(1956) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : First Appeal No. 7 of 1955

Kishangopal APPELLANT

Vs

Nathulal RESPONDENT

Date of Decision : 20-01-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63
Registration Act, 1908 — Section 37, 58, 59, 60, 69

Citation : (1956) 01 MP CK 0008

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : K.D. Tiwari, for the Appellant; Hirway and Ketkar, for the Respondent

Final Decision : Dismissed

Judgement

Samvatsar, J.—This appeal is filed by the Defendant and arises out of a suit for declaration under Order 21, Rule 63, Code of Civil Procedure.

2. The facts of the case are that Respondent 2, Mangilal owned a house in Sarafa Bazar at Ujjain anti held a share worth Rs. 500/- in the Madh. Bharate Vastra Vitaran Association, Ujjain, Mangilal was indected to several persons including Respondent 1, Nathulal.

3. In the early part of the year 1949 Mangilal got himself heavily involved and finding himself unable to meet the liabilities approached his creditors for settlement. On 15-7-1949 he apponinted a committee of five persons described as Niptara Committee (Committee for settlement), by a document which is produced in this case at Ex. P/1. By this document he requested the Committee to arrange to satisfy his creditors from out of his assets in such manner as time committee deemed fit and agreed that he, his Munims and servants would co-operate with them.

Along with the document he enclosed a list of creditors and a schedule of his assets. The members of the committee have endorsed his document stating bl dk;Z esa ;ksx nsuk Lohdkj gS A Two days thereafter, i.e., on 17-7-1949, a meeting of the creditors was called and as decided by the meeting, the personnel of the ''Niptara committee'' was raised to 11. The Appellant Kishangopal is one of the six persons appointed to the ''Niptara Committee'' on 17-7-1949.

4. The proceedings of this meeting are produced at Ex. P/2 and are signed by the creditors who were agreeable to this arrangement. Mangilal agreed to this agreement and endorsed the document in token thereof. In the endorsement he has specifically mentioned that he was handing over all his assets and account books to the committee and again repeated the promise that he and his servants would fully co-operate with the committee.

5. Some of the creditors however refused to agree to this arrangement and the Plaintiff-Respondent Nathulal is one of them. He filed a suit in the Court of Civil Judge First Class at Ujjain to recover his money against Mangilal and applied for attachment before- judgment, of the house in suit and Mangilal''s share in the Madhya Bharat Vastra Vitaran Association at Ujjain. The prayer was granted and this property was taken under attachment.

6. The Appellant who is one of the members of the committee objected to this attachment and filed an objection petition under the provisions of Order 21, Rule 58, Code of Civil Procedure. After inquiry the objection was allowed by the learned judge and the property attached was ordered to be released. Aggrieved by this order Nathulal instituted a regular suit under the provisions of Order 21, Rule 63, Code of Civil Procedure, for a declaration that the property in dispute belonged to Mangilal and was liable to be attached.

7. In the plaint it is alleged by the Plaintiff that the property had not vested in the committee before it was attached and the Respondent Mangilal continued to be its owner at the material time. The property belonged to him and was therefore liable to be attached.

8. The claim was resisted by the Appellant Kishangopal. The trial Court raised one important issue and decided it in Plaintiff''s favour. The issue is as follows:

Whether the house and the share had vested in the ''Niptara Committee'' before attachment and were not liable to be attached and whether the order dated 27-3-1952 releasing the property from attachment is liable to be cancelled?

9. The trial Court found on the construction of the documents Exs. P/l and P/3, that the property of Mangilal did not vest in the committee. It also held that the documents P/l and P/2 were not duly registered and could not operate to effect a transfer of the property in favour of the committee. The result was that the Plaintiff''s claim was decreed. Aggrieved by this decree the Defendant Appellant has preferred this appeal.

10. Mr. K.D. Tiwari criticized the judgment of the trial Court on both these, points. He submitted that the documents P/1 and P/2 constituted the members of the ''Niptara Committee'' as trustees and effected transfer of Mangilal''s

property in their favour. The learned Counsel relied in support of this contention on the decision of the Calcutta High Court in -- Himansu Kumar Roy Chowdhury Vs. Moulvi Hasem Ali Khan and Others,

11. As regards the validity of the registration, Mr. Tiwari contended that the defect in the endorsement of the Registrar was not, fatal and was at the most an irregularity which did not invalidate the registration.

