
(2007) 05 AHC CK 0330
In the Allahabad High Court

Shrimati Chhangura (D.) through L.Rs.	APPELLANT
Vs	
Mata Prasad and Others	RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 109A

Citation : (2008) 1 AWC 742 : (2008) 104 RD 32

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the parties.

2. This is plaintiff's second appeal against the judgment and decree dated 23.7.1976, passed by 1st Additional District Judge, Gorakhpur in Civil Appeal No. 16 of 1975 setting aside the judgment and decree of the trial court in Original Suit No. 750 of 1968.

3. The facts giving rise to the dispute is that the suit was instituted by the plaintiff for cancellation of sale deed dated 16.10.1964 alleged to be executed by Kalika Prasad, father of the plaintiff in favour of the defendant-respondents. The sale deed was executed on 16.10.1964 and vendor Kalika Prasad (father of the plaintiff) died on the same day. An application for issuing bhumidhari sanad was moved on 16.10.1964 and bhumidhari sanad was granted on 19.10.1964. The defendant Mata Prasad applied for mutation of his name on the basis of disputed sale deed, to which the plaintiff filed her objection claiming that she is only daughter of late Kalika Prasad and entitled to be recorded in his place. A compromise was entered into in the mutation proceeding where the defendant Mata Prasad admitted that Smt. Chhangura is the daughter of late Kalika Prasad. The deed of compromise is paper No. 57Ga. Pursuant to the aforesaid compromise, name of Smt. Chhangura was recorded by means of an order of Tehsildar dated 27.9.1966. Mata Prasad once again made an application for

mutating the name of the defendants on the basis of the sale deed dated 16.10.1964. After receipt of the notice, the plaintiff instituted the suit on 20.7.1968. However, during the pendency of the suit, the name of defendant was directed to be recorded in place of Kalika Prasad/Chhangura vide order dated 16.9.1968. The defendants filed their written statement. A number of issues were framed by the trial court. The trial court decreed the suit vide judgment and decree dated 15.2.1975 coming to a conclusion that late Kalika Prasad was not in sound mental condition and lacked clear understanding and therefore was not physically and mentally fit to execute the sale deed. The sale deed was executed on the same day when he died, i.e., 16.10.1964. Besides, the admitted position is that he was only a sirdar on the date of execution of sale deed and has no right to transfer the land. The judgment and decree of the trial court was challenged in an appeal by the defendant-respondents. The appeal was allowed holding that Kalika Prasad was physically and mentally fit at the time of execution of sale deed and he died on 19.10.1964 on the date when the bhumidhari sanad was granted to him. While coming to the conclusion that Kalika died on 19.10.1964, reliance was placed on his death certificate produced by the defendants.

4. I have heard the counsels at length and gone through the two judgments as well as the trial courts' record. The admitted case of the plaintiff-appellant is that the sale deed was executed on 16.10.1964. The contention of the plaintiff is that Kalika Prasad was 100 years old. He was not in a position to understand and realize and also could hardly hear and see because of his old age. However, the trial court concluded that he was 75 years of age but was not having proper understanding and the sale deed was executed in suspicious circumstances. The issue Nos. 1, 2 and 3 were decided in favour of the plaintiff. The trial court recorded a specific finding and accepted the plaintiffs claim that the defendants brought Kalika Prasad to Gorakhpur on the pretext of his treatment and got the sale deed executed, killed him and took back his corpse to the village. The application for grant of bhumidhari sanad was made on the same day and the sanad was granted only on 19.10.1964. Besides an area of more than 2 acres of land was sold by Kalika Prasad for a petty amount of Rs. 1,000 only. The defendant No. 1 Mata Prasad has stated that Rs. 900 was paid to Kalika Prasad whereas Rs. 100 was given prior to the execution of the sale deed. There is no document to substantiate the advance amount of Rs. 100 whatsoever. Besides, the application made for obtaining the bhumidhari sanad was not produced in the Court to establish that there was any signature or thumb impression of Kalika Prasad. All these circumstances were taken into consideration while recording a finding by the trial court that the sale deed was executed in suspicious circumstances and, therefore, liable to be cancelled. The lower appellate court relied upon only on the death certificate brought on record. The argument of the learned Counsel for the appellant that there is no presumption of correctness of such entry u/s 109A of U. P. Panchayat Raj Act, is also well founded. It was burden of the defendant-respondents to prove that the sale deed was executed

by Kalika Prasad in a fit state of mind for valid consideration and that he had a valid and legal right to transfer the property on the date when it was executed. Admittedly the bhumidhari sanad was granted only on 19.10.1964, i.e., subsequent to the execution of the sale deed. The lower appellate court reversed the judgment and decree of the trial court without setting aside the findings and conclusion of the court below. The lower appellate court was liable to set aside each and every finding of the trial court before coming to a contrary conclusion.

