
(1971) 11 AHC CK 0030
In the Allahabad High Court
Case No : Second Appeal No. 83 of 1966

Debi Prasad and Others	Vs	APPELLANT
Smt. Maika and Others		RESPONDENT

Date of Decision : 18-11-1971

Acts Referred:

Specific Relief Act, 1963 — Section 31, 31(1)

Citation : AIR 1972 All 376

Hon'ble Judges : O.P. Trivedi, J

Bench : Single Bench

Advocate : M.P. Srivastava and U.C. Srivastava, for the Appellant; M.L. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

O.P. Trivedi, J.—The facts giving rise to this appeal are briefly as follows: Respondent No. 1 Smt, Maika and her two sons Bhika and Bhairon, respondents Nos. 2 and 3, filed a suit for cancellation of a certain sale deed in respect of the disputed land which was executed by Debi Prasad, appellant-defendant No. 1, on 12-9-1963 in favour of appellants Nos. 2 and 3 on the ground that the disputed land was purchased under a sale-deed by the husband of Smt. Maika and that ever since the purchase she along with her two sons Bhika and Bhairon had been in possession of the property and had planted trees over it. In this way the respondents claimed title not only to the land but also to the trees standing thereon and denied the title or possession of Debi Prasad to and over this property at any stage. Debi Prasad appellant had contested the suit along with his vendees, Debi Prasad claimed title, inter alia, on the ground of long adverse possession, and one of the pleas raised by his vendees appellants Nos. 2 and 3 was that they were vendees-purchasers of the property from him for value. The trial Court held that the plaintiffs-respondents had failed to establish that the disputed land was purchased by Chhotey Lal, deceased husband of Smt. Maika, and came to the conclusion that the plaintiffs had failed to establish their title to

the land.

It was found at the same time that appellant Debi Prasad also had been unable to prove that he had been in adverse possession over the property. There was a further finding that respondents Nos. 2 and 3 were not vendees-purchasers. but still the trial Court awarded a decree for cancellation of the sale-deed in favour of the respondents on the sole basis that they were found to possess, what was described by the trial Court as possessory title. The present appellants appealed and the first appellate Court also concurred in the finding of the trial court that neither the plaintiffs-respondents nor the appellant Debi Prasad had title to the property, the latter having failed to establish the plea of adverse possession, but relying on a decision of the Calcutta High Court in the case of Badri Narain Singh v. Kodo Sah. AIR 1915 Cal 423 held the plaintiffs-respondents entitled to a decree for cancellation of the sale-deed for having succeeded in showing themselves to be in possession of the property. The appeal was in the result dismissed with costs and, therefore, Debi Prasad and his two vendees have come to this Court in Second Appeal.

2. The learned counsel for the defendant-appellants made only one submission in the appeal. It was urged that the lower appellate Court misapplied the case of AIR 1915 Cal 423 and that u/s 31 of the Specific Relief Act, which was equivalent to Section 39 of the unamended Act, a decree for cancelation of an instrument could not be passed in favour of the respondents on the basis of possession, their title not having been established.

3. I have heard the learned counsel for the parties. The submission of the learned counsel for the respondents is that a party is entitled to a decree for cancellation of an instrument even on the basis of possession no matter whether he has failed to establish his ownership to tile disputed property. The learned counsel places reliance on the aforesaid Calcutta decision referred to by the lower appellate court.

4. Section 31(1) of the Specific Relief Act is in these terms:--

"31 (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to nave it adjudged void or voidable and the court may, in its discretion, so ad-judge it and order it to be delivered up and cancelled".

It is clear from a reading of Section 31(1) that a suit for cancellation of a written document can lie only at the instance of a person against whom the instrument is void or voidable and secondly who has a reasonable apprehension that such instrument, if left outstanding, will cause him serious injury. I am of opinion that this is not a case in which it can be said that the sale-deed impugned by the respondents was void or voidable against them. The question whether an instrument can be said to be void or voidable against a person claiming relief under the aforesaid provision came to be considered by a Full Bench of the

Madras High Court in the case of Muppudathi Pillai Vs. Krishnaswami Pillai and Others, Mad 1 it was observed:

".....It stands to reason that the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus relief u/s 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title".