12. To appreciate the argument on the first point, it is necessary to bear in mind that a trust is an obligation annexed to the ownership of the property arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of Anr. or of Anr. and the owner.

13. In order to constitute a trust, legal title must therefore vest in the trustees and the beneficiaries have therein only an equitable interest. The trustee or trustees in whom the confidence is reposed hold the property for the benefit of the beneficiaries and is or are liable to account for it.

14. To determine, whether the documents P/1 and P/2 can be construed as a deed of trust, it is necessary to find out whether Mangilal has thereby divested himself of the title to the property and has transferred ownership to the trustees. Unless this is made out from the terms of the documents P/l and P/2 it would not be possible to uphold the Appellant''s contention that these documents have created a trust and vested the property in the committee.

15. P/l is the first of these two documents and it is to the following effect:

I, Mangilal Kishanlal Bhandari, owner of the firm Bakhatram Bachharaj of Indore and firm Shrikishan Gopinath of Ujjain, state that I have suffered losses in business and I have got myself into such a delicate condition that my liabilities are in excess of my assets and I earnestly intend to satisfy my creditors in such manner as is possible, and with this view I have given power to the gentlemen mentioned below and I am requesting them to satisfy my creditors from my property in such manner as they deem proper. In this connection I myself, my Muneems and Gumashtas will serve these gentlemen.

I am enclosing along with this document a list of my creditors as also a list of my immovable and movable property.

16. The names of the five members are mentioned below this and they have signed P/l with an endorsement bl dk;Z esa ;ksx nsuk Lohdkj gS A (We agree to co-operate in this work).

17. The next document is P/2 which is a resolution of the meeting of the creditors of Mangilal Kishanlal. In that document it is first mentioned that Mangilal, the proprietor of "Bakhatram Bachharaj of Indore" and "Shrikishan Gopinath of Ujjain", has stopped payment alleging that his condition had become very delicate and has appointed, a committee consisting of Shri Joharilalji Mital, Shri Bhawarlalji Sethi. Shri Balkishanji Muchhal, Shri Gulabchandji Tongia and

Shri Ayodhaprasadji Bhargava, and has empowered them to pay and to satisfy the creditors from his assets and has executed in their favour a document on 15-7-1949. By this document six more persons were added to the committee. The material portion of this document is as follows:

By this document we are adding the following six persons to the committee and agree to abide by such settlement of our dues as the committee makes bearing in mind the following conditions and we undertake not to take any steps against what it decides, in Court of law:

1. The committee shall prepare a broad outline of a scheme by 31st July, 1949 and publish it and start acting on it before 31-8-1949. The detailed scheme may take any amount of time.

2. The burden of whatever expenses required in this work, will be on the debtor''s property and its income.

18. The names of the members newly added are then mentioned and the document is signed by the creditors present. The debtor Mangilal has put an endorsement referred as A to A on P/2. The endorsement is to the following effect-

I accept the above stated arrangement and hand over to the committee my property at Indore and Ujjain and other places, both immoveable and moveable and the account, books. I agree that myself and my servants shall fully co-operate with the committee.

19. Mr. Tiwari learned Counsel for the Appellant laid stress on the fact that it is mentioned in the endorsement made by Mangilal on P/2 that he was giving possession of all his properly and account-books to the committee. Ha submitted that this was for the purpose of repayment of the debt and therefore the documents P/l and P/2 read together can be construed as a deed of trust.

20. I do not think it is possible to do so. The terms of the documents do not in clear words indicate that Mangilal, the author of P/l and a party to P/2 has divested himself of his ownership and has transferred the property to the ''Niptara Committee''. The committee is also not given any power to deal with the servants or to alienate the property in any manner. There is also nothing specifically stated about the future income of the property though it is stated that the expenses required by the committee shall be charged to the debtor''s account and be recovered from the income of the corpus.

21. Mr. Tiwari relied on the decision of the Calcutta High Court in Himansu Kumar Roy Chowdhury Vs. Moulvi Hasem Ali Khan and Others, '', but that case to my mind does not help the Appellant in any way. It does not lay down any principle contrary to what I have indicated above.

22. In the Calcutta case the judgment-debtor executed a trust deed and appointed the Plaintiff as a trustee for payment of his dues. The document was

styled as trust-deed. The debtor delivered all the property to the Plaintiff and invested him with full powers to collect future income and to mortgage the property either in full or in part if it became necessary to do so for the purpose of paying the debt.

