
(1981) 07 AHC CK 0019
In the Allahabad High Court
Case No : Second Appeal No. 1894 of 1970

Ramji Ram

APPELLANT

Vs

Smt. Krishnawati Devi and Others

RESPONDENT

Date of Decision : 29-07-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 64

Citation : (1981) AWC 679

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—This is a defendant's second appeal from a decree declaring the property in suit to be not liable to attachment and sale in execution of the decree in suit No. 229 of 1959 (Ramji v Bikrama Rai) of the Court of Munsif Ghazipur. Smt. Krishnawati Devi, Plaintiff-Respondent No. 1 purchased the property on 28th November, 1959 from Smt. Sheobachni Devi who was the third Defendant in the suit and the wife of Bikrama Rai, the judgment debtor in the earlier suit and the second Defendant in the suit giving rise to the present second appeal. The decree holder in the earlier suit Ramji Ram was impleaded as the first Defendant and is the applicant in this Court.

2. The undisputed facts are that the house in suit was attached before judgment in the earlier suit on 17th November, 1959. The sale deed in favour of the Plaintiff-Respondent Smt. Krishnawati Devi, which is Ext. 9 on the record is dated 29th November, 1959 which was 11 days after the property had been attached. The earlier suit was decreed against Bikrama Rai on 4th April, 1960 and an objection filed by the present Plaintiff-Respondent Smt. Krishnawati Devi under Order 38 Rule 8 read with Order 21 Rule 58 of the Code of Criminal Procedure in that suit, was dismissed on 12th May 1960. The present suit under Order 21 Rule 63 of the Code of Criminal Procedure was filed on 18th May, 1961.

3. Mr. R. S. Misra appearing for the Appellant urged before me that leaving aside every thing else, the suit was on the face of the plaint bound to be dismissed as the sale in favour of the Plaintiff was void u/s 64 of the Code of Criminal Procedure. The plaint does mention the fact of attachment of the property on 17th November, 1959 and also the fact of purchase of the property by the Plaintiff on 28th November, 1959, but the Plaintiff has added the plea that she did not know of the attachment when she purchased the property. May be that was so, but knowledge of attachment is not relevant u/s 64 of the Code of Criminal Procedure. It declares where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment." The explanation to that section is not relevant for our present purposes.

4. The declaration sought in the present suit was that the property was not liable to attachment and a sale in execution of the decree in the earlier suit. The Plaintiff was a person who had purchased the property inspite of the attachment which was subsisting when she purchased the property. The sale was in this sense contrary to the attachment but the property attached did not stand in the name of the Defendant Bikrama Rai on the date of the attachment. It had already been transferred by a deed of gift dated 13th March, 1957 to his wife. Smt. Sheobachani who was the Plaintiff's vendor. The question whether the Plaintiff Respondent could maintain the suit was not raised before the trial Court nor before the lower appellate Court. The question which was raised at the trial was whether the gift in favour of Smt. Sheobachani Devi and the sale made by her to the Plaintiff-Respondent were sham and fictitious and whether they were made by Bikrama Rai to defeat and delay his creditors.

5. Mr. G. P. Bhargava appearing for the Plaintiff-Respondent urged that under the circumstances it could not be said that the Plaintiff-Respondent was not entitled to impugn the attachment on the ground that the gift in favour of her vendor, namely, Smt. Sheobachni Devi was perfectly valid for if the gift was valid the attachment was bad and the attachment being bad the sale in favour of the Plaintiff Respondent would be good for all purposes.

6. Section 64 of the Code of Criminal Procedure does not render a sale made contrary to an attachment void for all purposes. It is void as against all claims enforceable under the attachment" that this is the law is clear even from the two authorities of this Court cited by the learned Counsel for the Defendant Appellant, namely, (1) Maheshwari Khetan Sugar Mills (P.) Ltd. and Others Vs. Ishwari Khetan Sugar Mills and Others, and Official Receiver, Muzaffarnagar Vs. Chandra Shekhar and Others, . That being so the Plaintiff Respondent could surely impugn the validity of the attachment by showing that the gift deed in favour of her vendor, namely, Smt. Sheo Bachani was valid and good. Mr. R. S. Misra then contended that the finding of the lower appellate Corrt that the said

gift and sale were genuine transactions and not invalid for having been executed by Bikrama Rai for defeating and delaying his creditors, is vitiated in law. Having heard learned Counsel for the parties on this point and having gone through the judgment of the two Courts below particularly the reasons given by the trial Court for its findings on issues nos. 2 to 5 and 8 I am satisfied that the gift deed executed by Bikrama Rai in favour of his wife Smt. Sheobachani was a bonafide and valid transaction. It was not a sham transaction and it was not bad for having been executed by Bikrama Rai in order to delay and defeat his creditors. If the gift deed is valid, the attachment was bad, for the property did not belong to Bikrama Rai on the date when it was attached and that being so the sale in favour of the Plaintiff Respondent was not hit by Section 64 of the Code of Criminal Procedure.

7. In the result the appeal fails and is dismissed with costs.