
(1984) 05 AHC CK 0037
In the Allahabad High Court
Case No : Second Civil Appeal No. 631 of 1977

Smt. Khairul Nisa

APPELLANT

Vs

Aisha Bibi

RESPONDENT

Date of Decision : 17-05-1984

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 167(1),
168A, 168A(1)

Citation : (1984) AWC 492 Supp

Hon'ble Judges : R.C. Deo Sharma, J

Bench : Single Bench

Advocate : Mohd. Hussain and Mohd. Arif Khan, for the Appellant; Bireshwar Nath, for the Respondent

Final Decision : Disposed Of

Judgement

R.C. Deo Sharma, J.—This is a Defendant's second appeal arising out of the judgment and decree dated 15-7-1977 passed by the learned District Judge, Sultanpur, whereby he dismissed the Defendant's appeal and confirmed the decree of the trial Court decreeing the Plaintiff's suit with costs.

2. It will appear that the Plaintiff-Respondent No. 1 Smt. Aisha Bibi filed the suit giving rise to this appeal for cancellation of a sale-deed dated 31-1-1974 executed by her in favour of Smt. Khairul Nisa, the present Appellant in respect of some agricultural land. The consideration shown in the sale deed was Rs. 3000.00. It was alleged that the Plaintiff-Respondent was Bhumidhar of the plots in dispute which comprised Chak No. 61(2). She claimed to be an old, illiterate and ignorant type of lady. The Defendant Smt. Khairul Nisa and her husband Jalil Khan were said to be residents of the same village and Jalil Khan had a plot bearing No. 346/4 area 1 Biswa 7 Dhoor close to the Chak of the Plaintiff but the same had been allotted in the chak of the Plaintiff during consolidation proceedings. The Defendant according to the Plaintiff started sympathising with the Plaintiff who had earlier had litigation with Rafiq Khan and Siddiq Khan and in

that process the Defendant tried to come close to her and ultimately she was deceived by them into executing the sale-deed saying that they were executing a "Dast Bardari" in respect of the aforesaid plot No. 346/4 area 1 Biswa 7 Dhoor which had been allotted to the Plaintiff during consolidation proceedings. The Defendant took her to Hasanpur on the pretext of taking her to the Mela of Moharram on the 7th of the month of Muharram and from there she was taken to Sultanpur on the pretext of executing a "Dast Bardari". Later she claimed to have come to know that the Defendant had fraudulently obtained from her a sale-deed in respect of her Khata No. 61 (2) on the pretext of "Dast Bardari". The Plaintiff's sons-in-law Mansoor Khan and Maqbool Khan were living with her and looking after her cultivation and were pulling Rickshaw as well. When she told them about what she had learnt relating to "Dast Bardari" and the sale deed they inspected the records and it was confirmed that the Defendant had obtained a sale-deed from her. She denied having received any consideration for the sale-deed and said that it was not read over to her and she did not know the contents of the document. In the sale-deed Rs. 2000.00 had been shown as having been paid to the Plaintiff before the execution of the sale-deed and Rs. 1000.00 paid before the sub-Registrar. All this was denied and it was contended in para 16 of the plaint that Jalil Khan Defendant had handed over some currency notes to her in the Registration Office which he had taken back outside the office.

3. Another plea raised by way of amendment in the plaint was that the sale-deed was void u/s 168-A of the U.P. Zamindari Abolition and Land Reforms Act because it related to transfer of a fragment. On these grounds, therefore, she claimed cancellation of the sale-deed. The plots to dispute were six in number and comprised Khata No. 61(2). The area being 1 Bigha 7 Biswa and 16 Dhoor.

