(1985) 09 OHC CK 0027

In the Orissa High Court

Case No : First Appeal No. 171 of 1975

Padma Bewa APPELLANT

Vs

Krupasindhu Biswal and Others RESPONDENT

Date of Decision : 09-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 4

Citation : AIR 1986 Ori 97 : (1985) 60 CLT 531

Hon'ble Judges : P.C. Misra, J;B.K. Behera, J

Bench : Division Bench

Advocate : A.K. Padhi and S. Rath, for the Appellant;

Final Decision : Dismissed

Judgement

Behera, J.—The unsuccessful plaintiff is in appeal against the judgment and decree passed by the learned Subordinate Judge, Dhenkanal, dismissing her suit for a declaration that the defendants-respondents, one of them being her husband''s brother and the other two being the sons of her husband''s brother, had not acquired any title over the suit land by virtue of Ext. 1, the sale deed executed by her deceased husband in the year 1968, which, according to the appellant, had been fraught with fraud and misrepresentation. The respondents, it was alleged by her, had got this deed executed by playing fraud and by misrepresenting that some modifications were necessary to the earlier deed of sale (Ex. H) executed by her husband in their favour in 1950. The appellant had also prayed for permanent injunction, for confirmation of her possession in respect of the land in suit and in the alternative, for restoration of possession to her in case it was found that she had been dispossessed. The respondents had disputed the allegations of fraud and misrepresentation and had asserted that Ex. 1 had duly been executed by the executant after knowing the contents thereof and on receipt of the consideration amount. This, in short, would represent the cases of both the parties. The details have been set out in the pleadings and in the impugned judgment.

2. On a consideration of the evidence led by the parties to the suit, the learned Subordinate Judge did not accept the case of the appellant that the sale deed in question had been got executed by playing fraud or by misrepresentation and accordingly dismissed the suit.

3. Appearing on behalf of the appellant, Mrs. Padhi has contended that there was evidence substantiating fraud and misrepresentation which had resulted in the execution of Ex. 1 and the learned Subordinate Judge went wrong in dismissing the suit. It has also been urged on behalf of the appellant that the fact that the appellant''s husband had sold away his entire lands would show that he had not intended a sale and this would be a pointer to the practice of fraud and misrepresentation. At the hearing, none has appeared on behalf of the respondents.

4. On a careful consideration of the contentions raised by the parties in the light of evidence adduced by them, the trial Court has negatived the claims set out by the appellant for well-founded reasons mentioned in the judgment which need not be catalogued and reiterated by this Court sitting in appeal as we are at one with the learned Subordinate Judge. We could, however, indicate some broad reasons in support of our conclusion. The Supreme Court has observed and held in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, :

".....It is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

5. In a suit on the basis of fraud, the allegation of fraud must be clear, definite and specific. General allegations of fraud, unaccompanied by particulars, are insufficient to amount to an averment of fraud of which any Court can take judicial notice. (See AIR 1928 PC 263 Tom Boevey Barrett v. African Products, Ltd AIR 1937 146 (Privy Council) and Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, . As has been laid down in AIR 1941 93 (Privy Council) , High Court of Rangoon, a charge of fraud, like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt and a finding based on suspicion and conjecture cannot be upheld.

6. A plea of fraud is to be raised in the pleadings by giving the particulars thereof as required under Order 6, Rule 4 of Civil P. C. Pleadings should be concise, but they should also be precise. When fraud is charged against a defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which is alleged. It is not enough to use such general words as ''fraud'', ''deceit'' or ''machinations''. The circumstances on which a plea of fraud is raised must be incompatible with the hypothesis of good faith.

7. When misrepresentations are alleged, the party pleading them should state as

to each misrepresentation, its date and whether it was made in writing or verbal and as to each verbal misrepresentation, the occasion thereof. While it is true that ''undue influence'', ''fraud'' and ''misrepresentation'' are cognate vices and may, in part, overlap in some cases, they are in law distinct categories and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of Civil P. C. required to be separately pleaded, with specificity, particularity and precision. (See Afsar Sheikh and Another Vs. Soleman Bibi and Others, .

8. Judged by these standards, the pleadings by the plaintiff-appellant were far short of the mark. Allegations of fraud and misrepresentation have been made in the plaint without giving particulars thereof and vague evidence has been led from the side of the appellant at the hearing of the suit.

9. The husband of the appellant was aged about seventyfive years at the time of execution of the sale deed in question (Ex. 1) in 1968 and he died in 1969. But mere was no material to indicate that he was physically incapacitated and that he was incapable of hearing or understanding things.

10. As would clearly appear from the contents of Exts. D to H, sale deeds executed by the appellant''s husband, one of the sale deeds, viz., Ex. H, being in favour of the defendant-respondents as early as in the year 1950 which, as averred by the appellant, was to be modified for which fraud had been played and misrepresentation had been made -- the appellant''s husband was well aware with regard to the manner as to how documents were to be executed and registered. He was not an illiterate or ignorant person who could be persuaded to believe fifteen years after the execution of the sale deed (Ex. H) that the same sale deed needed some modifications and without making a searching enquiry as to what the modifications were for, he would not glibly accept such misrepresentation and be a subject of fraud. It would not appeal to commonsense, much less to reason, that the respondents would suggest to the appellant''s husband about fifteen years after execution of the sale deed (Ex. H) that some modifications thereto were necessary and that after such length of time, the appellant''s husband would so readily accept the suggestion made by the respondents, proceed with them and execute a deed without knowing the contents or consequences thereof and without even asking the respondents to have the contents read over and explained to him.

11. The evidence from the side of the appellant and in particular, that of P. Ws. 1, 3 and 6 to which specific reference has been made by the learned Subordinate Judge, was highly discrepant. Far from giving the particular''s of fraud or the actual time or period of misrepresentation and as to how far earlier to the execution of Ex. 1 such misreprese tation had been made, the evidence of these witnesses widely differs even in the matter of the year and time when such misrepresentation had been made.

12. There was, on the other side, the clear and cogent evidence of the scribe and the attesting witness (D. Ws. 1 and 2) both of whom had testified in the court

that the sale deed had duly been executed by the husband of the appellant after understanding the contents thereof and that he had executed it after receiving the consideration amount. There was no reason as to why these two persons should be hands-in-glove to support the cause of the respondents and falsely depose and demolish the theory sot up by the appellant. In addition, the appellant''s husband had admitted the due execution of the document before the Sub-Registrar.

13. The contention raised on behalf of the appellant at the trial with regard to the sale of the entire lands by the executant as a circumstance indicating fraud and misrepresentation has been discussed and rightly negatived by the trial court. Even assuming, however, that the entire lands had been sold away by the appellant''s husband this circumstance, by itself, in the absence of other evidence to substantiate a case of fraud or misrepresentation, would not suffice to sustain the allegations made by the appellant against the respondents. The allegations of fraud and misrepresentation made by the appellant have not been substantiated by acceptable evidence and circumstances.

14. The impugned judgment and decree are well-founded on the evidence on record and no interference is called for.

15. In the result, the appeal fails and is dismissed. The judgment and decree passed by the learned Subordinate Judge are affirmed. As the respondents have not entered appearance at the hearing, we make no order as to the costs of this appeal.