
(1974) 08 MP CK 0001
In the Madhya Pradesh High Court
Case No : S.A. No. 227 of 1968

Sakharam Nandlalji and another	Vs	APPELLANT
Bhawani Ram Gajanand and others		RESPONDENT

Date of Decision : 28-08-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 210

Citation : (1974) 08 MP CK 0001

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Advocate : P.C. Pathak, for the Appellant; R.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sen, J.—This appeal filed by the plaintiffs is directed against a decree of the 3rd Additional District Judge, Bilaspur.

2. The short question for consideration in the appeal is whether the learned Additional District Judge was justified in holding that the plaintiffs' suit was not maintainable. The plaintiffs purchased 15.22 acres of land, situate in Mouza Turkadih, from Shrimati Ahilyabai, widow of Kanhaiyalal, by a registered sale deed dated 30-11-1954. Thereupon, Gajanand, who was the presumptive reversioner, brought Civil Suit No. 130-A of 1957, challenging the sale by the widow, after the death of Shrimati Ahilyabai, on the ground that the sale was not binding on him. That suit was decreed on 17-11-1958, but before any appeal could be filed, the parties settled their dispute, as per the terms of the dastbardarnama dated 18-12-1958, Ex. P.3. By the relinquishment deed, Gajanand relinquished all his rights and title to the suit lands and declared that the plaintiffs shall be the exclusive owners thereof, in lieu of payment of Rs 1,000. The adjustment, however, remained to be certified. Meanwhile, Gajanand died during the execution proceedings. The defendants, who are heirs of Gajanand, were brought on record at his legal representatives. One of them, i.e. Bhawaniram, executed the decree, despite the objections of the plaintiffs, who

are the judgment-debtors that the decree was discharged by the settlement. The matter was fought right upto the High Court.

3. In *Bhawani v. Sakharam & others* Miscellaneous (Second) Appeal No.70 of 1961. it was held that, having regard to the provisions of Order 21, Rule 2 (3) of the Code of Civil Procedure, the uncertified adjustment would not be recognized by the executing Court, stating--

16. Before pariing with the case, I may make it clear that nothing contained in this order would adversely affect the right of the judgment-debtors to secure compliance of the deed of relinquishment by adopting appropriate remedy and to claim damages from the decree holder and further to institute proceedings for getting a charge u/s 210 of the Indian Final Code of fraudulently getting the decree executed enquired into according to law.

The plaintiffs accordingly brought the present suit for declaration of title to, and for possession of the suit lands, on the strength of the said uncertified adjustment. The suit was decreed by the learned trial Judge, on his construction that the deed of relinquishment was one of sale. On appeal, the learned Additional District Judge held that though the deed was styled as "dastbardar-nama" it was not a deed of relinquishment, nor was it, according to him, a sale deed. According to his view, he held that it could not create any right or interest in favour of the plaintiffs and that no suit for title and possession could lie, on the basis of the deed. He, further held, on the basis of the observations made by the High Court that the plaintiffs' remedy lay in a suit for damages.

4. The view taken by the learned Additional District Judge that the deed was not a deed of relinquishment can hardly be supported. The document is styled as "dastbardarnama", and the recitals show that Gajanand had relinquished all his rights, title and interest in the suit lands and recognized the plaintiffs to be the owners thereof, on payment of Rs. 1,000. On a plain construction of the deed, it is nothing but a deed of relinquishment. The finding of the learned Additional District Judge, that no suit for title or possession, on the basis of the deed could lie, was not supported before me.

5. The only question for consideration is whether the plaintiffs' suit, based upon the uncertified adjustment, was maintainable. The prohibition under Order 21, Rule 2 (3) of the CPC against the recognition of uncertified payment or adjustment is limited to a "Court, executing the decree". It was, therefore, only the executing Court that was debarred from recognising the uncertified adjustment. A suit based upon such adjustment is not barred. In *Isvar Chandra Dutt v. Haris Chandra Dutt* I L R 25 Cal. 718., it was held that such a suit was maintainable. Chunder Modhub Ghose J. observed--

The defendants, decree-holders have already in execution of the decree been put in possession of the properties covered thereby, and what the plaintiffs now say is in effect this:

Subsequent to the decree you received from us certain considerations for which you conveyed the property covered by the decree; we were not at liberty to oppose the execution of the decree, and so you were put in possession of the property in execution; but we are, notwithstanding entitled to recover the same from you upon the conveyances executed by you. We think that this action is quite maintainable.

It has, however, been contended by the learned Vakil for the respondents that the adjustment which was pleaded by the plaintiffs in the execution department could have been dealt with by the Court u/s 244 of the CPC (corresponding Order 21, Rule 2 (3) of the Code, 1908) and therefore, the present suit is incompetent, But having regard to the provisions of the last paragraph of section 258, to which we have already referred, we are unable to hold that the executing Court could go into a question which is distinctly prohibited from being gone into any Court executing the decree". It seems to us, therefore, that there is no reason why the plaintiffs should not be entitled to recover upon the documents to which we have already referred documents executed subsequent to the passing of the decree, and by which distinct rights were conveyed to them".

Ameer Ali J., by his separate judgment, expressed the same view. The decision in Iswar Chandra Dutt v. Haris Chandra Dutt (supra) has throughout been followed. See Maung Myo v. Maung Kha A I R 1923 Rang. 88 ., Bondru Avasu Mahajan Vs. Dagadu Ekoba Dhake, . and Akbar Ali Khan and Others Vs. Dr. Ishwar Saran,

6. In view of the above, it must be held that the plaintiffs' suit is maintainable. But the suit has still to be tried upon its merits. The defendants, who are heirs of Gajanand, have impeached the relinquishment deed. Ex. P-3, on various grounds, such as fraud, undue influence, want of consideration etc. These issues have to be decided on the evidence that the parties may adduce in support of their pleadings.

7. The result, therefore, is that the appeal succeeds and is allowed. The judgment and decree of the Courts below are set aside, and the suit is remanded to the trial Judge for deciding it afresh with a direction that he will first frame proper issues arising from the pleadings of the parties and then afford the parties full and proper opportunity to adduce such further evidence as they may desire, in support of their respective case. The costs shall abide the event. Counsel's fee Rs. 50 if certified.