
(2011) 12 CAL CK 0100
In the Calcutta High Court

Case No : S. A. No. 8 of 2001 With C.O.T. No. 4221 of 2000

Sri Satyendra Narayan Banerjee and another	APPELLANT
Vs	
Shrimati Pubali Banerjee and others	RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Citation : (2012) 1 CALLT 46 : (2012) 1 CHN 195

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Bhaskar Ghosh, Mr. Satyaraj Banerjee, Mr. Probal Mukherjee and Mr. Animesh Das, for the Appellant; Asis Kumar Sanyal, Ram Prakash Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is a second appeal by the defendant nos. 1 and 2 against a judgment of affirmance.

2. Both the courts below concurrently decreed the suit in part and declared that the plaintiff no. 1 had a right of residence in the suit premises till her marriage. The defendants were restrained from interfering with her right in the suit premises. The courts below, further, declared that the deed of settlement dated August 14, 1964 (registered on October 6, 1964) would prevail and the subsequent deed of settlement dated June 9, 1969 was not binding upon the plaintiffs as it was obtained fraudulently.

3. The plaintiffs-respondents instituted the suit, inter alia, for partition, injunction along with other consequential prayers.

4. The relevant facts for decision of this second appeal are as under: -

Saileshnath Banerjee and Bhabani Sundari Debi, the admitted owners of the properties-in-suit, on August 14, 1964, corresponding to Shravan 29, 1371, executed a deed of settlement settling the properties in favour of their two sons,

the defendant nos. 1 and 2, three daughters, the plaintiffs-respondents and one married daughter, namely, Jyotshna Rani Mukherjee. The document was registered on October 6, 1964 in the office of Sub-Registrar of Sreerampore, in-charge of Chandernagore area. The said document was marked as Exhibit - 3. The scribe of the document was Ashutosh Hazra and the witnesses were Hrishikesh Das and Lakshminarayan Khan.

5. The relevant provisions of the deed are as under: -

6. Subsequently, however, the said Saileshnath and Bhabani Sundari executed another registered document on June 9, 1969, corresponding to Joisthya 26, 1376, canceling the earlier deed of settlement. The said document was registered in the office of the Sub-Registrar of Sreerampore, in-charge of Chandernagore area. The said document was marked as Exhibit - A1. The scribe of the deed was Ashutosh Hazra and the witnesses were Binoy Kumar Bhattacharya and Hrishikesh Das.

7. The relevant averments of the said deed are as under: -

8. On the same date another deed of settlement was executed by Saileshnath and Bhabani Sundari covering the properties covered by 1964 deed in favour of their two sons, namely, Satyendra Narayan and Surendra Narayan, the appellants herein. The document was registered in the office of the Sub-Registrar of Sreerampore, in-charge of Chandernagore area. The said document was marked as Exhibit - 1. The scribe of the deed was Ashutosh Hazra and the witnesses were Binoy Kumar Bhattacharya and Hrishikesh Das.

9. Salesnath Banerjee died on July 18, 1977 and Bhabani Sundari died on October 8, 1982.

10. After the death of Saileshnath, his widow Bhabani Sundari and the beneficiaries, namely, the appellants, executed a registered deed of sale on March 13, 1971, corresponding to Falgun 28, 1377, in favour of Becharam Mukherjee, the husband of Gita Rani Mukherjee, the fourth daughter of the settlors. The said document was registered in the office of the Sub-Registrar of Sreerampore, in-charge of Chandernagore area. The scribe of the document was Ashutosh Hazra and the witnesses were Pubali Bandyopadhyay and Shyamali Bandyopadhyay, the plaintiffs-respondent nos. 1 and 2. A portion of the property covered by the deed of settlement dated June 9, 1969 was conveyed in favour of the said Becharam Mukherjee. The document was marked as Exhibit -A4.

11. The relevant statements in the deed run as under: -

12. In respect of all the deeds, the scribe was Ashutosh Hazra, although the scribe signed as Ashutosh Ghosh Hazra in the deed dated March 13, 1971. It was, however, not disputed in course of hearing of this appeal that Ashutosh Hazra and Ashutosh Ghosh Hazra was the same person.

