(1977) 03 PAT CK 0010

In the Patna High Court

Case No : A.F.A.D. No. 437 of 1974

Ramdip Sharma and Others — APPELLANT

Vs

Baldeo Singh — RESPONDENT

Date of Decision : 02-03-1977

Acts Referred:
Evidence Act, 1872 — Section 91, 92

Citation : AIR 1977 Patna 234 : (1977) 25 BLJR 308

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : Kailash Roy and Kamla Pd. Roy, for the Appellant; Ram Padrath Pd. Singh, Anirudh Pd. Verma and Mutukdhari Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—The plaintiffs preferred this second appeal before this Court.

2. The plaintiffs instituted the suit for recovery of Rs. 1550/-, the unpaid portion of the consideration money covered by the sale deed dated 6-12-1962 (Ext. 2/a), which was executed by their father Deonarain Singh in favour of Baldeo Singh (the defendant). The consideration money mentioned in Ext. 2/a was Rupees 2,000/-, out of which Rs. 450/- was paid by Baldeo Singh (Vendee) to Deonarain Singh (Vendor).

3. The defence of defendant Baldeo Singh was that Ext. 2/a was a deed of exchange, and not a deed of sale. On 6-12-1962, the defendant executed another registered sale deed (Ext. 2) in favour of Deonarain Singh (father of the plaintiffs) in respect of 13 decimals of plot No. 364, 1 decimal of plot No. 363 and 21 1/2 decimals of plot No. 435 for Rs. 1500/-. The consideration money of Ext. 2 was not paid to Baldeo Singh. Hence another registered sale deed (Ext. 2/a) was executed on 6-12-1962 by Deonarain Singh (father of the plaintiffs) in favour of Baldeo Singh for a consideration of Rs. 2000/- in respect of 13 decimals. It is admitted by both the parties that the defendant paid Rs. 450/- out

of Rs. 2,000/-. The case of the defendant further was that the balance of the consideration money covered by Ext. 2/a, that is Rupees 1500/-, was adjusted towards the consideration money covered by Ext. 2.

4. On these facts, both the courts below concurrently held as follows:

(i) Both the sale deeds dated 6-12-1962 (Exts. 2 and 2/a) were deeds of exchange;

(ii) It was agreed between the parties not to act upon the sale deeds; and,

(iii) Defendant Baldeo Singh did not receive the consideration amount, that is Rs. 1500/-. covered by Ext. 2 and the said amount was adjusted towards the consideration money of the sale deed covered by Ext. 2/a.

5. In the ordinary course, this Court is precluded from interfering with the concurrent findings of facts. Hence, in view of the concurrent findings of facts arrived at by the Courts below, I shall not interfere with the same.

6. The short point for consideration in this appeal is:-- Whether oral evidence is admissible on the point of exchange in view of the provisions of Sections 91 and 92 of the Indian Evidence Act? When the terms of a contract have been reduced to the form of a document, Section 91 excludes oral evidence of the terms of such contract. Section 92 excludes oral evidence for the purpose of contradicting, varying, adding to, or subtracting from the terms of a written contract.

7. In the present case, the case of the defendant was that it was agreed between the parties that the documents (Exts. 2 and 2/a) will not be treated as sale deeds, but as exchange deeds. Under proviso (1) to Section 92 of the Indian Evidence Act, the documents (Exts. 2 and 2/a) can be invalidated on the ground that these were not sale deeds, but were deeds of exchange. In my opinion, this is a question of fact. Both the Courts below have concurrently held that these two documents (Exts. 2 and 2/a) are deeds of exchange. On the basis of the oral testimonies of the witnesses examined on behalf of the defendant, I hold that the parties agreed not to act upon Exts. 2 and 2/a as sale deeds but they agreed to treat as deeds of exchange. Section 92 of the Evidence Act excludes oral evidence for the purpose of contradicting, varying, adding to, or subtracting from, terms of any written contract, but it does not exclude parties to lead evidence about the nature of the ducuments. The oral testimonies of the witnesses in respect of the nature of the document is admissible under provisos (1) and (2) of Section 92 of the Evidence Act.

8. In para 21 of its judgment, the trial Court held as follows:

"These two issues have been taken up together and in view of the discussions made above, it is clear that the documents were exchange deeds and that Rs. 1500/- was adjusted and it was not paid in cash as alleged by the plaintiffs to Baldeo Singh. As regards the sale deed which Baldeo Sisgh had executed to Deona-rayan Singh Rs. 1500/- was adjusted in the sale deed of Baldeo Singh and out of balance amount Rs. 450/- has been received by the Plaintiffs'' father Deonarain Singh, as admitted by them. So the only money that remained due against the defendant is Rs. 50/-.....".

In para 15 of its judgment, the lower appellate Court upheld the above finding of the trial Court. The trial Court and the appellate Court discussed the evidence of both parties. Both the Courts below rejected the evidence of the plaintiffs'' witnesses and accepted the defence version. In these circumstances. I accept the concurrent findings of fact of the Courts below and hold that Exts. 2 and 2/a were deeds of exchance. I also hold that the consideration amount, that is, Rs. 1500/-, covered by the sale deed Ext, 2 was not paid to defendant Baldeo Singh and the same was adjusted towards the consideration amount covered by the sale deed Ext. 2/a. A sum of Rs. 50/- admittedly remained due to the plaintiffs which they are entitled to recover. Hence I hold that the plaintiffs are entitled to a decree for a sum of Rs. 50/-.