The document also provided that during the subsistence of the trust-deed in force, the debtor or his heir shall not be competent to exorcise any right of ownership on the property or to interfere with its management or to take any money from the tenants or officers of the trust estate. The Plaintiff was also given full power to remove any of the servants and to appoint new servants according to his own discretion.

23. After the trust deed wan executed, the creditor of the author of the trust attached some items of the trust property. The Plaintiff as trustee filed an objection which was overruled and the attached property was sold. The Plaintiff thereupon filed a suit for declaration that his title was not effected by the sale. The suit was decreed by the Subordinate Judge against which an appeal was taken to the High Court by the attaching; creditor but it too was dismissed.

It was held by the High Court that under the law in India, there can be only one owner of the property. When the property is vested in the trustee the trustee is the owner and the beneficiary has a right against the trustee as owner of the trust property. The ownership of the property having been vested in the Plaintiff, in was not affected by the auction sale.

24. The facts of the Calcutta, case are thus materially different from the present case. Here there is nothing in Ex. P/l or P/2 which would constitute vesting of the property in, the committee. The debtor has in P/2 stated that he was giving possession of the property and the account-books to the committee. But there is no indication that he was transferring ownership to the committee or divesting himself of his title to it. Mangilal has no doubt promised that he and his Muneems would co-operate with the committee and the members of the committee agreed to help him.

But neither the power of management or disposition of property or collection of income or removal and appointment of servants is given to the committee, nor is there any undertaking given by him that tie would not deal with the property so long as the committee is in existence. Under the circumstances, the test indicated in the Calcutta case cannot be applied and it cannot be said on the authority of that, decision that a valid trust was created and by the documents P/l and P/2 the ownership of the property was vested in the committee.

25. I am therefore of opinion that no trust is created in this case and the view taken by the trial Court in this respect is correct.

26. In the view I have taken, the question of the validity of the registration does not arise. The, trial Court has held that the registration was not valid because in the endorsement of the Registrar, he had not mentioned that the document was

registered. It was contended that this was an irregularity curable by reason of Section 87, Registration Act.

27. Section 87, Registration Act, expressly provides that anything done in good faith pursuant to this Act or any Act hereby repealed, by any Registering Officer, shall not be deemed invalid merely by reason of any defect in appointment or procedure.

28. The defects referred to in this section are defects which do not relate to the jurisdiction of the Registering Officer, but are defects of procedure which do not render the registration null and void. In this connection the observations of the Privy Council in -''Ma Pwa May v. S.R.M.M.A. Chettiar firm 56 Ind App 379 : AIR 1929 PC 279 (B), are of material value. Referring to Section 87 their Lordships of the Privy Council observed:

In seeking to apply this section it is important to distinguish between defects in the procedure of the Registrar and lack of jurisdiction. Where the Registrar has no jurisdiction to register, as where a person not entitled to do so presents for registration, or where there is lack of territorial jurisdiction, or where the presentation is out of time, the section is inoperative... On the other hand, if the Registrar havig jurisdiction has made a mistake in the exercise of it, the section takes effect.

29. In that case the registering officer had registered a document which was not sufficiently stamped and an objection was raised that this rendered the registration invalid. The Privy Council repelled this contention and observed:

It would be remarkable that, if he (the registering officer) made a mistake of possibly a few annas on the amount of stamp required, and admitted a document to registration, it would be treated as having no effect years afterwards.

30. In the present case it is not suggested that the document was presented by a person who had no authority to do so or was registered by a registering officer having no jurisdiction to register it. It is also not suggested that the document was presented for registration beyond the time prescribed for its presentation.

The document was thus presented for registration to the Registrar who had jurisdiction to register it and was by him registered alter complying with the provisions of Sections 58 and 59 Registration Act. He however failed to make an endorsement as required by Section 60 or made an endorsement which was net in strict conformity with the requirements of that Section. The defect is a defect of procedure which by reason of Section 87 did not invalidate the registration. I am therefore of the opinion that the defect in the endorsement of the Registrar did not render the registration invalid.

31. But as I am of the view that the documents Exs. P/1 and P/2 do not constitute a trust deed and do not opera to divest Mangilal of his interest in the property the appeal must fail.

This appeal is accordingly dismissed with costs.

Nevaskar, J.

32. I agree.