13. In all these documents, the scribe was Ashutosh Hazra alias Ashutosh Ghosh

Hazra. Therefore, it cannot be suggested that the settlors did not act according to their own wisdom, but acted as tools in the hands of the defendants- sons.

14. Subsequently, Satyendra Narayan and Surendra Narayan, the beneficiaries under the deed of June 9, 1969, entered into an agreement with Pubali, the spinster sister, on June 16, 1983. In the said document, the brothers permitted the sister to enjoy some properties covered by the deed dated June 9, 1969; of course, the document was not a registered document, but it was prepared on Rs. 5/- (Rupees five) only stamp paper. The document was marked as Exhibits - 2 and A(3). The witnesses of the said document were Becharam Mukherjee and Shibendra Narayan Banerjee, the eldest brother of the parties.

15. Admittedly, Pubali is a spinster. She deposed as plaintiffs' witness no. 1. In course of her deposition, she stated that she was a schoolteacher; she was a Master degree holder with Bachelor of Education Degree. Pubali suggested that the deed of settlement dated June 9, 1969 was never acted upon. The settlors had no right to execute the subsequent deed of settlement in 1969 as the settlors divested themselves of their right of the properties. She suggested that the parents did not voluntarily execute the document. She did not admit the terms of the said deed of settlement and asserted that the settlement made by the parents on August 14, 1964 and registered on October 6, 1964 was valid and correct document.

16. However, in cross-examination, she admitted acquisition of title by Becharam Mukherjee by virtue of the deed of sale dated March 13, 1971. She admitted that Becharam Mukherjee, after acquisition of the property, constructed his own house and was residing therein. She admitted that the deed of agreement dated June 16, 1983 bore her signature and signatures of her brothers, who were defendants-appellants in this suit. She admitted that Becharam Mukherjee, her brother-in-law, and Shibendra Narayan Banerjee, her eldest brother, were the witnesses to the deed. However, she suggested that she was forced to put her signature in the deed of settlement.

17. As I have indicated hereinabove, three sisters, who were beneficiaries under the deed of August 14, 1964, instituted the suit.

18. It is pertinent to note that the subject matter of the deed of sale dated March 13, 1971 was not included in the schedule of this partition suit.

19. If the deed of settlement dated June 9, 1969 is invalid, the vendors, that is, these appellants and their mother, had not right to convey a portion of the property covered by the deed dated June 9, 1969 in favour of said Becharam Mukherjee on March 13, 1971.

20. At the time of admission of the appeal, no substantial question of law was formulated. But, in presence of Mr. Bhaskar Ghosh, learned senior advocate, appearing for the appellants and Mr. Asis Kumar Sanyal, learned advocate, appearing on behalf of the respondents, by order dated march 27, 2008,

following substantial question of law was formulated: -

As admittedly the deed of settlement dated October 6, 1964 was to come into effect after the death of the settlers, whether the settlers had the right to revoke the said deed of settlement during their lifetime even in the absence of any clause in the said deed reserving the right of the settlers to revoke the grant?

21. Mr. Bhaskar Ghosh, learned senior advocate appearing on behalf of the appellants, strenuously argues that by the deed dated August 14, 1964, which was registered on October 6, 1964, there was no present disposition of the property. The document could at best be described as a Will, which is always by its nature revocable. Therefore, the said 1964 deed was revoked on June 9, 1969 and a new disposition was made on the same date.

22. Mr. Ghosh in support of this contention cites the decision in the cases of Naramadaben Maganlal Thakker Vs. Pranjivandas Maganlal Thakker and Others, and of Kokilambal and Others Vs. N. Raman, .

23. Mr. Asis Kumar Sanyal, learned advocate appearing for the plaintiffs-respondents, on the contrary, submits that the settlors divested themselves and created absolute interest in favour of the beneficiaries in executing 1964 deed. In view of such divestment, the settlors were not competent to revoke the settlement. Mr. Sanyal draws my attention to various recitals of 1964 deed, particularly, the words (sic) and submits that the property absolutely vested in favour of the beneficiaries.

