
(1954) 09 MP CK 0006
In the Madhya Pradesh High Court
Case No : Second Appeal No. 155 of 1952

Dhannalal Brijlal	Vs	APPELLANT
Bhaiyalal and Another		RESPONDENT

Date of Decision : 03-09-1954

Acts Referred:

Evidence Act, 1872 — Section 115
Registration Act, 1908 — Section 58

Citation : (1954) 09 MP CK 0006

Hon'ble Judges : Abdul Hakim Khan, J

Bench : Single Bench

Advocate : R.M. Karkare, for the Appellant; G.P. Patankar, for the Respondent

Final Decision : Dismissed

Judgement

Abdul Hakim Khan, J.—This second appeal arises out of a suit, which the Plaintiff brought for the possession of a house sold to him. The Plaintiff purchased the house from Rajmal and this suit is filed against Rajmal as well as Rajmal's elder brother, Dhannalal.

2. Rajmal did not enter any defence but his elder brother Dhannalal, has resisted the suit on the ground that the house in question was joint family property, that he as the elder brother was the Karta of the family, that his younger brother Rajmal (who was a mere co-parcener) had no right to sell the house.

It was also said in the written statement that the real reason for the sale of the house by Rajmal was to save it from attachment of a decree, which one Halkoo had obtained against Rajmal. The Defendant, Dhannalal, however admitted his signature as an attesting witness on the sale-deed, and has also admitted that he identified his brother before the Registrar at the time of the registration of the deed.

The trial Court held that the property was not joint but divided, and that in the circumstances Rajmal could have sold only half of the house and decreed the suit

accordingly. The Plaintiff filed an appeal against this before the District Judge, Bhilsa, who passed a decree for the possession of the entire house. Now Dhannalal has filed this second appeal.

3. The learned District Judge has held:

1. That Dhannalal was aware of the sale of the house.
2. That with his knowledge and consent the house was sold, and,
3. That his attestation of the sale-deed and later on his identification of his younger brother now preclude him from challenging the validity of the transaction on the basis of the doctrine of estoppel.
4. The case really turns upon the determination of the question as to what importance is to be attached to the attestation and later on to the identification by Dhannalal at the time of the sale of the house.
5. Assuming that the property was joint and Dhannalal was the Karta of the family (this is the Defendant's case) his attestation and later on identification incline one to the view that he allowed the house to be sold and gave his consent to the transaction.

It is a well-established proposition of law that if a man conducts himself in such a way that a reasonable man would take his representation to be true, and acts upon it. then the party making the representation is precluded from contesting the truth. I refer to the principle of "estoppel".

In this case Dhannalal made no verbal representation to the purchaser but this is an instance of estoppel by conduct, where under the condition of the case, representation may be inferred from silence or inaction. In the first place, Dhannalal admits that he had knowledge of the sale. Later on with full knowledge of the facts, he not only attested his signature to the sale-deed, but he also went with his brother, Rajmal to the office of the Registrar, where he identified Rajmal as the seller. Dhannalal never cared to inform the purchaser that Rajmal had no saleable interest in the property and by his conduct he permitted the purchaser to believe the thing to be true to act upon such a belief.

6. The doctrine of estoppel is based upon consideration of fraud. If a man by his declaration, act or omission has permitted another person to believe a thing to be true and has permitted him to act upon such a belief then the action of such a man is fraudulent and it is a well established rule of the law that where the fraudulent intention has succeeded the Court will not assist the person guilty of fraud or misrepresentation. The principle is aptly expressed in an English decision - ("Niven v. Belknap" 2 Johns 673(A),) by being stated that

where a man has been silent when in conscience he ought to have spoken he shall be debarred from speaking when conscience requires him to be silent.

In - Firm Jankiram-Sital Ram and Others Vs. Chota Nagpur Banking Association,

Ltd. and Others, . Courtney-Terrell Chief Justice of the Patna High Court, in a Somewhat similar case observed:

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will offer no opposition to it, although it could not have been lawfully done without his consent and he thereby induces Ors. to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

7. The learned Counsel for the Appellant has relied upon - Radhey Shiam and Others Vs. Official Receiver of the Estate of Ram Charan Das and Others, and - "Bhagwan Singh v. Ujagar Singh" AIR 1928 PC 20 (D). I am afraid that in the Allahabad Case, the learned Judges in expressing their view on the question of attestation, only considered Section 58, Registration Act. They were not asked to consider the effect of Section 115 of the Evidence Act.

8. The Privy Council case "AIR 1928 PC 20 (D)", is not very helpful to the Appellant. It is true that their Lordships of the Privy Council observed that attestation of a deed by itself stops a man from denying nothing whatever, except that he witnesses the execution of the deed and that, by itself it does not show that he consented to the transaction, which the document effects. But in this very case their Lordships further observed that

where in addition to the fact of the attestation, there was evidence to show that the attesor, who was the managing member of the joint family consented to and acquiesced in the execution of the mortgage, such an attesor cannot be allowed challenge the validity of the transaction.

This case really lends support to the claim of the Plaintiff. It is true that mere attestation of a deed does not create estoppel. But where it is established (as in this case) that at the time of attestation, the attesor had full comprehension of the transaction, it is different (see (Allu) Ramalinga Ayyar Vs. Malli N.M. Subba Ayyar (dead) and Others,

In the circumstances of the present case, on the , finding of the lower Court, it is a legitimate inference that Dhannalal not only witnessed the execution of the deed, but also consented to the transaction and he is now estopped from challenging it.

9. Regarding the plea of the Defendant-Appellant that Rajmal sold the house because of the ear he entertained that the property will be attached in the execution of a decree of One Halkoo, it is enough to say that he had not produced any evidence to show that as a matter of fact, there was any decree of Halkoo which induced both the brOrs. to act in manner in which they did.

10. For the reasons stated above I do not find any substance in this second appeal, which is in consequence disallowed with costs.