4. The claim was resisted by the Defendant who filed separate written statements raising almost similar pleas. The main contesting Defendant Smt. Khairul Nisa, the transferee, denied that any fraud was played on the Plaintiff or that she was an ignorant type of lady. It was contended that she was a very experienced and knowledgeable lady and was about 50 or 51 years of age rather than 70 as disclosed in the plaint. It was denied that there was any talk about "Dast Bardari" for plot No. 346/4 which was already allotted to the Plaintiff in the consolidation proceedings. The sale-deed was said to have been executed for valid consideration and after full understanding, and without fraud etc. as alleged. The further contention was that she used to go out for doing Pairvi in her consolidation cases in various courts and had in the past executed several sale-deeds in favour of Siddiq, Maqbool and Mansoor etc. and had also delivered them possession of the land sold and consequently she was fully conversant with the matters relating to property and sale-deed etc. Through an additional written statement the plea about bar of Section 168-A was controverted, The learned Jd Addl. Munsif, Sultanpur who tried the case found that the Plaintiff was an old lady and there was no occasion for her to execute the sale-deed and she had actually been defrauded into executing the same. On the point of the sale-deed being void u/s 168-A of the U.P. Act I of 1951 the learned Munsif held that the

transfer related to a fragment which was prohibited under the aforesaid provision and consequently on that ground also the sale-deed was void. The Plaintiff's suit was accordingly decreed for cancellation of the sale-deed. Feeling aggrieved Smt. Khairul Nisa, the purchaser, preferred a first appeal which came up for hearing before the learned District Judge, Sultanpur. On a consideration of the evidence on record and the arguments addressed the learned Judge came to the conclusion that the findings recorded by the learned Munsif on the point of fraud on the Plaintiff being an illiterate lady were contrary to evidence and circumstances and, therefore, the finding was reversed. It was held that the sale-deed in question was not invalid on that account and was rather executed for valid consideration and after full understanding. However, on the point relating to the prohibition contained in Section 168-A of U.P. Act No. 1 of 1951 the learned Judge found that the transfer was certainly of a fragment and was prohibited and was consequently void. On this ground, therefore, the cancellation of the sale-deed was upheld and the appeal dismissed.

6. Feeling aggrieved Smt. Khairul Nisa has preferred this second appeal and it has been contended that the only finding recorded against her by the first appellate court was contrary to law inasmuch as the bar of Section 168-A of U.P. Act I of 1951 did not apply to the instant case because the sale-deed was for the entire Khata No. 61 (2) and this was not prohibited in law.

7. The Respondent Smt. Aisha Bibi has, however, preferred a cross-objection in respect of the finding recorded against her to the effect that the sale-deed was for consideration and was not bad on the ground of her illiteracy etc. Her contention was that the finding was contrary to evidence and circumstances and that the sale-deed was in fact invalid for want of consideration and because of the illiteracy of the Plaintiff-Respondent.

8. I have heard learned Counsel for the parties and have also gone through the record. The Appellant has assailed the decree of the court below on the ground that the finding relating to the bar of Section 168-A of U.P. Act I of 1951 was erroneous as this provision did not prohibit sale of the entire land of the Khata which was a fragment by virtue of its area being less than 3.125 acres. Section 168-A of U.P. Act No. I of 1951 reads as below:

168-A. Transfer of fragments.--

(1) Notwithstanding the provisions of any law for the time being in force, No. person shall transfer whether by sale, gift or exchange any fragment situate in a consolidated area except where the transfer is in favour of tenure-holder who has a plot contiguous to the fragment or where the transfer is not in favour of any such tenure-holder, the whole or so much of the plot in which the person has bhumidhari rights, which pertains to the fragment is thereby transferred.

(2) The transfer of any land contrary to the provisions of Sub-Section (1) shall be void.

(3) When a bhumidhar has made any transfer in contravention of the provisions of Sub-section (1), the provisions of Section 167 shall, mutatis mutandis, apply.

