

(1995) 02 OHC CK 0012

In the Orissa High Court

Case No : Second Appeal No. 378 of 1989

Smt. Annapurna Barik Dei and Another

APPELLANT

Vs

Smt. Inda Bewa and Others

RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 16, 23
Evidence Act, 1872 — Section 101
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1995 Ori 273

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : S. Misra I, S.N. Mishra, S.K. Nayak-2, G.P. Mohapatra and R.C. Praharaj, for the Appellant; B.K. Beura, S. Sethi and A.C. Badu, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—In this appeal u/s 100 of the Code of Civil Procedure, 1908 (in short, the "CPC), the conclusion that the deed dated 30-8-1975, though styled as a sale deed was in reality adeed for security of loan, is assailed to be incorrect and contrary to evidence With the aforesaid conclusion the suit filed by the present respondents as plaintiffs was decreed by the learned Additional Munsif-cum-JMSC, Balasore, and confirmed in appeal by the learned District Judge, Balasore.

2. The fact situation is almost undisputed except relating to the nature of the document. Stands of the parties sans unnecessary details are as follows:

Inda Bewa (plaintiff No. 1) is the widow of one Bhima Barik. Respondents 2 to 8 (plaintiffs 2 to 8) were their sons and daughters. Appellant No. 2 Rama Chandra Barik (defendant No. 2} is the nephew of aforesaid Bhima, his father being elder brother of Bhima. Appellant No. 1 Annapurna (defendant No. 1) is the wife of

Rama Chandra. By a registered sale deed dated 29-5-1957, Rama Chandra and late Bhima jointly purchased some property including the scheduled property. By amicable arrangement, each of them was possessing half of that. The suit property was in possession of Bhima. After his death, sometime in January, 1975, the property devolved on his wife and children, the plaintiffs. Being hard pressed for sustenance, some of the plaintiffs worked as labourers and house hold servants. Rama Chandra used to render periodic assistance by supplying some rice and paddy. He prevailed upon Inda (plaintiff No. 1) to execute a deed. According to the plaintiffs, it was conveyed to Inda that it was a deed for security of loan, with a condition to reconvey the property after repayment of loan amount. But surreptitiously it was styled as a sale deed, and executed on 30-8-1975. There was an agreement that the document in question shall be returned after Sanatan (plaintiff No. 2) attained majority. It was also agreed that the plaintiffs shall refund the amount advanced by Rama Chandra from time to time. Plaintiff No. 1 is an illiterate, rustic and Pardanashin lady. She did not understand the implication of the recitals of the deed as the same was neither read over to her nor explained to her at the time of execution. Although the consideration amount is mentioned to be Rs. 800/-, she had neither received that amount, nor the same was paid by Rama Chandra in cash. There was no necessity for selling the land. Although the plaintiffs were in possession of the suit property, yet two years after the execution of the deed, Rama Chandra demanded a sum of Rs. 300/- from the plaintiffs together with interest at the rate of 25% per annum. Since the plaintiffs could not pay the amount, they permitted defendants to possess the suit property and enjoy the usufructs towards repayment of the loan. That is how the defendants were in possession of the suit property from the year 1978. Thereafter they initiated a proceeding for mutation of the land on the basis of sale-deed. On getting notice, the plaintiffs came to know that the defendants have fraudulently got the land mutated in their favour on 27-8-1982. Though request was made by the plaintiffs to the defendants to return the deed and give up possession on 15-1-1981, there was denial by the latter.

The defendants while admitting the fact of joint purchase and amicable possession of half of the property by each, disputed the other assertions. According to them, they were not pulling on well with Bhima during his life-time and after his death with the plaintiffs. Being misguided by a common relation, namely, Chandramani Barik, they were trying to create problems. In the year 1974-75 there was drought, and the plaintiffs faced a lot of difficulties to maintain themselves. Inda (plaintiff No. 1) therefore decided to sell away the suit property. Since nobody came forward to purchase the same, aforesaid Chandramani Barik (examined as P.W. 2) requested Ram Chandra to purchase the land. In his mediation the property was purchased by Rama Chandra's wife Annapurna (defendant No. 1) by utilisation of her own funds. Inda had gone to the office of Sub-Registrar, where after adjustment of the amount already paid either in cash or kind, the balance was, paid in cash. After execution of the deed,

defendants were in possession of the land which was delivered to them. They had paid rent after mutation, and there was no question of repayment of any loan. The deed was never intended to be a security for loan, and it was out and out a sale deed for consideration.

3. On consideration of rival submissions and the materials on record, conclusion of learned Additional Munsif-cum-JMFC was that the deed was in fact one for security for loan. The guidelines to be applied in the case of execution of a document by an illiterate, Pardanashin lady were kept in view while coming to the aforesaid conclusions. The appeal filed by the defendants before the learned District Judge, as stated above, did not yield any result.

