
(2006) 05 MP CK 0042
In the Madhya Pradesh High Court

Smt. Munnibai and Others

APPELLANT

Vs

Barelal Lodhi and Others

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (2007) 4 MPHT 194 : (2008) 1 MPLJ 256

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

Present appellants are heirs of original plaintiff Gopal Prasad, who died during the pendency of the suit. A suit for declaration of ownership of the suit land was filed by plaintiff with a further relief of injunction restraining the defendants from interfering with his possession and also from cutting grass.

In brief the suit of plaintiff is that plaintiff is Bhumiswami of the disputed property. He bought the suit property from defendants by registered sale-deed dated 16-10-70 for a consideration of Rs. 1,000/-. After the purchase of the suit property, plaintiff is possessing the same. The name of plaintiff and his possession is recorded in the revenue record by virtue of said sale-deed dated 16-10-70. The defendants on false assertion of fact that they have not sold the land to the plaintiff are threatening to dispossess him from the suit land. By amendment the plaintiff pleaded that at the request of defendants he did confer rights of re-conveyance and leased out the suit property for the year 1970-71 to them on 16-10-71. But, no sooner defendants expressed their inability to cultivate the land, plaintiff started cultivation on the suit land. The plaintiff further pleaded that no right has been conferred to the defendants in the subsequent years. The signature of plaintiff on that part of reconveyance deed dated 16-10-71 in which it has been mentioned that the suit property is leased

out for subsequent years, is forged and hence denied. The defendants in order to take advantage of the provisions of M.P. Land Revenue Code has created this forged note on the document of agreement. This document ought to have been registered and should have been properly stamped and in absence, it needs to be impounded.

The defendants filed their written statement refuting the averments made in the plaint. According to defendants they are Bhumiswamis of the disputed property. Indeed, plaintiff gave loan of Rs. 1,000/- to the defendants. The defendants were in need of money as a result of which they requested plaintiff to give loan which he agreed to give and gave loan of Rs. 1,000/- to the defendants on the condition that they are required to execute a sale-deed, as security of the loan. The interest at the rate of Rs. 3/- per month was settled between the parties. The plaintiff assured defendants that the sale-deed which shall be executed will never be acted upon and there shall be no conveyance by the said sale-deed. In this manner plaintiff gave Rs. 1,000/- towards loan, out of which Rs. 100/- were incurred in the stamp charges and registration fees etc. In this manner the registered document was executed on 16-10-70. The price of the suit land was not less than Rs. 10,000/- in the year 1970.

It has been further pleaded in the written statement that plaintiff may not turn from his version and may not grab the land in dispute, therefore, for the purpose of security, an agreement of sale dated 16-10-70 was executed. The other averments made in the plaint were specifically denied by the defendants. The mutation of the name of plaintiff had taken place with the collusion of the Patwari and in the absence of defendants, but in appeal said order has been set aside by the Sub-Divisional Officer.

The plaintiff is a money lender and he never cultivated the land in question. An alternative plea has also been taken by the defendants that if it is held that plaintiff had purchased the suit property, as disputed land was leased for more than one year, they have acquired right of occupancy tenant. In this manner, it has been prayed that the suit be dismissed.

The Trial Court framed necessary issues and after examining the parties dismissed the suit. The plaintiff preferred first appeal which has also been dismissed by the impugned judgment and decree. Hence this second appeal has been filed by the plaintiff.

This second appeal was admitted on 19-9-1997 on the following substantial questions of law:

(1) Whether defendants vendor under sale Exh. P-1 having failed to obtain re-conveyance upon repayment of Rs. 1,000/- in terms of Ikrarnama Exh. P-2 were debarred from their right to repurchase the land in suit?

(2) Whether Section 58C of the Transfer of Property Act prohibits the defendants from proving that the transaction was in the nature of mortgage?

(3) Whether the Courts below were justified in the facts and circumstances of the case in holding that Exh. P-1 was for collateral security in the absence of any material before them?

(4) Whether Appeal Court failed to adhere to directions in remand order dated 3-2-1997 in S.A. No. 400/96 when it omitted to record definite findings on vital issues?

I have heard Shri Pranay Verma, learned Counsel for the appellants and Shri N.K. Patel, learned Counsel for the respondents.

It has been vehemently argued by Shri Verma, learned Counsel for the appellants that sale-deed dated 16-10-70 (Exh. P-1) is outright sale and the two Courts below erred in law in holding that it is a document of security. It has also been put-forth by the learned Counsel that on the same date, i.e., 16-10-70 another document of agreement of sale (Exh. P-2) was also executed between the parties by giving right of re-conveyance to the defendants. At the most they could have filed a suit for specific performance of contract. It has been further propounded by the learned Counsel that the sale-deed (Exh. P-1) cannot be said to be a document of collateral security. In support of his contention, learned Counsel has placed reliance on *Mushir Mohammed Khan (Dead) By LRS. Vs. Smt. Sajeda Bano and Others*, . Reliance has also been placed on *Smt. Bismillah Begum (dead), by Lrs. Vs. Rahmatullah Khan (dead) by Lrs.*, .

Per contra, Shri Patel, learned Counsel for the respondents argued in support of the impugned judgment and decree passed by the two Courts below. It has been further argued that Exh. P-1 though it is a sale-deed, but, it was agreed between the parties not to act upon it. It has also been submitted that for the purpose of security of loan sale-deed Exh. P-1 was executed. In support of his contention, learned Counsel has placed heavy reliance on a recent decision of the Supreme Court *Ramlal and Anr. v. Phagua and Ors.* 2006 Revenue Nirnaya 1. By placing reliance on a Single Bench decision of this Court *Mahadev Prasad v. Munnibai* 2000(2) MPLJ 361, it has been submitted that oral evidence is admissible to show that the sale- deed was sham transaction to ensure repayment of loan.

Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be dismissed.

Regarding substantial question of law No. 2:

Learned Counsel for the parties submit that it is nobody's case that the transaction was a mortgage transaction and, therefore, this substantial question of law need not be answered. Since it is nobody's case that the transaction was a mortgage transaction, this substantial question of law is not answered.

Regarding substantial questions of law Nos. 1 and 3:

Indeed these are the two important substantial questions which would decide the fate of the case. The execution of the document of sale-deed Exh. P-1, dated

16-10-70 and another document of agreement of sale Exh. P-2 of the same date, i.e., 16-10-70 is not disputed though the portion marked "B to B" on Exh. P-2 wherein a condition has been embodied that the suit land is given on lease to the defendants has not been found to be proved by the two Courts below. The other part of the document Exh. P-2 (agreement of sale) and the execution thereof is not disputed. The question which hinges is whether the document Exh. P-1 can be said to be a document executed for collateral security. In this regard, I have gone through the findings arrived at by the two Courts below. The Trial Court framed a specific issue (Issue No. 4) in that regard and after appreciating the evidence came to hold that real transaction between the plaintiff and defendants was loan transaction and for security purpose the sale-deed Exh. P-I, dated 16-10-70 was executed and it was only a nominal document and it was agreed between the parties that it would never be given effect to. The said finding has been arrived at by the Trial Court after marshalling the evidence led by the parties. The two Courts below have also taken note of actual price of the disputed land and then such findings have been arrived at. This is a pure finding of fact and cannot be assailed in this second appeal.

In the case of Ramlal (supra), the Supreme Court in Para 14 has held as under:

14. In the instant case, in addition to the sale deed executed on 1-12-1965 an agreement was also entered into between the parties simultaneously for execution of the reconveyance deed in favour of the respondent-plaintiff as it admitted by the appellant herein. Therefore, by the said sale deed, no right, title or interest ever pass in favour of Mst. Hasrat Bi and that mere mutation of the name of Mst. Hasrat Bi in the revenue records does not confer any right, title or interest in her favour in the absence of the real transaction of the property. It is seen from the records that since the respondent-plaintiff failed to repay the loan within the stipulated period of 3 years, Mst. Hasrat Bi got her name recorded in the revenue records and sold the property to the appellants herein by a registered sale deed for a sum of Rs. 4,000/-. In our view, since Mst. Hasrat Bi had not right, title or interest over the suit property she was not competent to execute the sale deed in favour of Ramlal Shyamlal and Pyarelal for any consideration and if Mst. Hasrat Bi executed the sale deed in favour of the appellants it never conferred any right, title or interest in favour of the subsequent purchasers, i.e., the appellants. Therefore, the respondent filed a suit for declaration that the sale deed dated 1-12-1965 executed by him in favour of Mst. Hasrat Bi was only a nominal sale and he continues to be the owner of the suit land and also prayed for possession of the suit land as he was forcibly dispossessed by the appellant after purchasing the land from Mst. Hasrat Bi. A copy of the plaint has been filed and marked as Annexure R-3.

If the ratio decidendi of the case of Ramlal (supra), is tested on the anvil of the given case in hand it is revealed that in the present case also the sale-deed (Exh. P-I) and agreement of sale (Exh. P-2) have been executed on the same date, i.e., 16-10-1970 and, therefore, it is held that sale deed (Exh. P-I) was only nominal

sale, but, the defendants remained Bhumiswamis of the land in question. This Court in the case of Mahadev Prasad (supra), has categorically held that oral evidence is admissible in order to establish that the sale-deed was sham transaction and was got executed only to ensure repayment of loan. It was further held that Section 92 of the Evidence Act does not come in the way of proving the allegations. This Court while holding so has placed reliance on earlier decision of this Court Mandas v. Manbai 1972 MPLJ 852, and also decision of the Supreme Court Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi, .

The decision of Mushir Mohammed Khan (supra), has been placed reliance by learned Counsel for the appellants on the point that if more than one documents is executed almost contemporaneously all the documents should be read together in order to ascertain true nature of transaction. Indeed the case of Ramlal (supra), also deals with the same position where the documents of sale-deed as well as reconveyance were executed simultaneously and it was held that the sale-deed is nothing but a security for loan and does not pass any title to the vendee. The decision of Bismillah Begum (supra), is not applicable in the present case. In that case the question was whether time was essence of the contract and whether the plaintiff was ready and willing to perform her part of contract as it envisages from Para 3 of the said decision.

I have given my anxious and bestowed consideration to the reasonings assigned by the Trial Court on Issue No. 4 which has been affirmed by the Appellate Court. The findings arrived at are pure findings of fact and cannot be assailed in second appeal. Thus the substantial questions of law No. 1 is answered that Exh. P-1 was executed for collateral security and this has been held by the Trial Court as well as by the First Appellate Court on the basis of the evidence. Similarly, substantial question of law No. 3 is answered that Exh. P-2 which is document of agreement of sale, was not required to be acted upon. The sale deed Exh. P-1 was only nominal and was never intended to be acted upon.

Regarding substantial question of law No. 4:

I have gone through the reasonings assigned at by the First Appellate Court which has been given after remand. On going through the judgment of the First Appellate Court I do not find any error in order to hold that any vital issue has not been decided.

The substantial question of law No. 4 is answered accordingly.

Ab judicatio, the appeal is found to be bereft of any substance and the same is hereby dismissed with costs. Counsel's fee Rs. 1,000/-, if pre-certified.