9. The idea behind the provision is clearly the prevention of fragmentation when once after consolidation proceedings in a particular area chak have been carved out. A fragment has been defined to mean an area of 3"125 acres of land so far as the land in district Sultanpur is concerned. The Section prohibits transfer of such a fragment in a consolidated area except in two circumstances when such transfer would be valid. The first circumstance is when the land is transferred in favour of a tenure-holder who has a plot contiguous to such fragment. This is, however, not the position in the instant case. No. doubt some land of Jalil Khan, husband of the Appellant is contiguous to the land in dispute but that cannot be said to be the land of Smt. Khairul Nisa who is the transferee in this case. The second exception to this prohibition is that the transfer would be valid if it is in respect of the whole or so much of the plot in which a person has Bhumidhari rights which pertains to the fragment. In the instant case the second exception is fully applicable because admittedly the transfer relates to the whole of Chak No. 61(2) even though the area is a fragment. The section is intended to provide for prohibition of further fragmentation in a consolidated area but if during consolidation a Chak has been carved out which itself is a fragment, the position by transfer will not be worsened if the whole of such area is transferred. The reason is that it was a fragment even before transfer and will remain so and the position would not become worsened after the transfer. The courts below appear to have interpreted this provision as meaning that in case a fragment is sought to be transferred the transferor should transfer his entire land wherever it may be. This is not the correct position. Smt. Aisha Bibi has undoubtedly another Chak being No. 61/1 but that is away from the place as would appear from the statement in consolidation Form No. 23 and Form No. 41 filed on record. In Form No. 23 the new Chak was originally consisting of five pots with an area of 1 Bigha 6 Biswa 9 Dhoor. It was later found that one anna value was less allotted to her and, therefore, plot No. 346/4-M consisting of 1 Biswa 7 Dhoor belonging to Jalil Khan Defendant was allotted in the Plaintiff's Chak. Thus the Chak consisted of six plots with a total area of 1 Bigha 7 Biswa 16 Dhoor and it is this entire area comprised of the six plots which was sold by Smt. Aisha Bibi to Smt. Khairul Nisa under the sale-deed in question, which is Ex. A-1 on record. Admittedly there is No. other plot belonging to the Plaintiff situate adjacent to this chak. The other Chak belonging to the Plaintiff is situated at a distant place as will appear from the different series of numbers of plots in the two Chaks and then this fact has not been denied by the other side.

10. A question came up for consideration before a Division Bench of this Court as to whether the sale by a person of his entire share in Bhumidhari was hit by the prohibition contained in Section 168-A of U.P. Act No. 1 of 1951 if the total area of the Bhumidhari land was less than the area prescribed for a fragment. Some different views having been expressed in earlier cases the matter was referred to the Division Bench and it was held by the Division Bench in Bibhuti Vs. Kashi

Ram and Another, that the sale by a person of his entire share in the Bhumidhari where the total area of Bhumidhari land was less than 3.125 acres was not hit by the provisions of Section 168-A of the U.P. Zamindari Abolition and Land Reforms Act. Although the question for consideration before the Division Bench related to the sale of an undivided share in the Bhumidhari, such share being a fragment yet the principle Laid down was that in the case of a fragment if the whole of it was transferred the bar of Section 168-A will not apply. The same view was expressed in a Full Bench decision of the Board of Revenue in Jai Jai Ram v. Ram Shanker, 1978 R.D. 242. In more or less similar circumstances where transfer of the land was made in favour of more than one person and the area coming to the share of each person was a fragment but taken as a whole the area sold was more than a fragment, it was held that the restriction contained in Section 168-A did not apply vide Smt. Bhuri v. Balwan Singh 1980 AWC 258. In this view of the matter the transfer of the six plots in question comprising Khata No. 61 (2) could not be said to be prohibited u/s 168-A of the said Act and the findings of the courts below on the point cannot be sustained.

