

(2011) 12 MP CK 0048
In the Madhya Pradesh High Court
Case No : S.A. No. 829 of 1996

Shakuntalatiwari (Smt.)

APPELLANT

Vs

Mohammad Ramjan

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Citation : (2012) ILR (MP) 160 : (2012) 4 MPJR 78

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Aradhe, J.—This appeal has been preferred by the plaintiff. This Court vide order dated 13.4.1998 while admitting the appeal had formulated the following substantial questions of law:-

A. Whether the lower appellate Court was right in reversing the judgment and decree of the trial Court on the ground that the appellant was not entitled to a decree of entire house even though the sale deed was found to be totally illegal and without consideration

B. Whether the joint decree between the appellant and the respondent no. 2 could be granted

Facts giving rise to filing of the appeal briefly stated are that the plaintiff filed a suit inter-alia on the ground that suit house was constructed by her father late Madan Mohan approximately thirty years ago. Admittedly, the defendant no. 2 is the mother of the plaintiff. It was pleaded in the plaint that plaintiff and defendant no. 2 have equal share in the suit house, therefore, defendant no. 2 alone had no authority to alienate the suit house. It was also pleaded that defendant no. 2 was not in a fit mental condition after the death of her husband and son and defendant no. 1 taking advantage of the situation, got the sale deed executed in his favour on 2.3.1987 without payment of any consideration. Since the sale consideration was not paid, a mortgage deed on the same day was

executed in favour of defendant no. 2. It was also pleaded that on 1.3.1987, the defendant no. 1 forcibly took possession of the part of the suit house and on 5.5.1987 threatened the plaintiff with dispossession. Accordingly, the plaintiff filed the suit seeking the relief of declaration that she is owner of the suit house and the sale deed dated 2.3.1987 executed by defendant no. 2 in favour of defendant no. 1 is null and void. The plaintiff sought a decree for possession as well as permanent injunction restraining the defendant no. 1 from interfering with her possession over the suit house.

2. The defendant no. 1 filed the written statement in which inter-alia it was pleaded that defendant no. 2 was the owner of the suit house and she had the authority to sell the suit house. The defendant no. 2 was in a fit physical and mental condition to execute the sale deed. The sale deed had been executed by her voluntarily on receipt of consideration. It was also pleaded that defendant no. 2 placed defendant no. 1 in possession of part of the suit house and assured him that possession of the remaining portion shall also be handed over to him. The defendant no. 2 did not file any written statement and was proceeded ex-parte.

3. The trial Court vide judgment and decree dated 29.3.1993 decreed the suit preferred by the plaintiff. The trial Court on the basis of documentary evidence on record namely Ex.P/2, P/3 and D/1 as well as the statement of defendant's witness namely Gulam Hussain DW-4 held that suit house was constructed by father of the plaintiff. It was further held that plaintiff and defendant no. 2 are the co-owners and were in possession of the suit house being the legal representatives of late Madan Mohan. The trial Court on the basis of the statement of plaintiff namely PW-1 as well as Krishna Kumar PW-2 and Praveen Kumar PW-3 held that sale consideration was not paid to defendant no. 2 as witnesses to the sale deed have stated in their statement that the sale consideration was not paid to the defendant no. 2. The trial Court further held that there is inconsistency and contradiction in the statements of DW-1 Mohd. Ramjan, DW-2 Ansarul Haq, DW-3 Ramesh Prasad, DW-4 Gulam Hussain and DW-5 Babu with regard to payment of sale consideration. It was also held by the trial Court that defendant no. 1 executed the mortgage deed Ex.P/3 on the same day in favour of defendant no. 2 as the sale consideration was not paid to her. It was further held by the trial Court that defendant no. 1 has not been able to prove that the suit house was sold for legal necessity. It was also held that defendant no. 2's son had died on 4.1.1987 and immediately thereafter, the sale deed dated 2.3.1987 was executed. Accordingly, it was held that defendant no. 2 was not in a fit mental condition to execute the sale deed. Accordingly the suit was decreed.

4. Being aggrieved by the aforesaid decree, the defendant no. 1 preferred an appeal. The appellate Court vide judgment and decree 9.9.1996 modified the decree passed by the trial Court. The appellate Court held that since the plaintiff was not a party to the sale deed dated 2.3.1987, therefore, she can challenge the sale to the extent of her share only. The defendant no. 2 who had executed

the sale deed has not challenged the sale deed. Accordingly, it was held that sale deed is valid to the extent of share of defendant no. 2. It was further held that since the sale deed executed in favour of defendant no. 1 is valid to the extent of share of defendant no. 2, therefore, it cannot be said that defendant no. 1 is in unauthorised possession of the suit house. Accordingly, the decree passed by the trial Court was modified and the sale deed was declared void to the extent of plaintiff's share in the suit house. The appellate Court set aside the decree of the trial Court in so far as it granted the decree for possession and permanent injunction in favour of plaintiff.

