

(1980) 09 KAR CK 0015
In the Karnataka High Court
Case No : RSA 493/74

Seshamma by Lrs

APPELLANT

Vs

Channakeshaviah M.K.

RESPONDENT

Date of Decision : 29-09-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5

Citation : (1981) 1 KarLJ 126

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. This plaintiff's second appeal is against the judgment and decree of the lower appellate Court reversing the judgment and decree of the trial Court.

2. It is necessary to state that within two months after the plaint was presented and before the written statement was filed by the defendant, the plaintiff passed away and since then she is represented by her legal heirs.

3. The plaintiff presented the suit praying for a declaration that a deed of gift dated 13-9-65 registered as No. 1877 of 1965-66 in Book 1, Vol. 2028 at pages 118-121 in the office of the Sub-Registrar, Bangalore City North to be null and void and the same had been obtained by misrepresentation, fraud and undue influence by the defendant and for other consequential prayers such as awarding of costs etc.

4. The facts, briefly stated, leading to the suit are as follows:

The plaintiff had half interest in the suit schedule properties consisting some residential accommodation bearing No. 267, Kottige Veerabhadrappe Lane, Cottonpet, Bangalore City. The other half interest in the said property was with one Yellamma. It is not in dispute that the deceased-plaintiff Seshamma and Yellamma were the absolute owners of the property in question. The defendant, according to the plaint allegation, had been brought to the house as a child by Keshavaiah the husband of Yellamma from the village Gudibanda as the defendant had lost his father when he was very young for the purpose of being

educated at Bangalore. The defendant had to return to his native place Gudibanda soon after the death of Keshavaiah and thereafter, the defendant came to Bangalore claiming to be a well wisher of the plaintiff and Yellamma and in that circumstance was permitted to reside with them in the property aforementioned. On account of the old age of the plaintiff Sheshamma and Yellamma, the defendant was assisting them in the matter of collecting rents from the tenants by issuing receipts etc. That about two months prior to the filing of the suit, the defendant represented to the plaintiff that she was required to sign certain documents before the Sub-Registrar which were said to be noother than certain applications to the Corporation Authorities for revision of house tax. In that circumstance, she accompanied the defendant and before the Sub-Registrar affixed her thumb impression believing it to be an application for the revision of house tax. Not being a literate she never knew the document as nobody explained the contents to her. However, the subsequent change of attitude in the defendant towards her and Yellamma led her to suspect as to what she had done and on enquiries learnt that indeed she had executed a deed of gift and therefore, she had filed the suit to avoid the gift deed.

5. The defendant resisted the suit stating that he was the adopted son of Keshavaiah the deceased husband of Yellamma that the suit was not maintainable because the so called legal representatives were not really the legal representatives of the deceased; that he was managing the properties as he was the adopted son of late Keshavaiah husband of Yellamma; that the allegation that he had made misrepresentation and committed fraud and used undue influence to get the gift deed executed in his favour was false and that the gift deed in question was executed out of love and affection deceased Seshamma, had for him.

6. On the pleadings as above, the trial Court framed the following issues:

(1) Whether the gift deed in favour of the defendant was taken by practising fraud and misrepresentation on the deceased-plaintiff?

(2) Whether the gift deed is liable to be set-aside?

(3) To what reliefs are the parties entitled?

Additional Issues:

(1) Whether the defendant can agitate that the persons who are now brought on record as legal representatives of the deceased plaintiff are not the real legal representatives and if yes whether they are not the legal heirs of the deceased Seshamma?

(2) Whether a right to get the gift deed cancelled was the personal right of the deceased plaintiff and whether therefore her legal representatives cannot continue the suit?

(3) Whether the suit is bad for misjoinder and non-joinder of parties?

The additional issues appear to have lost all significance in the course of the trial because the evidence was adduced and recorded in regard to main, issues only. It was held by the trial Court that the plaintiffs could maintain the suit. Therefore, the importance of the additional issues were lost and the defendant has not agitated about those findings thereafter. In that view of the matter what really survived for consideration of the trial Court was the issue originally framed. The evidence was led only in respect of the issues framed originally. Evidence was led only in respect of the issues framed in regard to misrepresentation and fraud. The defendant also contested the suit only in respect of that issue. It, however, transpired that the trial Court while dictating judgment framed an additional issue as regards the plea of undue influence by the defendant in obtaining the gift deed.

7. While holding on the original issues framed against the plaintiff, on the additional issue framed while writing the judgment, the learned Munsiff came to the conclusion that the gift deed was bad in as much as the defendant had secured the same by undue influence. Aggrieved by such finding the defendant preferred the appeal to the lower appellate Court. The lower appellate Court came to the conclusion that while it was competent for the Munsiff to frame an issue for just decision of the case while writing the judgment, nevertheless held that issue against the plaintiff. The plaintiffs have assailed the same in this second appeal.

8. The learned Counsel appearing for the appellant and the respondent have urged several grounds in support of their case and have placed reliance on a number of cases decided by the Supreme Court and this Court. In my opinion it is unnecessary either to advert to their arguments and give my findings or even refer to those decisions.

9. The matter requires to be remitted back to the trial Court on a short question of law which the lower appellate Court has overlooked. If the gift deed in question was obtained by the defendant by undue influence as held by the trial Court on formulating that issue while writing the judgment, having regard to the provisions contained in Sec. 16(3) of the Contract Act, the burden of proving that there was no undue influence shifted on the defendant. But the defendant never being aware of that burden could not be saddled with a decree against him unless he had a clear opportunity of discharging that burden. Similarly, the learned Civil Judge, in appeal, once he came to the conclusion that the Munsiff was competent to frame the issue while writing the judgment for just disposal of the case, ought to have remitted back the case to the trial Court with a direction to give opportunity to the plaintiff to discharge the onus of proving the case of undue influence assuming that S. 16(3) of the Contract Act was not attracted.

10. In this view of the matter, the evidence on record is insufficient to, decide the case one way or the other.

11. I, therefore, think it proper and just in the circumstances of the case to remit

the matter to the trial Court to try the issue whether the gift deed in question was obtained by undue influence by the defendant after giving the parties due opportunity to, lead evidence as may be necessary to discharge their respective burdens. Accordingly, the judgment and decree of the lower appellate Court is set-aside The matter is remitted back to the trial Court to try the issue of undue influence afresh permitting the plaintiffs to amend the pleadings if they apply and also permitting the defendant to file additional statement in accordance with law.

12. The above order made by this Court will not in any way affect the findings already recorded by the trial Court in respect of other issues nor should it be construed as to which of the parties should discharge the burden on the issue now to be tried by the trial Court. It is further clarified that the contention advanced by the Counsel for the defendant-respondent that there was no adequate pleadings and particulars in the matter of undue influence is also left open for him to agitate before the trial Court afresh if the pleadings are not amended suitably.

13. Appeal allowed to the extent indicated above. The trial Court will decide the suit now remitted back within three months.

14. In the circumstances of the case parties will bear their own costs.

15. The appellant is entitled to refund of full Court fee paid in this appeal under Section 64 of the Karnataka Court Fees and Suits Valuation Act.