
(1944) 08 AHC CK 0016
In the Allahabad High Court
Case No : Second Civil Appeal No. 11 of 1940

Pt. Anand Narain Bahadur	Vs	APPELLANT
Lala Murli Manohar and Others		RESPONDENT

Date of Decision : 16-08-1944

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (1944) 08 AHC CK 0016

Hon'ble Judges : Madeley, J; Ghulam Hasan, J

Bench : Division Bench

Advocate : M. Wasim, for the Appellant; Hyder Husein and D.P. Khare for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Hasan and Madeley, JJ.—This is a Plaintiff's appeal arising out of a declaratory suit.

2. Defendant No. 3, Mst. Zaman Begam, owned a share of 3 annas 11 pies and odd in mahal Zaman Begam, village Kapera Madarpur. Syed Sardar Husain obtained a decree against her from the Court of the Sub-Divisional Officer for about Rs. 400 for profits in the year 1933 and, the property being ancestral, the decree was transferred for execution to the Court of the Collector in accordance with Section 68, Code of Civil Procedure. The decree was received by the Collector on 17th October, 1933. On the 20th June, 1934, the share was sold by the Collector at a Court auction. On the 17th July, 1934, Zaman Begam and her son and daughter executed Ext. 6, a possessory mortgage of the share without taking the permission of the Collector as required by law. This mortgage included a piece of land in Pir Bokhara, Lucknow. The mortgage was in favour of Murli Manohar, Defendant 1 and the consideration was Rs. 600. On the 18th July Zaman Begam deposited the entire amount with 5 p.c. and prayed for cancellation of the sale under Order 21 Rule 89, Code of Civil Procedure. On the 2nd August, 1934, Zaman Begam executed a sale deed in favour of her daughter

Munni Begam, Defendant 2, of 2 annas 8 pies of this share and included in the sale deed the same land in Pir Bokhara. This also was done without the permission of the Collector. The sale deed is Exh. 5. The auction sale was set aside by the Collector on the 9th August, 1934, and the order transmitting the case back to the Sub Divisional Officer and stating that the decree has been satisfied is Ext. 8, dated the 29th August, 1934. Other decrees came up afterwards against Zaman Begam, and the Plaintiff-appellant purchased her entire share on the 20th June, 1935. A sale certificate was issued on the 9th August, 1935, and formal possession was delivered to him. With respect to the two annas 8 pies share which was sold to Munni Begam, there is competing title between her and the Plaintiff and there is also the question of the mortgage deed in favour of Murli Manohar.

3. Appellant's learned Counsel states the three points for decision by this Court:

- (1) Whether the mortgage deed and sale deed were fictitious and so void,
- (2) whether the Collector was still, at the time they were made, in a position to exercise or perform in respect of the judgment-debtor's immovable property or any part thereof the powers or duties conferred or imposed on him by paras 1 to 10 of Schedule III, Code of Civil Procedure, so that according para 11 of that Schedule the sale and the mortgage deed were invalid as having been made without his written permission, and
- (3) whether registration at Lucknow was fraudulent and defective, because there was no property where the registration took place.

4. The learned Civil Judge who tried the case held that the sale and mortgage were not void by reason of para 11, Schedule III, because the money for setting aside the sale had been deposited, and therefore the jurisdiction of the Collector had ceased. He, however, decreed the suit on the ground that there was no property situate in Lucknow and a fictitious item had been put in. In appeal the learned District Judge of Lucknow held that para 11 did not apply for the same reasons as those given by the Civil Judge. He also held that no property was situate in Lucknow and he says,

"The facts that Exts. 5 and 6 were not registered in the proper registration office and by getting them registered in the Lucknow registration office a fraud was committed on the law of registration are admitted as well as proved. By virtue of the commission of fraud Exts. 5 and 6 must be deemed to have been unregistered, the result of the invalid registration being that the title of Zaman Begam was not legally divested and the title of the mortgagee and the vendee under Exts. 5 and 6 were not legally completed."

5. The learned Judge then went on to hold that the mortgage-deed and sale-deed were admissible in evidence for collateral purposes, and since the transferee under the mortgage is admittedly in possession of the property, provisions of Section 53A of the Transfer of Property Act debar the Plaintiff

auction-purchaser from enforcing his rights because he is representative of the mortgagor.

6. The learned Counsel for the Appellant has attacked the decision of the learned District Judge concerning Schedule III, para 11 on the basis of a ruling quoted in *Raja Mohan Manucha Babu v. Manzur Ahmad Khan Babu* 1943 O.A. (P.C.) 50 : A.W.R. (P.C.) 52 : O.W.N. 214. We think it is unnecessary to express any opinion about learned Counsel's argument, because we consider that the appeal must be allowed on the third point, viz, that the learned District Judge has made a wrong application of Section 53A of the Transfer of Property Act. Appellant's learned Counsel argues that Section 53A has no application where there has been a fraud on registration. We think that this is correct. The cases relied upon by the Respondents *Mohammad Kazim Husain v. Nadri Begam* 1941 O.A. 338 : A.W.R. (C.C.) 129 : O.W.N.532; *Khodaijatul Kubra Vs. Krishna Pershad and Others*, , *M.E. Moolla Sons, Limited v. Burjorjee* (1922) 59 I.A. 161 at 171, *Firdos Jahan v. Mohd. Yunus* 1939 A.W.R. (C.C.) 193 : O.W.N. 876 and *Ewaz Ali v. Firdous Jehan* 1944 O.A. 158 : A.W.R. (C.C.) 159 : O.W.N. 228, proceed upon different grounds. None of them goes to the length of saying that a document, which must be regarded as unregistered, because the parties deliberately committed a fraud on registration, can be looked at for the purposes of giving effect to a plea u/s 53A. In this case, moreover, there is no possibility that the transferee did not know of the fraud which was being committed, because the piece of property situate in Lucknow had formerly been transferred to him.

7. The purpose of this fraud is not proved but it seems to have been done with the object of avoiding the possible objection that the sanction of the Collector had not been taken. Whatever the object we think that it would be dangerous to extend the doctrine of part performance to a case in which the parties to the defective document had joined in perpetrating a fraud on registration.

8. We therefore allow this appeal and set aside the decree of the lower appellate Court and restore that of the trial Court. Plaintiff-appellant will get his costs in all Courts.