
(1926) 12 AHC CK 0031
In the Allahabad High Court

Raghunath Tewari and Others

APPELLANT

Vs

Sita Ram Singh and Others

RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:

Registration Act, 1908 — Section 28

Citation : AIR 1927 All 797

Hon'ble Judges : Kendall, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kendall, J.—This is a second appeal from the judgment of the learned District Judge of Azamgarh, upholding the decision of the first Court by which the plaintiffs-appellants' suit for possession of certain zemindari property in Azamgarh District and of two mango trees in Fyzabad District was dismissed. Some difficulty has arisen in this Court owing to the lower appellate Court having imported into the proceedings certain findings which are not based on the pleadings of either party. The plaintiffs-appellants based their suit on a sale-deed by which Jaikaran Singh, one of the defendants, purported to transfer the property described above to Sarju Tewari, son of Baijnath Tewari. This sale-deed was executed in 1915. In January 1917, the same defendant, Jaikaran Singh, gifted the same property to defendants 2 and 3, and gave them possession. Sarju, the nominal vendee under the sale-deed of 1915, sued the donor and the donee for possession in 1918. The suit, which ultimately went up in appeal to the High Court, was dismissed on the ground that the registration of the sale-deed was invalid. It may be explained here that the registration took place in Fyzabad District, and it was found in that litigation that there were no mango trees belonging to the vendor, as described in the sale-deed, and that no part of the property transferred was situated in the District of Fyzabad.

2. In the present suit the first Court considered that the question of the validity of the registration was res judicata on the ground that the present plaintiffs-

appellants actually fought out the previous suit in the name of Sarju Tewari; but in this the lower appellate Court has disagreed. The facts of the transaction are by no means free from doubt. The plaintiffs-appellants' case was that the whole joint family intended to purchase the property, and it was actually purchased with joint family funds, but that Baijnath Tewari, father of Sarju Tewari, who was entrusted with the execution of the deed, dishonestly had it executed in the name of Sarju alone; and that the plaintiffs-appellants were entirely ignorant of the litigation in which Sarju attempts to obtain possession in 1918. The learned Judge has found that the sale was in reality not in favour of Sarju at all, or in favour of the joint family, or paid for from the joint family funds; but that it was a collusive transaction in favour of one Sadanand Shukul, maternal uncle of Sarju.

3. As I have said above, this is not the case of either party, nor is it supported by the evidence on the record. Before he wandered on to this side tract, the learned Judge was in a fair way to agree with the finding of the Court of first instance that the plaintiffs-appellants were cognizant of the proceedings in which Sarju sued to recover possession of the property. He remarks:

The learned Subordinate Judge has not believed plaintiffs' case that they had no knowledge of the former litigation, and I am also not inclined to believe them. If they are really members of a joint family, as they allege and as has been found by the lower Court, plaintiffs must have known of Sarju's case fought up to the High Court in respect of the joint family property.

4. However, the Judge then proceeds to make out what appears to be a hypothetical case, namely, that the property was purchased not by the joint family but by Sadanand Shukul. This hypothetical case is fatal to the plaintiffs-appellants' appeal, because on the Judge's findings the plaintiffs-appellants have no share in the property purchased. If, however, the case set up by the District Judge be discarded, as the appellants argue that it should be discarded, we are left with the finding of the first Court that the property was purchased with the joint family funds and that the plaintiffs-appellants were fully aware of, and were, in fact conducting the proceedings in Sarju's name, by which Sarju's possession was sought to be established at the expense of the donee. In these circumstances, it is difficult to see how the Judge could have avoided following the first Court in finding that the question of the validity of the registration was *res judicata*. The Judge's finding to the contrary is coloured by the hypothetical case that he has himself set up.

5. My own opinion is that the matter is *res judicata* for the reasons given by the trial Court. I am clear, however, that in any case the registration must be held on the merits to be invalid. The lower appellate Court has found that a fraud was practised on the registration department; but, as in reaching this finding also that Court has been influenced by the hypothetical case of Sadanand, it is necessary to look into the matter in some detail. The sale-deed purports to transfer landed property in Azamgarh District and two mango trees in Fyzabad District. u/s 28, Indian Registration Act, the deed could be presented for

registration in the office of a sub-registrar:

within whose sub-district the whole or some portion of the property to which such document relates is situate.

6. The two mango trees which, according to the recital in the deed, were the property of Jaikaran Singh, did not exist in Fyzabad District. An attempt has been made to show on behalf of the appellants that the mere fact that the document contains a reference to such trees is sufficient to justify the registration in Fyzabad District. It is argued that whether the vendor actually owned the trees or not, the registration would be valid, provided that there was no fraud or collusion. Reference was made to the following decisions: *Harendra Lal Roy Choudhury v. Sari Dasi Debi* AIR 1914 P.C. 67, *Pahladi Lal v. Laraiti* [1918] 41 All. 22 and *Ram Dai v. Ram Chandrabali Debt* [1919] 4 P L.J. 433. In none of these cases, however, was there any real difficulty in identifying the property concerned, nor does there seem to have been any suspicion that a fictitious entry was made in order to enable the registration to be carried out in one district rather than in another.

7. In the present case, there are many suspicious elements. In the first place, it is difficult to conceive why the vendor should wish to transfer these two solitary trees in Fyzabad District in conjunction with the body of property in Azamgarh. The fact that possession was not given to the vendee aggravates the suspicion. We next find that the two trees referred to in the sale-deed do not exist. The Courts below have certainly found that the plaintiffs-appellants are entitled to a share in one tree in plot 995. This is not the plot given in the sale deed, and it needs special pleading to show that the two trees referred to in the sale-deed may possibly be partially identified with the share of the vendee in the tree on plot 995. In *Narasimha Rao v. Papanna* [1920] 43 Mad. 436 it has been held by a Bench that the inclusion of an item of property belonging to the vendor in a sale-deed without any intention of passing any title in it and purely for the purpose of making the deed available for registration in a particular place is a fraud upon the registration law, and as such the sale-deed must be deemed not to have been properly registered. Without, therefore, going as far as the lower appellate Court in its findings of fact, I am prepared to agree with it that the recital in the deed of the two mango trees and the registration of it in Fyzabad District amounted to a fraud on the registration department, and that the deed is, therefore, invalid.

8. The result is that the appeal fails, and is dismissed with costs, including fees in this Court on the higher scale.