
(1922) 05 CAL CK 0018
In the Calcutta High Court

Umarannessa Nnessa Bibi

APPELLANT

Vs

Jamirannessa Bibi and Another

RESPONDENT

Date of Decision : 23-05-1922

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1923 Cal 362 : 76 Ind. Cas. 448

Hon'ble Judges : Asutosh Mookerjee, C.J.;Chotzner, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for declaration that a conveyance executed by her on the 18th February 1916 was void and inoperative. The case for the plaintiff is that it had been represented to her that the document was a deed of mortgage and that on the faith of this representation she affixed her signature thereto. She has since discovered that the document is in reality a conveyance. She further alleges that, notwithstanding the execution of the document and the delivery of the deed to the defendant, she is still in possession. In the Court of first instance, a Question was raised, whether a suit of this description could be regarded as a suit for a declaratory decree and whether Rs. 10 was the proper Court-fee payable on the plaint. The Trial Court answered this question in favour of the plaintiff, but on the merits dismissed the suit. Upon appeal, the District Judge has not considered the merits of the case, but has dismissed the suit on the ground that the plaint Was inadequately stamped. We are of opinion that this view cannot be supported.

2. There can be no room for controversy that if the allegation of the plaintiff is well founded, the document cannot be treated in law as her deed, and was not merely voidable but void ab initio. This view is based on the principle that, where a person is induced to execute a document other than what he had undertaken to execute, the document is void and need not be cancelled. Illustrations of this ? principle will be found in Thoroughgood's case (1582) 2 Co. Rep. 9a at. p. 9b : 76 E.R. 408 and Foster v. MackInnon (1869) 4 C.P. 704 : 3 L.J. C.P. 310 : 20 L.T.

887 : 17 W.R. 1105. In *Thoroughgood's case* (1582) 2 Co. Rep. 9a at. p. 9b : 76 E.R. 408 it was held that if an illiterate man have a deed falsely read over to him and he then seals and drivers the parchment, that parchment is nevertheless not his deed. In *Foster v. Mackinnon* (1869) 4 C.P. 704 : 3 L.J.C.P. 310 : 20 L.T. 887 : 17 W.R. 1105 Byles, J pointed out that this doctrine was not confined to the condition of an illiterate grantor and that it made no difference whether the grantors were lettered or unlettered. The essential position is that if a grantor or covenantor be deceived or misled as to the actual contents of the deed, the deed does not bind him *Edwards v. Brown* (1831) 1 C. & J. 307 at. p. 312 : 1 Tvr. 182 : 9 L.J. (O.S.) Ex. 84 : 148 E.R. 1436 : 3 Y & J. 423 : 35 R.R. 720 *Swan v. North British Australasian Company* (1863) 2 H. & C. 175 : 32 L.J. Ex. 273 : 10 Jur. 102 : 11 W.R. 862 : 159 E.R 73 : 126 R.R. 617. In *Foster v. Mackinnon* (1869) 4 C.P. 704 : 3 L.J.C.P. 310 : 20 L.T. 887 : 17 W.R. 1105 it was further pointed out that this principle is not limited in its application to deeds, but that the doctrine is equally applicable to other written contracts. In the Case, a person had been induced to put his name upon the back of a Bill of Exchange by the fraudulent representation of the acceptor that he was signing a guarantee. It was ruled that such a signature was not operative in law. The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived not merely as to the legal effect but also as to the actual contents of the instrument, This principle has been repeatedly recognised and applied, *Barnku Behari Shaha v. Krishto Gobindo Joardar* 30 C. 433 *Chooramani Dasi v. Baidya Nath Naik* 33 C. 473. *Sunni Bibi v. Siddik Hossain* 49 Ind. Cas. 76 : 29 C.L.J. 53 : 23 C.W.N. 93.

3. On behalf of the respondent it has been urged, however, that if this be treated as a suit for a declaratory decree the plaintiff is bound to ask for consequential relief under the proviso to Section 42 of the Specific Relief Act, and that if she asks for such consequential relief she is bound to pay Court-fees advalorem on the plaint. There is no foundation for this contention It was pointed out in *Aisa Siddika v. Bidhu Sekkar Banerjee* 13 Ind. Cas. 633 : 17 C.L.J. 3. *Baktawar Singh v. Bhuvan Singh* 20 Ind. Cas. 322 : 17 C.L.J. 468 that the answer to the question whether it is incumbent upon the plaintiff to ask for consequential relief, must depend upon the circumstances of each case. It is plain that there may be cases in which a declaration may be sufficient for his protection In such an event, the plaintiff cannot be compelled to seek a consequential relief. In the present case, the plaintiff alleges that she is still in possession of the property and all that she requires at the present moment is a declaration that the deed which is in the hands of the defendant is not her deed. We are of opinion accordingly that the Court-fees payable on the plaint is sufficient and that the appeal should have been considered on the merits.

4. The result is that this appeal is allowed, the decree of the Court of Appeal below set aside and the case remanded for decision of the appeal on the merits. The appellant is entitled to the costs of the appeal.

5. We direct u/s 13 of the Court-Fees Act that the Court-fee paid upon the Memorandum of Appeal to this Court be returned to the appellant.