4. The learned counsel for the appellants has urged that the CAourts below have lost sight of the fact that the evidence of the plaintiffs were substantially at variance with the evidence on record. Additionally, the plea relating to the suit being barred by limitation which ought to have been adjudicated, has not been considered. The stand of the learned counsel for the respondents is that while exercising jurisdiction u/s 100, CPC, no factual conclusion should be disturbed. The Courts below having kept the appropriate guidelines in view, the conclusions are irreversible.

5. There is practically no dispute that the executant of the deed was an illiterate, rustic lady. A person who transacts with a Parda-nashin or illiterate lady has to show that the terms are fair and equitable, and that she had been given independent advice in the matter. To charge such a lady, upon an instrument alleged to have been executed by her, it must be shown by satisfactory evidence that the document had been explained to and understood by her. Where a person sets up the validity of a deed executed by a Pardanashim or illiterate lady, the onus is upon him to prove that she had understood the nature and effect of her act. As observed by the apex Court in *Mst. Kharbuja Kuer Vs. Jangbahadur Rai*, Pardanashin ladies have been given a special protection in view of the social conditions of the time; they are presumed to have an imperfect knowledge of the world, as, by the purdah system they are practically excluded from social intercourse and communion with outside world. The burden of proof shall always rest upon a person who seeks to sustain a transaction entered into with a Pardanashin lady to establish 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. Rules regarding transactions by a Pardanashin lady are equally applicable to an illiterate and ignorant woman, though she may not be a Pardanashin. It is not by reason of the Pardah itself that the law throws its protection round a Pardanashin lady, but by reason of those disabilities which a life of seclusion lived by a Pardanashin lady gives rise to, and which are consequently presumed to exist in the case of such a lady. But the disabilities which make the protection necessary

may arise from other causes as well. Old age, infirmity, ignorance, illiteracy, mental deficiency, inexperience and dependance upon others, may by themselves create disabilities that may render the protection equally necessary. If, therefore, it is proved that a woman, although she is not a Pardanashin lady, suffers from the disabilities to which a Pardanashin lady is presumed to be subject, the validity and the binding nature of a deed executed by her have to be judged in the light of the above principles which are applied to a deed by a Pardanashin lady. In the case at hand, an illiterate and rustic lady, who is I devoid of intelligence, appears to have reposed confidence on a person, who had rendered help to her. But there was no compassion in such help; mala fides lay hidden behind it. Therefore, there can be no doubt that she was entitled to protection under the law as a Pardanashin lady.

6. The expression "construction of a document" involves several questions, i.e., (a) the meaning of the words used which is question of fact, (b) inference of fact from evidentiary documents, which is also a question of fact unless the interpretation of the document involves the question of application of a principle of law, (c) the legal effect of the words used in a document which is a question of law. It is in this aspect that a misconstruction of a document is regarded as a ground of second appeal. The construction of a document as regards the legal effects will only arise where the document is an instrument of title or is a contract or is the direct foundation of legal rights. Where the nature and character of a document are clear and the only question or dispute is whether the real "contract between the parties is something different from that contained in the document, no question of the construction of the document is involved and no second appeal lies.

7. Section 100, CPC as it stands now being substituted by the Amending Act, 1976. contains few changes to the provision as it stood prior to the amendment Under the section as it stood before the amendment, a second appeal was competent on any of the three grounds set out in clauses (a), (b) or (c). These clauses were fairly wide in their effect, particularly clauses (b) and (c) under which the Courts devised concepts such as mixed question of law and fact. The amended section has drastically cut down the scope of the section by providing in Sub-section (I) that a second appeal is henceforth competent only if the case involves a substantial question of law. To secure this limitation the section further requires:

(a) that the High Court, presumably at the stage of admission must be satisfied that the case involves such a substantial question of law;

(b) that such a question has been precisely stated in the memorandum of appeal;

(c) that even where the High Court is satisfied that a substantial question of law is involved, it shall formulate it, and (d) that even where the High Court has been so satisfied and has formulated the substantial question of law, a respondent has still been reserved the right of challenging that such a question is not involved.

Such a challenge can presumably be taken after the High Court has admitted the appeal on being satisfied that a substantial question of law arises so that if a respondent can even after such admission satisfy that no such question is involved, the appeal becomes liable for dismissal on that ground. The proviso to subsection (4), however, reserves power to the High Court, provided reasons are there for recorded, to hear the appeal on another substantial question of law, though it has not been formulated by it and it is satisfied that such a question does arise in the appeal.

8. The jurisdiction of the High Court is now confined to entertain only such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal, and formulated by the High Court. In between the domains occupied respectively by questions of fact and of law, there is a large "area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then . determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained.

9. Judged in the above background, there is no scope for interference in this appeal which is accordingly dismissed. In the circumstances, however, there shall be no order as to costs.