
(1992) 09 CAL CK 0046

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1393 of 1969

Sk. Amiruddin Ali alias Sk. Amiruddin Mondal

APPELLANT

Vs

Smt. Kali Bala Bhunia

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Evidence Act, 1872 — Section 105, 111

Citation : (1993) 1 CALLT 121 : 97 CWN 495` : 97 CWN 495

Hon'ble Judges : Jyotirindra Nath Hore, J

Bench : Single Bench

Advocate : Himanshu Kumar Basu, for the Appellant; Minal Kanti Roy, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirindra Nath Hore, J.—This appeal is directed against the judgment and decree passed by the learned Subordinate Judge, First Court, Midnapore dated 23.8.68 in Title Appeal No, 674/67 affirming those of the learned Munsif, 3rd Court, Midnapore in Title Suit No. 162/67.

2. The plaintiff/respondent Smt. Kalibala Bhunia instituted the said Title Suit No. 162/62 against the defendant/appellant for a declaration that the Kobala executed by her in favour of the defendant on 28.1.64 is a void document without consideration and not binding on the plaintiff and for permanent injunction restraining the defendant from interfering with the plaintiff's possession in respect of the suit land. Admittedly, the disputed property belonged to the husband of the plaintiff who died in 1367 B. S. leaving the plaintiff and a daughter named Gita Rani as his heirs. The plaintiff gave her daughter Gita Rani in marriage with one Haripada Sur. To meet the expenses of such marriage the plaintiff on behalf of herself and as guardian of her minor daughter sold some properties to her husband's elder brother. She also gave some properties by way of gift to her son-in-law Haripada as dowry for the marriage. Thereafter, her daughter died childless and the plaintiff inherited her

share. It was alleged that after her daughter's death, her son-in-law and his father put pressure upon the plaintiff for executing a deed of gift in favour of her son-in-law Haripada but the plaintiff refused to accede to such demand. Plaintiff's husband's brother and her son-in-law then influenced plaintiff's bargadars to deliver meagre quantity of paddy to the plaintiff as her share. Placed in such a predicament, the plaintiff sought for the assistance of her neighbour Khandu Singh who was then working as a labourer under defendant's father. Khandu introduced the plaintiff to the defendant who asked the plaintiff to execute and register a power of attorney in his favour for enabling him to look after her property and the plaintiff agreed to it. It was further alleged that on 21.8.64 the defendant got a kobala executed and registered by the plaintiff in respect of the suit land upon a fraudulent misrepresentation that the deed was a power of attorney and in that year the defendant realised plaintiff's share of bhag produce from the bargadars and delivered the same to her. Next year the defendant did not deliver her full share of the bhag crops and the plaintiff subsequently came to learn that the defendant surreptitiously procured a sale-deed from her under misrepresentation that the deed executed by her was a power of attorney. It was the case of the plaintiff that she executed the impugned sale deed on 21.8.84 under the impression that it was a power of attorney as misrepresented by the defendant and was not aware about the real nature of the document executed by her. It was not her conscious mental act and the sale deed was not binding on her.

3. The defendant contented the suit by filing a written statement alleging that the impugned sale deed was executed by the plaintiff with full knowledge of its contents. The recitals in the sale deed were read over and explained to her and she understood the contents thereof. It was her conscious mental act and no fraud was practised upon her in the matter of the execution of the sale deed. The kobala was executed by the plaintiff for repayment of debts incurred by her in connection with her daughter's marriage and sradh ceremony of her daughter. The further defence case was that subsequent to the execution of the kobala the defendant was in khas possession of a portion of the suit land and he was in possession of the remaining portion through bargadars.

