
(2003) 07 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1201 of 2003

Ramesh Chander and Others

APPELLANT

Vs

Budha Singh and Another

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 1 CivCC 170 : (2003) 135 PLR 840 : (2003) 4 RCR(Civil) 29

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : B.R. Mahajan, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is plaintiffs' appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity the Code) challenging concurrent findings of facts recorded by both the Courts below holding that plaintiff-appellants have failed to prove that the portion of the compound was in joint ownership of Khazan Singh and defendant respondent Budha Singh. It has also been held that plaintiff-appellants failed to examine their vendor Khazan Singh and which would lead to an adverse inference against them. It has been categorically found that defendant-respondent Budha Singh alongwith his brother is exclusive owner of the compound shown as ABCD in red colour in the site plan Ex.P.1 and plaintiff-appellants have no right, title or interest this petition. Accordingly, they are not entitled to interfere in this portion of the compound.

2. Shri B.R. Majan, learned counsel for the plaintiff-appellants has argued that registered sale deed Ex.P1 and P2 dated 19.7.1990 were signed by defendant-respondent Budha Singh as an attesting witness and once he has appended his signature he is bound by its contents also. According to the recitals in the sale deed Ex.P1 and P2 even the stair case is part of the sale transaction and is shown to be sold to the plaintiff-appellant. Therefore, the learned counsel submitted that the stair case would also be deemed to be transferred by the sale

deeds Ex.P1 and P2.

3. I have thoughtfully considered the submissions made by the learned counsel and am of the view that there is no merit in this appeal. The afore-mentioned submission has been considered by the Id. Addl. District Judge in the impugned judgment. Relying upon a Division Bench judgment of this Court in the cases of Ram Gopal v. Mohan Lal and Ors. AIR 1960 P&H 266, and other judgments in the cases of Pandurang Krishnaji v. M. Thukaram and Ors. AIR 1922 P.C. 20 and Si-raj Ud-Din. v. Mr. Rahiman and Ors. AIR 1938 Lah. 978, the Addl. District Judge held as under:

"Plaintiffs Ramesh Chander Sheh Lata are simply relying upon the recital in the sale deeds Ex.P1 and Ex.P2 wherein it has been written that the shop alongwith the stair case is sold to the plaintiffs. It may be mentioned here that in Ex.P1, Budha Singh was neither party nor attesting witness. However, in Ex.P2, Budha Singh was the marginal witness, but he was not aware of the fact that Khazan Singh had also included stair case, which is situated in the property of Budha Singh, in the sale deed vide which Khazan Singh sold the shop in question to the plaintiffs Ramesh Chander and Sneh Lata and he simply attested this sale deed. By merely attesting sale deed, defendant Budha Singh cannot be held bound by the contents of the sale deed. It has been held by the Division Bench of our own Hon"ble High Court in case Ram Gopal v. Mohan Lal and Ors. AIR 1960 P&H 266, that mere attestation of a deed does not by itself impute to the attesting witness any knowledge of its contents. So as to make out a case of estoppel against said attesting witness. It has been held by the Privy Counsel in Pandurang Krishnaji v. M. Thukaram and Ors. AIR 1922 P.C. 20 that attestation does not work estoppel u/s 115 of the Evidence Act. Attestation of a deed by itself estops a man from denying nothing whatsoever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication any knowledge of the contents of the documents and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effect. The same view has been taken by our own Hon"ble High Court in case Si-raj Ud-Din. v. Mr. Rahiman and Ors. AIR 1938 Lah. 978 that non parties to transaction are not bound by it even if they are relatives of transferor and have not protected against it or attested the deed as a marginal witness. So it does not work as estoppel against them. The attesting witness signing the document, where there is no proof of his knowledge of their contents nor is he consenting party to transactions embodied therein. Onus lies on the persons who rely on documents to prove such knowledge and consent. Here, in this case, plaintiffs/appellants Ramesh Chander and Sneh Lata failed to prove on record that Budha Singh defendant had knowledge of the contents of the sale deed Ex.P2 which he has simply attested as marginal witness without any such specific proof or knowledge of the contents of this sale deed Ex.P2. Budha Singh who was only marginal attesting witness of this sale deed Ex.P2 cannot be held bound by the contents of this sale deed."

4. There are concurrent findings of facts that Budha Singh is a marginal witness on the sale deed Ex.P2 dated 19.7.1990. However, merely on the basis of being marginal witness, defendant-respondent cannot be held bound by the covenants or recitals made in the sale deeds. Such sale deeds can be evidence of due execution and defendant-respondent Budha Singh who have signed the same as an attesting witness could prove that fact but he cannot be held bound by its contents. In the case of Smt. Chandrakantaben Modi and Narendra Jayantilal Modi Vs. Vadilal Sapalal Modi and Others, , their Lordships of the Supreme Court have held that an attesting witness of a document is not presumed to be aware of its contents. The observations of their Lordships in this regard reads as under:-

"Reliance has been placed on the attestation of Bapalal, the father of the executants. Two days earlier i.e. on 22.10.1954 he had executed a release deed, Ext.222 giving up his right in the family properties for a sum of money named therein. He was already staying in Vrindavan for sometime past and proposed to spend rest of his life there. The release deed however, did not contain any list of properties and the document, therefore, is not of any help to either side. So far the agreement Ext. 167 is concerned, it has not been stated by anybody that Bapalal went through its contents or that somebody read the same to him before he attested it. There is no presumption that an attesting witness of a document must be assumed to be aware of its contents. What is significant, however, is that it was executed in 1954 when the defendant No. 6 was in adverse possession to the exclusion of defendant No. 1 and the other members of the family and Jayantilal did not join the document and his brothers chose to get the signature of his minor son." [Emphasis add]. Similar principles were laid down by the Privy Council in Pandurang"s case (supra) to hold that the attestation by a witness does not work as an estoppel against him. He can always deny its contents but may not be able to deny its execution. The views of the Privy Council reads as under:

"And then further issue is raised as to whether he attested with knowledge and consented to the transfer. Before their Lordships consider the circumstances in which that attestation took place, they think it is desirable to emphasize once more that attestation or a deed by itself estops a man denying nothing what ever excepting that he has witnessed the execution of the deed. It conveys neither directly nor by implication any knowledge of the contents of the document and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course possible as was pointed out by their Lordships in the case of Banga Chandra Dhur Biswa v. Jagat Kishore Acharya Chowdhuri AIR 1916 P.C. 110 that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document but no such knowledge ought to be inferred from the mere fact of the attestation."

5. In view of the principles laid down by the Supreme Court as well as by the

Privy Council the argument raised by Mr. Mahajan is devoid of merit and is thus liable to be rejected. The view taken by the Courts below is correct on facts and law. Therefore, the instant appeal is liable to be dismissed.

For the reasons recorded above, this appeal fails and same is dismissed.