

(1929) 04 AHC CK 0016
In the Allahabad High Court

Mukat Nath and Others

APPELLANT

Vs

Shyam Sundar Lal and Others

RESPONDENT

Date of Decision : 15-04-1929

Acts Referred:

Contract Act, 1872 — Section 65

Citation : AIR 1929 All 659 : 117 Ind. Cas. 341

Judgement

1. This is a defendants appeal arising out of a suit brought by three sons of Lallan Lal who along with two of his nephews executed a sale-deed on 9th February 1917, for Rs. 12,500 purporting to transfer two annas share in village Parsauni in the district of Gorakhpur along with a mango tree and one dhur of land in the city of Gorakhpur. This document was presented for registration on 17th February 1917, at the office of the Sub-Registrar of Gorakhpur and inasmuch as on the face of it the deed covered property situated within his jurisdiction he registered it. The plaintiffs claimed that the transfer was without legal necessity and being of ancestral joint family property was not binding on the family. They further alleged that the sale of the mango tree and one dhur of land was wholly fictitious and was never intended to be operative and accordingly the Sub-Registrar of Gorakhpur had no jurisdiction to register the document and the document does not effect a valid transfer. The claim was contested by the defendants. The Court below has found that the property sought to be transferred is joint ancestral property but the sale consideration was all for legal necessity. He has, however, held that the inclusion of the mango tree and the one dhur of land in the sale-deed was entirely fictitious and was merely a device to enable the executants to present the document for registration at Gorakhpur and that it was never the intention of the parties that the interest in that property should pass. As a matter of fact he has gone further and held that the alleged tree probably does not exist at all. The learned Judge has decreed the suit for possession without calling upon the plaintiffs to pay any amount to the defendants. The defendants have appealed and challenge the findings of the learned Subordinate Judge.

2. So far as the questions of fact go we are in agreement with his view. There can be no doubt that the entire sale consideration was for legal necessity. Rs. 6,000 had been left with the vendee for payment to one Ram Sewak Upadhia on account of an usufructuary mortgage dated 7th June 1910, executed by the grandfather of the plaintiffs. There is no suggestion that this debt was tainted with immorality. It was an antecedent debt and therefore binding on the family. Another sum of Rs. 4,400 which was paid in cash before the Sub-Registrar had really been borrowed for payment to certain prior creditors who were named in the sale-deed. It is not suggested that these creditors were fictitious. The debts being antecedent debts of Lallan Lal are binding on his sons the present plaintiffs. Similarly the remaining sum of Rs. 2,100 had been set off on account of the amount due on two promissory notes dated 1st February 1916, in favour of the vendee. One of these was executed by the father of the plaintiffs and was an antecedent debt. Out of the property sought to be transferred only half belonged to Lallan Lal and his family and to that extent the consideration was undoubtedly good. The learned Judge has further pointed out that the sum of Rs. 6,000 which had been left with the vendee for redemption of the previous usufructuary mortgage was paid in Court and constituted a valid debt.

3. There can also be no doubt that the inclusion of the mango tree and one dhur of land in the sale-deed was a mere device and there was no real intention to transfer this property. The learned Judge has gone further and remarked that probably no tree exists now. There was no such specific allegation in the plaint and it is therefore not necessary for us to uphold this finding. But there can be no doubt that the whole object of including this bit of property was to justify the presentation of the document before the Sub-Registrar of Gorakhpur. The document was executed on 9th February 1917 and on that date admittedly even this mango tree and one dhur of land did not belong to Lallan Lal. There is no suggestion or evidence on the record that in reality a sale of this property had taken place in his favour before that date. On the 16th February i.e., two days before the registration a sale-deed was executed by Mahabir Prasad the scribe of the document in favour of Lallan Lal purporting to transfer this bit of property in favour of Lallan Lal. Mahabir Prasad was examined in this case and stated in favour of the vendee that this property belonged to him. In proof of this assertion the khatauni for 1325-F was filed by the defendants in which the name of one Mahabir Prasad was entered as the owner of a grove. On behalf of the plaintiffs the register from the Collector's office was sent for in order to establish that this Mahabir Prasad was an altogether different person.