11. The next question that arises for consideration is with regard to the cross-objection. The learned Munsif had found the sale-deed to be bad for want of consideration and as being vitiated on the ground of illiteracy of the Plaintiff etc. The learned District Judge reversed the finding after discussing the evidence on record. On going through the findings recorded by the two courts below and also on going through the record I am satisfied that the learned District Judge was justified in reversing the finding recorded by the learned Munsif and consequently the cross-objection deserves to be dismissed. The Plaintiff's contention was that she was an old and illiterate lady and was deceived by the Defendant into executing the sale-deed on the plea that the Defendant Jalil Khan was going to execute a Dast Bardari" in her favour in respect of plot No. 346/4 which had already been allotted to her in Chak No. 61(2). In the first instance when plot No. 346/4 area 1 Biswa 7 Dhoor belonging to Jalil Khan had already been allotted to the Plaintiff in her chak and there was No. dispute about it whatsoever because Jalil Khan had been compensated for this plot while allotting a Chak to him, there was No. question for Jalil Khan to have executed a "Dast Bardari" in Plaintiff's favour nor there was reason for the Plaintiff to suppose that even after the allotment of the plot in her chak she needed a "Dast Bardari" from Jalil Khan. When the Plaintiff's daughters and sons-in-law were living with her as claimed by her there was also No. occasion for her to go to Hasanpur to see the Mela on the asking of Jalil Khan or from there to Sultanpur for getting a "Dast Bardari" executed without consulting the aforesaid members of her family. Assuming for a moment that she had gone to Hasanpur and then to Sultanpur with the Defendant there is No. reason why she would not tell these facts to her daughters and sons-in-law on return the same evening. After all they were important matters and the lady was not a completely ignorant lady because admittedly she had executed in the past at least three sale-deeds more in favour of different persons including one in favour of her two sons-in-law. She

admittedly purchased the stamps for those sale-deeds and having received consideration executed the same and delivered possession over the land in pursuance thereof. She had visited the Registration office on all those occasions. These facts have been admitted by her. Thus she was an ignorant lady but was fully conversant with the matters relating to transfer of land. If, therefore, she was taken to the Registration Office on the pretext of execution of a "Dast Bardari" she must have told this fact to her sons-in-law the same evening on return. Even the daughters and sons-in-law could have inquired of her as to where she had been all the day. It was, therefore, highly an unnatural conduct on the part of the daughters and Smt. Aisha Bibi. The Plaintiff claimed that she came to know about the Defendant having obtained a sale-deed from her when some 5 or 6 days later one Fakir Askari told her that the Defendant had obtained a sale-deed from her. Fakir Askari has not been examined nor any body else has been produced in the witness box except that the Plaintiff has examined herself alone as P.W. 1.

12. It was argued by the learned Counsel that the sale-deed had not been read over to her and, therefore, she did not understand the contents. This has been belied by the statements Shambhu Nath (DW 1) and Jalil Khan (DW 3). Shambhu Nath (DW 1) is a scribe by profession and had admittedly scribed all the sale-deeds executed by Suit. Aisha Bibi in earlier years in favour of her sons-in-law and other persons. There are three such registered sale-deeds already on record which were executed by her prior to the one in dispute. This time, however, Shambhu Nath (DW 1) was a marginal witness to this sale-deed which has been scribed by Yahiya Khan. Shambhu Nath (DW 1) stated that he was busy writing other deeds and had no time and consequently when the plaintiff approached him as usual, he took her to Yahiya Khan scribe who also used to sit close by and when Yahiya Khan had scribed this document he was called to sign as a witness which he did. The credibility of this witness was sought to be assailed on the ground that once he had scribed a sale-deed purporting to be on behalf of a lady who had no thumb at all and yet the deed was said to have been thumb-marked by her. The witness denied that the lady had no thumb. He also stated that the suit for cancellation filed by that lady was earlier decided against her. But later perhaps the witness was disbelieved and some relief was granted in the suit for cancellation as observed by the courts below. However, several other deeds had been scribed by this witness on the asking of the plaintiff who admitted that there was no ill-will between her and Shambhu Nath (DW 1) though she added that he was now favouring the defendants. There is, however, no reason to disbelieve this witness. This witness clearly stated that the sale-deed was read over to Smt. Aisha Bibi before she executed it and others signed as witnesses. He also stated that in the Registration Office the Sub-Registrar had asked her and she had told him that she was executing the sale-deed in favour of Smt. Khairul Nisa and that she had already received Rs. 2000.00 earlier and was to receive Rs. 1000.00 on that date. The witness further stated that this amount of Rs. 1000.00 was paid to her in his presence and that the Sub-Registrar had also

endorsed this fact on the back of the sale-deed Ex. A-1.

