
(2012) 11 AHC CK 0015
In the Allahabad High Court
Case No : Second Appeal No. 855 of 1978

Gangan Saran

APPELLANT

Vs

Kashi Prasad

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Evidence Act, 1872 — Section 68

Citation : (2013) 5 ADJ 431 : (2013) 4 AWC 4172

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : O.P. Misra, S.P. Mishra and Ramesh Chandra, for the Appellant; L.N. Pandey, S.D. Shukla and S.P. Tewari, for the Respondent

Judgement

A.P. Sahi, J.—Heard Sri Ramesh Chandra, learned counsel for the appellant and Sri S.D. Shukla for the respondent.

The appellant was the defendant in the suit. The suit was filed by Mst. Rajpali praying for cancellation of the sale-deed in respect of the property in question on the ground that the sale-deed had been got executed fraudulently and by misleading the plaintiff after taking her to the Sub Registrar Office at Tehsil Harraiya, District Basti on the pretext on the payment of some compensation. The suit was dismissed by the trial Court holding that the sale-deed had been proved by the production of the marginal witness and had been executed for consideration. It is to be noted that the suit proceeded in the absence of original plaintiff Mst. Rajpali as she had died before the evidence was taken in the suit and she had not entered the witness box.

The respondents herein are the substituted heirs of Rajpali claiming themselves to be the natural heirs and they deposed before the Court below supporting the plaint allegation. The respondents further relied on the statement given by Rajpali in the mutation proceedings that were initiated for carrying out mutation over the land in dispute. They also urged that the consideration never passed on and in such circumstances, the sale-deed deserved to be cancelled.

2. After the dismissal of the suit, the respondents went in appeal and the Court below reversed the judgment of the trial Court on the ground that the consideration of Rs. 500/- which did not even pass on in front of the Sub Registrar at the time of execution of the sale-deed, was inadequate and therefore, the sale-deed was void. The lower appellate Court further concluded that the allegation of the payment of the consideration was before one Ram Murat who was never produced by the defendants and, as such, the passing on of consideration was not proved at all. The lower appellate Court further went on to hold that the defendants failed to produce any receipt of the amount that they had paid for the transaction and that the statement, made by Mst. Rajpali during the mutation proceedings, clearly indicates that she had not executed the sale-deed which evidence was sufficient to decree the suit.

3. Aggrieved the defendants have come up in this second appeal and the matter was heard by this Court on 1.11.2012. After hearing, the Court found that the appeal deserves to be decided on the substantial questions of law that arose and have been recorded in the aforesaid order.

Sri Ramesh Chandra, learned counsel for the appellant contends that the lower appellate Court without reversing the finding on the issue of possession, without recording any finding with regard to production of marginal witness and proving of the sale-deed in terms of the Section 68 of the Indian Evidence Act, has reversed the order of the trial Court on the issue of inadequacy of consideration which was neither pleaded nor proved by the plaintiff. He submits that the sale-deed had been executed and was proved and non production of Ram Murat as a witness, was irrelevant. He submits that the lower Court carved out a new case of inadequacy of the consideration when the case of the plaintiff was that no consideration had passed on at all. He therefore, contends that the appellate Court proceeded on a probability that since the defendants have failed to produce any receipt of the consideration, therefore, no consideration has passed on and was inadequate. Sri Chandra further submits that this part of the finding is based on conjectures and surmises and therefore, impugned judgment is vitiated. In the mutation case, Sri Chandra contends that even though Rajpali has given a statement but the mutation case had been ultimately decided in favour of the defendants/appellant and therefore, the lower appellate Court committed a manifest error by relying on such a statement recorded during the summary proceedings of mutation.

4. Sri Shukla learned counsel for the respondent/plaintiff contends that the lower appellate Court was justified in re-appreciating the evidence and arriving at the findings and therefore, there was no error committed by it in reversing the judgment of the trial Court. He urged that the consideration had not passed on at all and taking undue advantage of old age of the lady, and on the pretext of getting some compensation a fraudulent transaction was entered into which has no sanctity and was not proved in accordance with law. He further contends that in the absence of any proof having been given by the defendants on whom the

burden had shifted, the trial Court committed an error by dismissing the suit which was rightly reversed by the lower appellate Court. He contends that the inadequacy of the consideration amount is also a factor which has been rightly taken notice of and the story set up by defendants with regard to the payment of the amount for the purpose of the plaintiff going on a pilgrimage was not proved at all. In such circumstances, the lower appellate Court rightly drew an adverse inference against the defendants/appellants and was justified in decreeing the suit.

5. Having heard the learned counsel for the parties, in my opinion this appeal is bound to succeed inasmuch as, the plaintiff took up a case that she had been misled to go to the office of Sub Registrar for receiving some compensation. The plaintiff witnesses did not adduce any evidence worth the name to prove this allegation in the plaint. None of the witnesses on behalf of the plaintiff have indicated as to what was that compensation that was to be received by the plaintiff for which she had accompanied the defendants to the Sub Registrar Office. The lower appellate Court has completely missed this aspect of the matter and has been swayed away by the old age of the plaintiff and the insufficiency of the evidence relating to her on going pilgrimage. The lower appellate Court in my opinion has wrongly relied on the weakness of the defence when the plaintiffs failed to prove their case.

6. The lower appellate Court again committed a manifest error by not reversing the finding on the issue relating to the proving of the registered sale-deed as the defendant in support thereof did produce the marginal witness and proved the sale-deed in terms of Section 68 of the Indian Evidence Act. The lower appellate Court has tried to overcome this finding on the ground that Ram Murat who was named by the marginal witness in whose presence the consideration was received had not been produced. In my opinion, this was absolutely irrelevant in so far as the execution of the document is concerned where the marginal witness had been produced.

7. No attempt appears to have been made by the plaintiff except for a bald plea that the sale-deed was got executed fraudulently. Fraud in my opinion is not a term of orientation. Fraud has to be proved on the basis of oral or documentary testimony. The plaintiffs in my opinion ultimately failed to adduce any evidence worth the name for the said purpose.

8. So far as the statement of the lady in the mutation case is concerned, that was in summary proceedings of mutation but nonetheless, the mutation proceedings were also decided in favour of the defendants/appellants. In this view of the matter, the order of the mutation Court has to be read in favour of the defendant/appellants and not against them. The lower appellate Court committed a manifest error by reversing the judgment of the trial Court on a totally wrong premise. The execution of the document having been proved, the lower appellate Court also travelled beyond the pleadings of the parties and proceeded on the issue of inadequacy of consideration. This Court is in vain to

find any such pleading or proof about the inadequacy of consideration and therefore, the argument of the learned counsel for the appellant on this count has to be accepted.

The appellate Court has overlooked the principles for drawing an adverse inference that can be gathered from the decision in the case of Holar Vs. State of Haryana, . Even assuming for the sake of arguments that there was an alleged inadequacy of consideration, the said issue has been answered by this Court in the case of Gayatri Prasad Vs. The Board of Revenue and others , in favour of the appellants.

In view of what has been said hereinabove and no other point having been raised, this second appeal is allowed. The judgment of the lower appellate Court is set aside and the order of the trial Court is restored.

No order as to cost.