
(1981) 12 AHC CK 0010
In the Allahabad High Court
Case No : Second Appeal No. 2488 of 1972

Deo Nandan (deceased by L.Rs.) APPELLANT
Vs
Chhote RESPONDENT

Date of Decision : 08-12-1981

Acts Referred:

Contract Act, 1872 — Section 10, 13, 14, 17, 19
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5
Contract Act, 1872 — Section 10, 13, 14, 17, 19
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5
Contract Act, 1872 — Section 10, 13, 14, 17, 19
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5

Citation : AIR 1983 All 9

Hon'ble Judges : S.J. Hyder, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant; Sankatha Rai, for the Respondent

Judgement

S.J. Hyder, J.—In this second Appeal, Plaintiff-Appellant, Deo Nandan, has moved an application stating that consolidation proceedings have commenced in the village and as such the suit and the appeal arising therefrom deserve to abate. On March 10, 1981 three weeks' time was allowed to the learned Counsel for Respondent to file a counter-affidavit. No counter-affidavit has been filed but he has appeared to oppose the application Orally.

2. On behalf of the Respondent, it is not disputed that consolidation proceedings have commenced in the village. The only point raised on his behalf is that the suit and this second appeal arising therefrom cannot be said to have abated u/s 5, U.P. Consolidation of Holdings Act. Since the sale deed, relating to agricultural land was impugned by the Plaintiff on the ground that it was fraudulent. It is submitted that a sale deed which is alleged to have been obtained by practising fraud is voidable and not void. In these circumstances, it is contended that the Civil Court alone is competent to finally adjudicate the controversy between the parties. On behalf of the Appellant, however, it is urged that on the allegations

made in the plaint, the sale deed is ab initio void and not voidable. Learned Counsel for the Appellant submits that the question as to whether the sale deed impugned in the suit was void or not can only be gone into by the consolidation authorities. Thus the short controversy between the parties is whether on the facts alleged in the plaint, the sale deed is claimed to be void or only voidable. Parties are agreed that if the allegations made in the plaint amount to an averment that the sale deed is void, then the only course open for this Court is to record an order that the suit and the second appeal arising therefrom has abated.

3. Plaintiff-Appellant, in his statement of claim, disclosed that he had no male issue and that his daughters were married. Defendant-Respondent was a brother of his wife and had been asked by the Plaintiff to assist him in his agricultural operations and the Defendant had acceded to that request. It was further stated that the Defendant persuaded the Plaintiff to execute a will in his favour so that the Defendant may become the owner of the holding in dispute after the death of the Plaintiff. Plaintiff agreed to do so. Plaintiff went along with the Defendant for the purpose of executing a will but somehow or the other, the Defendant obtained his thumb impressions on a document which purported to be a sale deed of the holding. Plaintiff thus repudiated the character of the document which was relied upon by the Defendant as a sale deed Plaintiff also disclosed that the document which the Defendant, claimed to be a sale deed was wholly without consideration.

4. Learned Counsel for the Plaintiff-Appellant contended that the true legal position which has to be taken into account in disposing of the application moved by him is whether the allegations made in the plaint amount to an averment of fraud pure and simple or they go a step further and should be construed to mean fraudulent misrepresentation not merely as to the contents of the document but also as to its character. He submitted that on a fair reading of the plaint, the conclusion is inescapable that the Plaintiff's allegation was that he wanted only to execute a will in favour of the Defendant and that by using unfair means, the Defendant has obtained a sale deed from him and that too without consideration. According to the learned Counsel, the charge made out by the Plaintiff was against the character of the document and not against its contents. In support of his submission, he relied on *Ningawwa Vs. Byrappa and Others*, and *Smt. Marachi v. Deputy Director of Consolidation 1978 Rev Dec 79 AIR 1978 NOC 92 (All)*.

5. In the former case, the Supreme Court was considering the question of limitation. It cited with approval the following passage from the decision in *Foster v. Mackinnon (1869) 4 CP 704 (Para 5 of AIR)*:

It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign the contract to which his name in appended...The Defendant

never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the "actual contents" of the instrument.

6. While approving the observations in Foster's case Ramaswami, J. speaking for the court stated thus (Para 5):

The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.

7. Ningawwa Vs. Byrappa and Others, was cited by a single Judge of his court in the case of Marachi (AIR 1978 NOC 92) (supra). It was stated therein that in every case where a document is said to be a result of fraudulent representation it is, not necessarily voidable. If the character of document is itself challenged as distinguished from the contents of document it shall be void.

8. Learned Counsel for the Respondent on the other hand contended that the principle enunciated in Ningawwa's case can only be applied to a case where the question involved is one of limitation. He submitted that the law laid down in the case was not one of universal application. He invited my attention to Section 19, Contract Act, and contended that a document alleged to have been obtained by fraud or misrepresentation is only voidable at the option of the party whose consent was so obtained. He also referred me to the definition of fraud contained in Section 17 and to some other provisions of law enacted in Chapter II of the Contract Act.

9. Section 10, Contract Act, inter alia, lays down that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. From the words of Section 10 it is clear that consent (sic) of parties to an agreement is necessary (sic) order to give it the shape and (sic) of a contract. In fact consent is (sic) rock bottom on which all contracts (sic) founded. If there is no evidence of consent between two persons who are alleged to have entered into a contract, such a contract cannot be upheld, In a case where a party denies his consent to a contract, he will not be required to avoid the contract on the ground that it was voidable. All that he has to prove is that he was not a consenting party to it and if such evidence is believed, the alleged contract will have to be adjudged as void. Section 14 Contract Act, makes the position further clear. It enumerates the circumstances in which a party may be said to have consented but such consent will not be deemed to be free. Every consent is said to be free u/s 14 unless it has been obtained by coercion, undue influence, fraud or misrepresentation as defined under the Act. On a comparison of the language

used in Sections 10, 13 and 14 of the Contract Act, two conclusions are inescapable. In order to constitute a contract, both the parties must consent to the agreement. Even if both the parties have consented to the agreement, consent of one of them may not be said to be free if the same had been obtained by coercion, undue influence etc. The distinction between the total lack of consent and a tainted consent is, therefore, real and must always be kept in mind. It is only in those cases in which a tainted consent has been obtained or procured from one of the parties that a contract "at his instance shall be held to be voidable and may be set aside.

10. The Supreme Court decision, referred to above, proceeds on that assumption. There is nothing in the said case from which it may be confined only to a case relating to the law of limitation.

11. In view of the above discussion, the application moved by the Plaintiff-Appellant deserves to succeed and the suit and the above second appeal arising therefrom are hereby directed to abate. It is made clear that the observations made in this judgment are only of a general character laying down the true legal position in cases of this nature. None of the observations made by me shall be taken into account as deciding any of the allegations made by the parties in their respective pleadings. The consolidation authorities shall decide the question on the evidence produced before them. There shall be no order as to cost.