4. As soon as this register was summoned the defendants' vakil had to admit that Mahabir Prasad whose name was entered in the khatauni was a different person. The scribe when examined could not state the number of the plot on which the tree stood or of one dhur of land which he had sought to transfer. He frankly admitted that he could not give any clear description. It is a curious fact that on the very date, viz., on 15th February 1917 another similar, deed for a similar purpose was executed by the same Mahabir Prasad in favour of another

parson in which also a mango tree and one dhur of land were sought to be sold. The oral evidence produced on behalf of the defendants was heard by the learned Subordinate Judge and he was not satisfied that there was a bona fide transfer of this bit of property. It seems to us that the scribe executed this fictitious document in order to satisfy the Sub-Registrar that he had jurisdiction to register the document. There was really never any intention of transferring the property. This amounted to a fraud on registration and the Sub-Registrar had in reality no jurisdiction to register the document. The result, therefore is that there has been no valid transfer of any property as recognized by law vide: Mathura Prasad v. Chandra Narayan Chowdhury AIR 1921 P.C. 8. Although the point was not taken in the grounds of appeal in express terms it has been argued before us that in justice and equity the defendants should be allowed the payment of the amounts which have been found to have been advanced for legal necessity. Rs. 4,400 and Rs. 2,100 were simple money debts which were outstanding. There was no charge on the family property created by these debts nor were the creditors concerned entitled to claim any lien on this property. We, therefore, fail to see how the defendants can call upon the plaintiffs to make good these amounts before they can recover possession of this property. We do not wish to suggest that the defendants have necessarily no remedy against Lallan Lal and other executants but if they have any remedy their remedy would be exclusively as against the executants and not against the plaintiffs who were no parties to the transaction. By merely paying off the creditors the defendants cannot claim to retain this property so long as their debts have not been satisfied, as by having made the payment they have merely stepped into the shoes of these creditors who have no right to claim possession of this property.

5. The position of the vendee with regard to the sum of Rs. 6,000 paid to redeem the previous usufructuary mortgage of 1910 is different. On the date when the sale-deed was executed Lallan Lal and his family were not in fit possession of the property at all. The property had been validly put in possession of the usufructuary mortgagees." The present plaintiffs had no right to recover this Property without redeeming that mortgage and their claim would have to be made against the mortgagees themselves. The present defendants on the strength of the invalidly registered document have obtained possession of the property not from Lallan Lal but from the usufructuary mortgagees who have put them in Possession because their mortgage debt was discharged by the defendants. The defendants have thus stepped into the shoes of the usufructuary mortgagees with their consent and were not necessarily trespassers. The present plaintiffs have no right to recover possession, of the property so long as they have not redeemed the mortgage. It therefore, seems to us that even though the equity of redemption has not been validly transferred to the defendants the latter are entitled to retain possession of the property so long as the mortgage debt which was a charge on this property remains unpaid by the plaintiffs.

6. We have not been able to find any direct authority in support of this view but we may refer to the provisions of Sections 65 and 70, Contract Act, under which

when an agreement is discovered to be void, any person who has received any advantage under such agreement is bound to restore it or to make compensation for it to the person from whom he received it and when a person lawfully does anything for another person not intending to do so gratuitously and such other person enjoys the benefit thereof the latter is bound to make compensation to the former in respect of the thing so done. The defendants have paid off the previous mortgage on the plaintiffs property and have obviously not done so gratuitously: The plaintiffs have received the advantage inasmuch as the mortgage debts would be discharged if they were put in possession of the property. It therefore seems only just and equitable that the plaintiffs should be called upon to make compensation to the defendants to the extent to which the defendants have benefited the plaintiffs and the other members of the family.

7. We accordingly allow this appeal in part modifying the decree of the Court below: (a) declare that the sale-deed dated 9th February 1917 executed by Lallan Lal and others in favour of the defendants father is invalid for want of proper registration and (b) decree the plaintiffs' suit on conditions of their depositing in the Court below to the credit of the defendants the sum of Rs. 6,000 within six months from this date. If the amount is so deposited the parties will bear their own costs in both Courts If they fail to deposit the amount within the time allowed the suit will stand dismissed with costs in both Courts.