5. Learned counsel for the appellant submitted that the Courts below have found that the sale deed was executed without any consideration. Therefore, the appellate Court erred in reversing the judgment and decree of the trial Court and in holding that the sale deed is void only to the extent of plaintiff's share. It was also submitted that the sale deed ought to have been declared void in its entirety. In support of his submissions, learned counsel for the appellant has placed reliance on *Badriprasad Vs. Bhagwandas*, AIR 1956 MB 117, *Ehsanali Vs. Kikabhai*, AIR 1956 MB 118, *Puny Kalu and Another Vs. Sankar Kalu, Ramkrishna Maniram Lende and others Vs. Vithalrao alias Baboo and others*, [1978 MPLJ 500] and *Bhagwandas Vs. State of M.P. and another*,

6. On the other hand, learned counsel for respondent no. 1 submitted that respondent no. 1 has filed the cross-objection in which the finding recorded by the appellate Court that sale deed is void to the extent of share of the plaintiff has been challenged. It was further submitted that the sale deed was executed for legal necessity and the finding that the sale deed was executed without any consideration has been set aside in appeal by the appellate Court. Therefore, the appellate Court ought to have allowed the appeal in its entirety. In support of his contention, learned counsel for respondent no. 1 has placed reliance on the decisions in *Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others*, , *Prasad and Others Vs. V. Govindaswami Mudaliar and Others*, *Panni Lal Vs. Rajinder Singh and Another*, *Vimal Chand Ghevarchand Jain and others V. Ramakant Eknath Jadoo*, 2009 (4) M.P.L.J. 35, *Baba Saheb Nimalkar V. Laxmi Bai (dead) others*, 2007 (2) M.P.H.T. 145.

7. I have considered the submissions made on both sides and have perused the records. The recital in the sale deed about transfer of title, receipt of consideration and delivery of possession are normally evidence of such acts and event. On execution and registration of the sale deed, the sale is normally complete even if sale price was not paid. See: *Janak Dulari Devi and Another Vs. Kapildeo Rai and Another*, . In the case of *Ramdas Vs. Sitabai and Others*, the Supreme Court has held that if a co-owner executes a sale deed in respect of the entire property and hands over the possession to the third party, the sale deed would be invalid to the extent of the share of the other co-owner without whose consent and knowledge the property was sold, and who was party to the sale deed. Actual payment of the price at the time of execution of the sale deed is not

sine-qua-non for completion of the sale. The real test of sale is the intention of the parties. See: Vidhyadhar Vs. Manikrao and Another,

8. In the context of aforesaid well settled legal position, facts of the case may be seen. The recital contained in the registered sale deed dated 2.3.1987 (Ex.P/1) shows the receipt of consideration as well as delivery of possession. The sale deed Ex.P/1 shows that the sale is complete. Merely because the sale price is not paid, the sale deed cannot be held to be invalid. At the most, if the seller who has sold the property and has not received the sale consideration, may sue for recovery of the sale consideration. In the case of Prem Singh and Others Vs. Birbal and Others, , it has been held by the Supreme Court that there is a presumption that registered document is validly executed. A registered document therefore prima-facie would be valid in law. A voidable document is required to be avoided whereas a void document is not required to be avoided. In the instant case, the registered sale deed Ex.P/1 has been executed by defendant no. 2 in favour of defendant no. 1, which is prima-facie valid and, therefore, a presumption arises with regard to its genuineness. Even assuming that the sale deed was executed without payment of any consideration and the defendant no. 2 was not in a fit physical and mental condition at the time of execution of the sale deed, the same would be binding on defendant no. 2 and would be voidable document. Since, defendant no. 2 has not challenged the same, it would bind her and it would be invalid only to the extent of the share of the plaintiff, in view of the law laid down by the Supreme Court in Ramdas Vs. Sita Bai, supra.

9. For the aforementioned reasons, the first substantial question of law is answered in the affirmative and against the appellant. From perusal of the decree passed by the appellate Court, it does not appear that any joint decree has been passed in favour of the appellant and the respondent no. 2. Therefore, the second substantial question of law framed by this Court infact does not arise in the facts and circumstances of the case. In the result, the appeal as well as the cross-objection fail and are hereby dismissed.