

(1936) 06 CAL CK 0016
In the Calcutta High Court

Radha Sundar Roy and Another

APPELLANT

Vs

Saktipada Roy

RESPONDENT

Date of Decision : 10-06-1936

Acts Referred:

Specific Relief Act, 1877 — Section 39

Citation : AIR 1936 Cal 714 : 166 Ind. Cas. 55

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In the suit out of which this appeal arises the plaintiff sued the defendants for the cancellation of an Ekrarnama which, according to his case, had been forged by the principal defendants. This document is said to have been executed on 3rd August 1931 and was presented for registration on 9th September 1931. The land covered by the Ekrarnama originally belonged to the maternal grandfather of the plaintiff and subsequently it devolved upon Nagendrabala Dasi, his maternal grandmother from whom he inherited it. On 29th August 1931 he sold this property to Rajendrabala. The contention of the defendants was to the effect that the Ekrarnama was a genuine one and that, in any event, the plaintiff's suit was not maintainable having regard to the provisions of Section 39, Specific Relief Act. Both the Courts below found that the Ekrarnama was a forged document and, this being the case, they decreed the plaintiff's suit. It has been faintly argued by the learned advocate for the appellants in this case that the findings of fact with regard to the genuineness of the Ekrarnama have been reached by the Courts below after insufficient consideration of the evidence. From a reference to the judgment of the learned Munsif and that of the learned Subordinate Judge it appears, however, that the evidence was very carefully discussed in all its bearings and I am of opinion that the findings of fact at which the Courts below have arrived with regard to the genuineness of the Ekrarnama cannot be challenged in second appeal. It is, however, urged that, in any event, the plaintiff's suit was not maintainable in view of the provisions of Section 39, Specific Relief Act. This section provides

that:

Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable.

2. In the case out of which this appeal arises it is admitted that the plaintiff has parted with his interest in the property by reason of the kobala executed in favour of Rajendrabala on 29th August 1931 and it has been argued that, in these circumstances and having regard to the decision of the Madras High Court in Iyyappa v. Ramalakshamma (1890) 13 Mad 549 no suit would lie u/s 39, Specific Relief Act. The learned Judges, in the case cited above, stated that they were of opinion that the bare possibility of the plaintiff being sued in an action for damages would not entitle the plaintiff who had divested herself of all interest in the property to maintain the suit. This case was considered by the Bombay High Court in Kotrabassappaya v. Chenvirappaya (1899) 23 Bom 375 In the latter case a suit had been brought by the Swami of a mutt to avoid a Jimmapatra whereby he had made over the management of the mutt properties to a certain person. It was alleged that the conditions contained in the Jimmapatra had not been carried out and after this deed had been executed, the Swami transferred the property covered by the Jimmapatra to a third person. In the judgment of the Court in the case last cited above Farran, C.J. made the following observations:

It appears to us that, if the document is not cancelled . . . the purchaser may sue the original plaintiff for a return of his purchase money, if he cannot get possession of the lands by reason of the defendant holding them under the Jimmapatra, and that thus the original plaintiff may have had reasonable apprehension of permanent injury. He was also in danger of the defendant suing him in respect of the lands of which the defendant had not detained possession, for it does not appear that the defendant has detained possession of all the lands; and there is lastly the suggested risk that the added plaintiff may not act fully up to the terms of his purchase and that the original plaintiff may be in a position to resume the lands.

3. In the case out of which the present appeal arises it is alleged in the plaint that Rajendrabala is in possession of the property covered by the Ekrarnama, whereas in the written statement it is alleged that the defendants are in possession of this property. This being the case the possibilities of injury to the plaintiff are almost precisely similar to those to which reference has been made in Farran, C. J.'s judgment in Kotrabassappaya v. Chenvirappaya (1899) 23 Bom 375 the case cited above, and it would follow that as far as the plaintiff is concerned, there exists a reasonable apprehension of serious injury. In discussing the decision of the Madras High Court in Iyyappa v. Ramalakshamma (1890) 13 Mad 549 the learned Chief Justice of the Bombay High Court further stated that:

We are not prepared to follow it if it was intended to lay it down, as a rule of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled, and his Lordship went on to point out that:

The true test in a case of this sort is reasonable apprehension of serious injury.

4. I am entirely in agreement with the line of reasoning which has been adopted in the Bombay case cited above and, in these circumstances, I am of opinion that the decision of the lower appellate Court is correct. The judgment and decree of the learned Subordinate Judge will therefore be affirmed and this appeal is dismissed with costs. Leave to appeal u/s 15, Letters Patent is refused.