13. A reference to Smt. Aisba Bibi's statement as PW1 will indicate that in the examination-in-chief she stated that Jalil Khan defendant had given her something wrapped in a paper inside the Registration Office and she could not see what that contained and that it was taken back from her. During cross-examination when she was asked to elucidate this fact she stated that whatever was given to her wrapped in a paper was given outside the Registration Office and the same was taken back from her in about half an hour's time. In para-16 of the plaint it was stated that in the Registration. Office some currency notes were given to her by Jalil Khan defendant asking her to hold it and then immediately after coming out from the Registration Office and when she was being seated in an Ekka the same were taken back from her. When confronted with this statement contained in para-16 of the plaint she denied having told these facts to her counsel and stated that this was wrongly mentioned in the plaint. Obviously, therefore, Rs. 1000.00 were paid to her towards consideration in the presence of the Sub-Registrar and about this she had been making inconsistent statements in the plaint, examination-in-chief and in the cross-examination. The defendants examined one Mohd. Saleem (DW 2) to say that Rs. 2000.00 were paid in his presence a couple of months before the execution of the sale-deed when Smt. Aisba Bibi wanted the money to repay some debts. He claimed to be present when she borrowed this money from Jalil Khan-defendant saying that in case she was not able to repay within two months she would take some more money from him and execute a sale-deed in respect of her land. It was suggested to this witness that he was friendly to Jalil Khan defendant who had stood surety for him in some criminal case. The witness denied this fact and showed ignorance whether the same Jalil Khan had stood surety for him or it was another Jalil Khan who was also a witness to the sale-deed in question. Besides Jalil Khan defendant, however, there was another Jalil Khan who was a witness to the sale-deed in question. The learned first appellate court has discussed the evidence in detail and found that the plaintiff was not an ignorant type of lady who could be deceived like this as she had executed several other sale-deeds earlier and had transferred possession after receiving the consideration. Moreover, the inconsistencies about the receipt of Rs. 1000.00 before the Sub-Registrar and the circumstance of her not telling her daughters and sons-in-law about her visit to the Sub-Registrar's Office till some Fakir had disclosed the fraud to her clearly, go to disprove her contention. The respondent's learned counsel placed reliance on the decision in *Parasnath Rai v. Tileshra kaur* 1965 ALJ 1080 and contended that the same principles which applied to a Pardahnashin lady should apply to the case of an illiterate lady like the plaintiff and consequently the burden of proving consideration, conscious execution of the deed etc., should heavily lie on the defendant-appellant. It has been found by the first appellate court and rightly so that the plaintiff-respondent was not an ignorant type of lady even though she may be illiterate and particularly when she had executed several sale-deeds in the past and the

circumstances do not show that she was taken to the Mela and then for execution of "Dast Bardari" on a false pretext, it is obvious that the principle in Parasnath Rai's case aforesaid will not apply. In that case it was found as a fact that besides being old the lady was hard of hearing and was a foolish type of woman, devoid of intelligence, and that the transferees stood in relation to her in a position of active confidence. In the instant case there are No. such circumstances and the allegation that she was hard of hearing has not been proved as a fact. That she was 70 years of age as claimed in the plaint has also not been established and strangely enough in her deposition recorded only after two years of the filing of the plaint she claimed to be 80 years old. In any view of the matter, therefore, the principle in Parasnath Rai's case was not applicable to the facts of the present case. The findings of the first appellate court, therefore, on this point deserve to be confirmed.

14. In the result, the cross-objection should fail and the appeal should be allowed.

15. The appeal is accordingly allowed and the cross-objection dismissed. The decrees passed by the courts below are set aside. The plaintiff's suit shall stand dismissed. In the circumstances, however, both the parties shall bear their own costs throughout.