4. Upon consideration of the evidence in detail the learned Munsif held that the recitals of the document were not read over and explained to the plaintiff before execution of the document by putting her thumb impression and that it was not a conscious and intelligent execution, that there was fraudulent representation that the document was a power of attorney, that there was no passing of consideration, that the plaintiff continued to be in possession of the property even after execution of the document and that the document was void and not binding on the plaintiff. He, therefore, decreed the suit. The lower Appellate Court upheld the findings of the learned Munsif and dismissed the appeal, affirming the decree passed by the learned Munsif. Being aggrieved, the defendant has preferred the second appeal.

5. Mr. Basu, learned Advocate for the appellant has contended that the lower appellate Court has erred in law in shifting the onus to the defendant by applying the principle applicable to a transaction entered into by a pardanashin lady and the judgment and decree passed by the lower appellate Court cannot, therefore, be upheld. It has been contended that there is no finding of the courts below that the plaintiff is a pardanashin lady.

6. In India pardanashin lady has been given a special protection in view of the social conditions of the time ; they are presumed to have imperfect knowledge of the world, as, by the Pardah system they are practically excluded from social intercourse and communion with the outside world. It is a well-settled law that the burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to prove that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct or circumstantial. The protection given to a pardanashin lady has been extended to an illiterate village woman. In *Chandhala Bewa Vs. Madhab Panda and Others*, it has been held that in order that the documents may be enforced against an old and illiterate lady belonging to a village or, as a matter of that, in order that it may be found by the Court that the documents were properly executed, the vendee must prove that the documents were read over and explained to the illiterate executant, who was a lady, and she knew the nature and character of the transaction while she became a willing party to the documents. In the case of *Narayan Mishra and Others Vs. Champa Dibya (dead) and Others*, , the Orissa High Court has observed that there is no justification as to why a rule applicable to pardanashin ladies on the ground of their ignorance and illiteracy should be restricted to that class only and should not also apply to a poor lady who is equally ignorant and illiterate but is not pardanashin, simply because she does not belong to that class. The object of the rule of law being the protection of the helpless, the distressed and the downtrodden, it should not be restricted to a particular class or community. Even in the case of an illiterate lady who is outside the pardanashin class, it is for those who deal with her to establish that she had the capacity of understanding, that she had entered into the transaction voluntarily with full knowledge and she understood what the transaction actually meant. The lower appellate Court has observed that the transaction being one with an illiterate village woman, the onus is on the defendant to prove that the execution was the conscious mental act of the plaintiff by proving that the disputed document was read over and explained to the plaintiff and that she understood the contents thereof and that she put her thumb impression with full knowledge about the nature of the document on which she affixed such thumb impression. In my opinion, the lower appellate Court correctly formulated the law and did not commit an error by placing the onus to the defendant to prove that it was a conscious and intelligent execution with full knowledge of the nature of the

transaction by the plaintiff who is admittedly an illiterate village child-widow. The concurrent findings of the Courts below that the disputed document was not read over and explained to the plaintiff and that it was not her conscious and intelligent execution with full knowledge of the nature and contents of the disputed document upon consideration of the entire evidence on record and the facts and circumstances of the case do not suffer from any legal infirmity and cannot be called in question in the second appeal.

7. It has also been contended that if the disputed document is vitiated by fraudulent misrepresentation it is voidable and not void ab initio and without a prayer for setting aside the document the suit was not maintainable. I do not find any substance in the contention. It is true that a contract or other transaction induced and tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided the transaction is valid. But as pointed out by the Supreme Court in *Ningawwa Vs. Byrappa and Others*, the legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but also as to its character. There is clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter it is merely voidable. In the instant case, there is fraudulent misrepresentation both with regard to the nature and contents of the document. Apart from the question of fraudulent misrepresentation, the disputed document was not conscious and intelligent execution of the plaintiff as held by both the Courts below. She never intended to execute the document. It has, therefore, been rightly held that the impugned document is void ab initio and not binding on the plaintiff and does not require to be set aside.

8. There is, therefore, no substance in the appeal which is dismissed with costs. The judgment and decree of the lower appellate Court are hereby affirmed.