5. Learned Counsel for the appellant has placed reliance on a decision in the case of Parasnath Rai and Ors. v. Tilesra Kuar 1965 ALJ 1080 . The reference is to the rules regarding transaction by pardanashin lady which equally apply to illiterate and ignorant man or woman which may not be necessarily a pardanashin. The next decision relied upon is, Lakshmi Amma and Another Vs. Talengalanarayana Bhatta and Another,

6. In the instant case, the trial court has given a categorical and specific finding discussing the circumstances in which the sale deed was executed. The entire evidence was taken into consideration while arriving at a conclusion that the sale deed was executed in suspicious circumstances and vendor Kalika Prasad was not in a fit state of mind to understand the implication of the signature or thumb impression on the document which was actually a sale deed as well as the fact that the huge area of land was sold for a pittance and that too the entire amount was not paid. There was nothing on record to establish that Rs. 100 was paid previously and the lower appellate court failed to take into consideration that the vendor had no right to transfer the property on the date when the sale deed was executed. The lower appellate court without setting aside any of the findings placed reliance on death certificate which was produced at the instance of the defendants. This Court in the case of Mahendra Singh v. Niranjana Singh 1995 (26) ALR held that the findings of the trial court, which are based on assessment of oral evidence, particularly, noticing the demeanour of witnesses cannot be reversed by the appellate court. It can only be done in exceptional circumstances after pointing out specific reasons and grounds for doing so, by the appellate court. In the case of Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, it was held as under:

At this stage, it would be right to refer to the general principle that, in an appeal against a trial court decree, when the appellate court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony, when there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies.

7. Similar view was expressed in the case of *Jasmel v. Rajendra Prasad Saxena and Ors.* 1998 (33) ALR 84 . This Court had ruled that a decree passed by the trial court cannot be reversed in an appeal without setting aside the findings recorded by the trial court. The appellate court can interfere only when appraisal of evidence by the trial court suffers from material irregularity or passed on inadmissible evidence. This Court had also held that in such a situation where the lower appellate court has reversed a finding without setting aside the specific finding of the trial court and judgment of the lower appellate court suffers from material irregularity, the High Court can very well reverse the findings of the lower appellate court in exercise of jurisdiction u/s 100, C.P.C. In the case of *S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others*, it was laid down that the appellate court has to bear in mind reasons scribed by the trial court for its findings and the same should be considered before setting aside the judgment in first appeal.

8. I have examined the judgment of the lower appellate court. The reasoning given for holding that Kalika was of sound mind and completely agile at the time of execution of the sale deed is that since the plaintiff and her sons were not present with him and left him alone is sufficient to infer that he was in good health. The endorsement of the Sub-Registrar that Kalika got down from a rickshaw in front of his office at the time of execution of the sale deed. The Sub-Registrar failed to make a note that Kalika was infirm physically and mentally, it was enough to arrive at a conclusion that the executor/vendor was in perfect condition and was able to understand the implication of what he was doing when the sale deed was executed. The trial court had considered all the aspects and the existing circumstances as well as the hot haste of the defendant-appellant in applying for bhumidhari sanad and also extended to him the benefit available to a pardanashin lady, could not be brushed aside lightly by the learned Additional District Judge as it has been done in the instant case. The disabilities which grant protection to a pardanashin lady is not only because she is behind a veil but also for the reason of old age, infirmity, ignorance, illiteracy, mental deficiency and inexperience. Admittedly the plaintiffs father was aged 75 years, ailing, illiterate and died on or soon after executing the sale deed, the lower appellate court should have been very cautious and examined all the aspects.

9. In view of the various decisions, I hold that there is no exceptional circumstances pointed out by the lower appellate court for dislodging the finding of fact recorded by the trial court on the basis of the appraisal of oral testimony. The appellate court fell in error in upsetting the findings of the trial court on all the issues.

10. Besides the aforesaid fact, the most glaring circumstance is that on the date of execution of the sale deed, the vendor had no right to transfer the land and, therefore, taking into consideration the entire circumstances in which the sale deed was executed, the executor of the sale deed as well as the bhumidhari sanad was obtained on a subsequent date, consequently the sale deed dated

16.10.1964 stands cancelled. The findings of the trial court are affirmed and the Judgment and decree of the lower appellate court dated 23.7.1976 is set aside. The second appeal is allowed with cost.