holding brief of Sri Tarun Verma, learned Counsel for the appellant and Sri C.K. Rai, learned Counsel for the respondents. Learned Counsel for the appellant mainly argued the question No. 1 said to be substantial question of law. He submitted that the plaintiff No. 2, the mother of plaintiff appellant, was illiterate lady. The interest of the minor was involved in the property. On account of the fact that the defendants-respondents have done some pairavi, therefore, she decided to transfer 42 decimal agricultural land. By fraud and misrepresentation, the defendants-respondents have got the sale deed executed for 98 decimal land and further on the plea that she was required to be present before the Registrar in connection with the rectification in the first sale deed got. the second deed executed in respect of the entire balance property. He submitted that the sale consideration was not paid before the Registrar and the possession of the property is still with the plaintiffs. He submitted that the property belongs to minor and the fiduciary relationship existed, therefore, burden lies upon the defendants-respondents to prove the genuineness of the sale deed which they failed to do so.

4. Sri C.K. Rai, learned Counsel for the respondents submitted that for the sale of the land, plaintiff No. 2 sought the permission from the District Judge on the ground that she was in heavy debt on account of the expenses incurred during the illness of her husband and after the permission the properties in dispute were sold. He submitted that it is wrong to say that the consideration of the properties in dispute were not paid. He further submitted that it is not denied by the plaintiffs that in the sale deeds there are signatures of plaintiff No. 2 and the sale deeds were executed before the Registrar. He submitted that the defendants-respondents cannot be asked to discharge the negative burden. If it is a case of the plaintiff-appellant that the sale deed was executed on account of fraud and misrepresentation, the burden lies upon the appellant to prove which the appellant has failed to prove. Therefore, the order of the first appellate authority is wholly justified and liable to be sustained.

5. I have considered the submissions of learned Counsel for both the parties. I do not see any reason to interfere with the order of the first appellate authority which is based on evidence on record. It is settled principle of law that the person who alleges anything burden lies upon such person to prove its case. Since it was the case of the plaintiff that the sale deeds were executed as a result of fraud and misrepresentation, the burden lies upon the plaintiffs-appellant to prove it which they have failed to do so. The defendants-

respondents cannot be asked to discharge the negative burden.

6. In the circumstances, the substantial question of law raised in the present appeal is decided against the appellant.

In the result, appeal fails and is dismissed.