9. Learned Counsel for the appellants contends that oral evidence in respect of the terms of the sale deeds is inadmissible under Sections 91 and 92 of the Evidence Act. In this connection he relied on a decision of the Privy Council in Balkishan Das v. Legge (1900) 27 Ind App 58 . In that case it was held that oral evidence of intention is inadmissible for the purpose either of construing the deeds or of proving the intention of the parties. In my opinion, this decision does not apply to the facts of the present case.

Learned counsel for the respondenl relied on another decision of the Privy Council in AIR 1936 70 (Privy Council) . In that case the plaintiff challenged the validity of a maintenance deed on the ground that it was distinctly understood between the parties that the document was not to be the final contract for the plaintiff''s maintenance. Their Lordships of the Privy Council held that the plaintiff was entitled to lead oral evidence to prove that it was not a maintenance deed. In my opinion, this decision applies to the facts of the present case.

10. In the present case, both the parties executed two sale deeds Exts. 2 and 2/ a on the same date. The areas mentioned in the two deeds are identical, except 21 1/2 decimals covered by plot No. 435. By virtue of Ext. 2, Baldeo Singh (defendant) sold to Deonarain Singh 13 decimals of plot No. 364, 1 decimal of plot No. 363 and 21 1/2 decimals of plot No. 435. It is said that plot No. 435 was given to Deonarain Singh on the basis of Ext. 2 as he was already shown in its possession in the rent schedule Ext. G. In other words both the Courts below held that by virtue of Ext. 2/a, 13 decimals of land was given in exchange by Deonarain Singh to Baldeo Singh and by virtue of Ext. 2, 14 decimals of land was given by Baldeo Singh to Deonarain Singh. It has also been held by the Courts below that both parties were Gotias. Both the documents were also registered on 6-12-1962. It is on the basis of these facts that the Courts below concurrently held that the parties never intended to execute sale deeds nor to act upon the same and that the documents were deeds of exchange. I agree with the concurrent findings of the Courts below.

11. The law may be briefly stated thus:

When the terms of a contract have been reduced to the form of a document, Section 91 excludes oral evidence in respect of the terms of the documents. The prohibition u/s 91 is that oral evidence shall be excluded in respect of the terms of a document. The parties are certainly entitled to lead oral evidence in respect of the nature of the document. Section 91 refers to the terms of the document, and not the nature of the document. The parties are entitled to lead oral evidence to the effect that they never intended to act upon such document. In other words, when a sale deed is executed, a party can lead oral evidence to the effect that he never intended to act upon the sale deed. If a party executes a maintenance deed, the party can certainly lead oral evidence to the effect that it was never intended to act upon the maintenance deed. The party is entitled to lead oral evidence to the effect that the intention of the party was not to execute documents or it should not be acted upon.

Section 92 of the Indian Evidence Act excludes oral evidence for the purpose of contradicting, varying, adding to, or subtracting, from the terms of a written contract. In my opinion, however, the party is entitled to lead oral evidence that there was no agreement at all. Under proviso (1) to Section 92, the party may prove that the document is invalid on the ground of fraud intimidation, illegality, want of due execution, want of capacity in any contracting party, want of failure of consideration or mistake in fact or law. In the present case, the defendant led evidence that the sale deed Ext. 2/a is an invalid document on the ground of mistake of fact. In other words, the defendants, case is that it is in fact a deed of exchange, and not a sale deed. Hence the defendant can lead oral evidence to invalidate the sale deeds Exts. 2 and 2/a under proviso (1) to Section 92. The parties may also lead oral evidence under proviso (1) to Section 92 as to any matter on which the document is silent, and which is not inconsistent with its terms. In the present case the defendant is entitled to adduce oral evidence to the effect that the parties never intended to act upon these sale deeds (Exts. 2 and 2/a) as it was agreed between the parties to treat these sale deeds as exchange deeds. The defendant can certainly lead oral evidence to this effect for the simple reason that these documents (Exts. 2 and 2/a) are silent on the point of "exchange" and there is no inconsistency with the terms mentioned in these sale deeds (Exts. 2 and 2/a). Hence, I hold that the oral evidence adduced on behalf of the defendant is also admissible under proviso (2) to Section 92 of the Indian Evidence Act.

In sum and substance, Section 91 excludes the oral evidence in respect of the terms of a written contract. Section 92 excludes oral evidence for the purpose of contradicting, varying, adding or subtracting from the terms of a written contract. In other words, Sections 91 and 92 exclude oral evidence in respect of the terms of a written contract. They do not prohibit the parties to lead oral evidence in respect of the nature of contract as well as in respect of the oral agreement entered into between the parties.

12. In the result, this appeal is dismissed. The parties will bear their own costs in this court.