Proceeding with the discussion their Lordships pointed out the example of a trespasser purporting to convey the property in his own right and not in the right of the owner. In such a case, to my mind, agreeing with respect with their Lordships of the Madras High Court, the remedy of cancellation of such an instrument cannot be granted because such a relief would not remove the cloud upon his title by the instrument and the proper remedy to seek is a declaration of his own title or a declaration that the sale-deed is not binding or valid against him. It is only in the case of instruments which are either executed by a party or which purport to have been executed by a party or by a person who can bind him that the relief u/s 31 can be claimed in law because in such cases only can it be said, as observed by the Madras High Court also in the said case, "that there is a cloud on his title and an apprehension that if the instrument is left outstanding it may be a source of danger". They went on further to illustrate the point by observing that such cases may arise in the following circumstances: "A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of a limited estate, in respect of a document executed by the benamidar etc." Courts have also recognised in this respect the right to challenge and to pray for cancellation of a forged document which is purported to have been executed on his behalf. In all these cases there is no question of a document by a stranger to the title as in the present case and it can further be found that in all such cases a reasonable apprehension can be entertained that if such an instrument is left outstanding the same may cause the plaintiff serious injury. In the present case it cannot be successfully maintained that a reasonable apprehension can be entertained by the plaintiffs that if the sale-deed is left outstanding it may cast a cloud upon their title or cause them serious injury because the cloud upon their title will not be removed merely by a decree for cancellation of the instrument. The cloud will continue to hang over the plaintiffs by the hostile assertion of title by the executant of the sale-deed and those who claim a title to it. Therefore, the proper relief for the plaintiffs to seek in a case of this kind is a declaration of their own title or a declaration that the executant of the sale-deed in dispute has no title to the property.

5. The learned counsel for the appellants cited an authority of the Rajas-than

High Court, namely. Sukh Lal and Others Vs. Devi Lal and Others, which is also in point. In that case their Lordships brought out difference between a suit for cancellation of an instrument and one for a declaration that the instrument is not binding on the plaintiff and pointed out that the plaintiff should file a suit for cancellation of an instrument when he seeks to establish a title in himself and cannot establish that title without removing an insuperable obstacle such as a decree or a deed to which he has been a party or by which he is otherwise bound. In making these observations their Lordships of the Rajasthan High Court also impliedly emphasised that a suit for cancellation u/s 31 of the Specific Relief Act will lie only in those cases where the instrument sought to be impugned would be otherwise binding on him, was executed by him or purported to have been executed by him and they went on to observe that, on the other hand, when the plaintiff is seeking to establish title and finds himself threatened by a decree or a transaction between third parties his proper remedy is to get a declaration that the decree or deed is invalid so far as he himself is concerned.

6. The lower appellate court appears to have awarded a decree for cancellation of the sale-deed on the sole ground that the respondents had an interest in the property. In the first place, the mere fact that they were in possession of" property as found by the two courts below, did not amount in law to their having an interest in the property in the sense of some title or right in the property. Possessory title may avail a person for securing a decree for possession against a rank trespasser on the principle that he is in the eyes of the court at least in possession of the property when the trespasser had no right to dispossess him and to deprive him of possession, A decree for possession on the basis of possessory title is, therefore, awarded on the principle that even the right of a person in possession of the property irrespective of whether he has any legal right or interest also must be safeguarded against a rank trespasser or intruder. But possession in itself or for that matter a possessory title does not, to my mind, entitle a person to a decree for cancellation of a written instrument u/s 31 unless all the three ingredients of Section 31 are established, namely, (1) that the plaintiff was such a person against whom the instrument was void or voidable (2) that the plaintiff could entertain a reasonable apprehension that if such instrument is left out-standing, it may cause him serious injury, and (3) that the court must adjudge the instrument void or voidable.

In the present case the lower appellate court did not adjudge the sale-deed to be either void or voidable against the plaintiffs. Without such an adjudication against the plaintiff-respondents a decree was not possible quite apart from the consideration that this was for reasons above stated, not a case where a reasonable apprehension could be entertained by the plaintiffs that if the instrument was left outstanding, it may cause him serious injury. It is for these reasons in the main that, the decree for cancellation could not be given to the respondents u/s 31 of the Specific Relief Act on the basis merely of their possession over the property despite the finding of the courts below that they are in possession of the property. The case of the Calcutta High Court, on which

the lower appellate court placed reliance, did not apply. The sale-deed sought to be cancelled in that case was a certain Kobala. The sale-deed was challenged on the ground that it was a forgery. The plaintiff's suit in that case for cancellation of the instrument was not by a stranger to the title as here. Secondly, it was found by the Court as a fact that even after the execution of the deed the plaintiff had still some interest left in the land. It is in this sense that their Lordships of the Calcutta High Court observed that he had a cause of action. It will be noticed that no question arose in that case as to whether a decree for cancellation of an instrument could be granted on mere possessory title. I am therefore, of opinion for the aforesaid reasons that the lower appellate court was in error in affirming the judgment and decree of the trial court. The respondents having failed to establish their title to the disputed land a decree for cancellation of the sale deed dated 12-9-1963 could not be granted to them.

7. Accordingly I allow the appeal, set aside the judgments and decrees of the two courts below and dismiss the suit of the plaintiffs-respondents. In the circumstances of the case, to my mind, the parties shall bear their own costs.