24. Mr. Sanyal cites a decision in the case of Namburi Basava Subrahmanyam Vs. Alapati Hymavathi and others,

25. It is now well settled that construction of documents of title under which the claim to property is made is a substantial question of law. As to construction meaning of the words is a question of fact, but the effect of words is a substantial question of law. High Court can go into the said question in a second appeal.

26. There were sufficient indications in the deed of cancellation of the earlier settlement deed of 1964 the reasons for which the settlors were forced to revoke the earlier deed. They stated that the settlement suggested in 1964 did not resolve the disputes between the children of the settlors. On the contrary, it aggravated the disputes. The settlors were living with agonies and, therefore, the document was revoked and/or cancelled and the new settlement was made in 1969 on the very same date.

27. In this appeal, I am concerned as to whether the settlors by executing the deed of 1964 created a vested right in favour of the beneficiaries. In other words, whether the 1964 deed conferred any interest in the property in praesenti in favour of the beneficiaries. The very important provision of the deed of 1964 is a prohibition on the beneficiaries from transferring or creating any encumbrances in the properties during the lifetime of the settlors. The settlors reserved their

rights to pay the rates and taxes and imposed a prohibition on the beneficiaries from mutating their names in relation to the properties settled. It was stipulated that only after the deaths of the settlors, the properties would vest absolutely in favour of the beneficiaries.

28. It is true that settlement is one of the recognized modes of transfer of moveable and immovable properties. Such transfer by way of settlement is legal and valid, but in order to find out the correct intention of the settlors, the deed of settlement has to be read as a whole. The court has to closely examine the documents; sometimes there is absolute vesting and some times there is contingent vesting. The nomenclature of a document is not a conclusive one.

29. My reading of the document of 1964 is that the disposition was not a disposition in praesenti. The document did not take effect on the date on which it was executed, but the settlors created rights thereunder to take effect after their demise. It was specifically stated in the document that the property would remain with the settlors and that the beneficiaries would not be able to mutate their names in relation to the properties. It was, further, specifically stated that the rates and taxes would be paid by the settlors. It was clearly stated in the deed that the property would devolve on the beneficiaries absolutely on the death of the settlors.

30. I cannot accept the contention that by executing the deed dated August 14, 1964 the settlors made complete disposition of the property vesting right in favour of the beneficiaries with effect from date of execution of the deed.

There is an additional factor for coming to this conclusion. The defendants - brothers and the mother executed a deed of sale dated March 13, 1971 in favour of Becharam Mukherjee, the husband of one of the daughters of the settlors. The plaintiffs' witness no. 1 admitted in her cross-examination that Becharam Mukherjee, after acquisition of the property, has constructed his own house.

31. There was an unregistered agreement dated June 16, 1983 between the defendants and the plaintiff no. 1, the spinster sister. By executing the said document, the defendants permitted the said plaintiff no. 1 to enjoy some properties vested in the defendants by the deed dated June 9, 1969. She admitted that it bore her signature and the signatures of her brothers. She, also, admitted that Becharam Mukherjee, her brother-in-law, and Shibendra Narayan Banerjee, her eldest brother, were witnesses to the deed.

32. If the document of 1969 was not acted upon, the defendants could not have conveyed a portion of the property covered by the deed dated June 9, 1969 in favour of said Becharam Mukherjee on March 13, 1971. Moreover, the property conveyed to Becharam Mukherjee has not been included in this partition suit.

33. Therefore, I have no hesitation to hold that the decisions of the courts below were not correct as they misread the deeds of settlement. The process of reasoning of the final court of fact is not legally sound as it was based on

misinterpretation of the documents of title.

34. The judgment and decree of the courts below are, therefore, set aside. I hold that the deed of settlement dated June 9, 1969 is a valid document. However, the plaintiff no. 1, being spinster, shall be entitled to stay in the residential house during her lifetime or till she marries, whichever is earlier.

35. The appeal is, thus, allowed in part. The cross-objection is dismissed. The decree passed by the courts below stands modified, as above.

36. Having regard to the relationships of the parties, I, however, direct the parties to bear their respective costs in this appeal.

37. Urgent certified copies of this judgment and decree, if applied for, are to be given to the learned advocates for the parties on compliance of all formalities.