

(1989) 10 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 1797 of 1989

Sri Siya Ram and others

APPELLANT

Vs

Smt. Lilawati

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100, 34
Evidence Act, 1872 — Section 101
Interest Act, 1978 — Section 3

Citation : AIR 1990 All 75 : (1990) 1 AWC 130

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : S.N. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is a defendants' second appeal arising out of a suit for cancellation of sale-deeds alleged to have been executed by the plaintiff respondent. The plaintiff-respondent has challenged the sale-deeds on the ground that she was defrauded by the defendants. The defendants are her cousins. They got the sale-deeds in their favour fraudulently and did not explain the contents of the deeds to the lady who is illiterate. Relevant allegations challenging the sale-deeds have been made in para 16 of the plaint.

2. The defendants-appellants contested the suit and justified the execution of the sale deeds by the lady and asserted that the sale deeds were valid documents and conferred valid title upon the defendants.

3. Both the courts below have given judgments for the plaintiff-respondent. Aggrieved by their judgments the defendants appellants have approached this Court under S. 100 of the Code of C.P.

4. The learned counsel for the appellants has raised two substantial questions of law for consideration; firstly, that the courts below have placed burden on wrong

shoulders and, therefore, their findings stand vitiated in law and deserve to be set aside and secondly that the defendants-appellants are entitled to interest on the money advanced to the plaintiff-respondent.

5. During the course of arguments the learned counsel for the appellants has placed reliance upon the rulings reported in Krishna Kisor De Vs. Nagendrabala Chaudhurani, ; , Kundan Lal v. Musharrasi Begum; AIR 1938 Oudh 152 Mt. Mahadei v. Ishwari and AIR 1943 Mad 677 Zohara Khatoon Bibi v. Mahboobbi and has contended that the plaintiff respondent could get advice of her husband, therefore, the courts below have patently erred in placing burden upon the defendants appellants to prove that the contents of the deeds were readover and explained to the plaintiff respondent.

6. I have considered the contentions raised on behalf of the appellants and I have gone through the rulings cited by the learned counsel for the appellants. A bare perusal of the three cases except AIR 1938 Oudh 152 would indicate that it was the duty of the court to satisfy itself upon the evidence whether the deeds were actually executed by the lady or by some person duly authorised by her with full understanding of what she was about to do and that she had full knowledge of the nature and effect of the transactions entered into. I think that the learned counsel for the appellants has not read the rulings between the lines and has wrongly relied upon the three cases. Moreover, in 1965 All LJ 1080 Paras Nath Rai v. Tileshra Kuar, a learned single Judge of this Court has observed as below vide Head Note III and IV:

"Rules" regarding transactions by a Pardahnashin lady are equally applicable to an illiterate and ignorant woman though she may not be a pardahnashin. It is not by reason of the Pardah itself that the law throws its protection round a pardahnashin lady but by reason of those disabilities which a life of seclusion lived by a pardahnashin 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 Pardahnashin lady, suffers from the disabilities to which a pardahnashin 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 Pardahnashin lady. Where the plaintiff was illiterate and when she executed the deed in question she was not only more than 60 years old but was also hard of hearing and she has been described by the defendants themselves as a foolish and rustic woman completely devoid of intelligence, and according to the finding of the lower appellate Court she was correctly described as such, and besides the defendants stood in relation to her in a position of active confidence held that there could be no doubt that she was as much entitled to the protection of law as a Pardahnashin lady".

It is not necessary to ascertain whether fraud, misrepresentation or undue influence has been established when it has been found that a deed executed by a pardahnashin lady has not been executed by her voluntarily and after appreciating the nature and import of the transaction, and the latter finding alone is sufficient for holding that the deed is not binding on her and it conveyed no title".

7. In 1988 RD 5 : 1988 All LJ 956 Saghiran v. D. D. C. I have indicated that the revisional Court had patently erred in placing burden upon the petitioner to prove that the sale deed was vitiated by fraud. The revisional court had also patently erred in expecting from the petitioner to prove that she had not executed the document without understanding the contents thereof. The Head Note of this case appears wrong where it indicates that the burden lay upon the lady. To my mind, in view of the decision quoted above the contention of the learned counsel for the appellant is not sustainable that the courts below have placed burden on wrong shoulder in the facts and circumstances of the present case. The defendants-appellants being cousins were under an obligation to prove that the contents of the deed were fully understood by the plaintiff-respondent and that she executed the same being fully aware of the contents.

8. In AIR 1938 Oudh 152 Mst. Mahdei v. Ishwari, a learned single Judge has indicated that the burden lay upon the lady to show that the document was executed under fraud or misrepresentation. The aforesaid observations are confined to the facts involved in the case. In the present case the dictum of law relied upon by the lower appellate court are applicable. In my opinion the burden of proof has been rightly placed upon the shoulders of the defendants appellants.

9. Second contention raised on behalf of the appellants is with regard to the interest upon the sum of Rs. 6,000/- payable to the defendants-appellants. I think that the appellate Court has rightly not awarded interest to the defendants-appellants when they were found guilty of fraud. The question of interest is discretionary with the Court unless it is agreed upon between the parties or it is provided under some statute. Section 3 of the Interest Act, 1978 also does not support the claim of the appellants for interest in the facts and circumstances of this case . Section 3 of the Interest Act, 1978 reads as below:

"3. Power of court to allow interest.--(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say:-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date

mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.....".

In view of the above provision, the claim of the appellants for interest is wholly untenable. In my opinion, the impugned judgment does not suffer from any error of substantial question of law.

10. In the result, the second appeal fails and is accordingly dismissed under Order XLI, Rule 11, C.P.C.

11. Appeal dismissed.