

Smt. Rani and Another

Vs

Smt. Santa Bala Debnath and Others

Civil Appeal No. 1943 of 1966

(J. C. Shah A. N. Grover JJ)

14.10.1970

JUDGMENT

SHAH, J. -

1. One Sashi Bhusan was possessed of a piece of land at Mouza Behala District, 24-Parganas, admeasuring .98 acres. The land developed on the death of Sashi Bhusan in 1920 upon his daughter Sarala. Under the Dayabhaga system of law, Sarala inherited the property of her father as a limited owner. Sarala married Kunja Behari. The latter died in 1937 leaving him surviving Sarala, two sons Tulsi and Gobinda, and four daughters Nalini, Kamala, Mangala and Radha. Two of the daughters were married during the life time of Kunja Behari. Kunja Behari left no estate except a residential house constructed on the land at Mouza Behala. Kunja Behari was ailing for about one year before his death in 1937. He was in an humble walk of life, and was apparently not profitably employed during his lifetime. At the time of his death the two sons Tulsi and Gobinda were minors.

2. On October 22, 1941, Sarala executed a deed, Ext. E, agreeing to sell a part of the land (.90 acres) for Rs. 1,100/- to Chapalabala, wife of Sakha Nath Ghosh. It was recited in the agreement of sale that Sarala had agreed to sell .90 acres of land possessed by her "on account of financial need and to pay off certain debts". Sarala acknowledged receipt of Rs. 101/- as earnest money. It appears that Sarala was for some time thereafter disinclined to carry out the bargain. However on March 13, 1942, she executed a deed, Ext. C, conveying the land agreed to be sold for a consideration of Rs. 1,500/- to Chapalabala and Banikana. It was recited in the deed :

"Now on account of financial needs and to meet certain debts and out of other legal necessity, I announced to sell 90 acres land at rent of Rs. 23/- per annum free from defects and encumbrances leaving a portion of homestead land measuring .08 acres."

It was also recited in the deed that Rs. 101/- were paid on the date of the agreement of sale that Sarala had received Rs. 899/- before the date of sale, and Rs. 500/- were paid to her in the presence of the Sub-Registrar. An endorsement of payment of Rs. 500/- before the Sub-Registrar was made by that Officer. The thumb-mark of Sarala was arrested by Abinash Chandra Chakravarty and the deed was attested by four persons including her son Gobinda.

3. On the date of the sale the rent in respect of the land was in arrears. It also appears that before the date of sale Mangala had been given in marriage and the youngest daughter Radha remained to be married. Sarala had also to provide for food and clothing for at least five persons. Sarala had only a residential house and the land in dispute and she had no source of income.

4. Sarala died on April 12, 1950. On January 24, 1953, Tulsi and Gobinda, sons of Sarala filed a suit in the Court of the Subordinate Judge, 24-Parganas, for a decree declaring that the sale deed, dated March 13, 1942, executed by Sarala was not binding upon the plaintiffs, because it was executed without legal necessity. The suit was resisted by Chapalabala and Banikana (Defendants 1 and 2) and by alienees of the land from them. The Trial Court held that the sale deed was supported by illegal necessity. The learned Judge observed that Sarala was in 'strained financial circumstances' and she executed the sale deed to meet expenses for maintaining herself and her family, and for payment of debts. She had to meet municipal taxes, rent for the land and expenses for the marriage of her daughter Radha. The learned Judge observed that the plea that execution of the sale deed was obtained by fraud, mis-representation and undue influence was not seriously pressed "inasmuch as there was no evidence worth the name adduced" to support that case.

5. Against the decree dismissing the suit the plaintiffs appealed to the High Court. In the view of the High Court there was "no such serious and sufficient pressure on the estate" of Sarala as to compel her to sell her property, and the case of the plaintiffs that she was induced to do so "by persuasion and undue influence" of Sakha Nath Ghosh, husband of Defendant 1 must be accepted. The High Court also observed that it was doubtful whether even full consideration for the sale was paid. The High Court held that the defendants' case of legal necessity was not proved and on that account the sale deed executed by Sarala was not binding upon the plaintiffs. But because one Dhiren Chandra in intermediate transferee was not made party to the suit and Dhiren Chandra had obtained a fresh settlement, the High Court was of the opinion that the decree of the Trial Court in respect of 10 Cottahas out of the land sold by Salara, could not be reversed. The High Court accordingly modified the decree passed by the Trial Court and allowed the appeal in part, and dismissed the plaintiffs' suit against Defendants 4, 5, 6 and 16 in respect of 10 Cottahas of land in the northern part of the land. The plaintiffs were given by the decree opportunity to amend the plaint by making a claim for actual possession which was not till then claimed in the plaint. Accordingly the suit was decreed in respect of the remaining defendants in respect of the portion of the land not covered by 10 Cottahas in possession of Defendants 4, 5, 6 and 16. With certificate granted by the High Court, the heirs of original Defendants 2 and 3 having appealed to this Court.

6. In the plaint it was averred in Paragraph 4 that Sarala was 'illiterate and unpractical in worldly matters', that 'she was a simple and Pardanashin lady', that Sakha Nath Ghosh, husband of Chapalabala was an 'Officer', of one of the partner, of the famous Roy family and was 'shrewd and cunning', that Sarala called him 'Dharamapita' and used to 'depend upon him in many affairs', and used to be guided by his instructions, and on that account the said Sakha Nath an the husband of Banikana in collusion with the scribe made fraudulent representation and exercised undue influence over Sarala and got the sale deed executed in their favour. This plea was denied by the contesting defendants. At the trial no issue was raised and no evidence was led in support of that plea. It was conceded that the plea of fraud and undue influence could not be supported. The Trial Court observed :

"Though it was also tried to be said that there was fraud, mis-representation and undue influence exercised for the execution and registration of the Kobala (sale deed) yet that branch of argument was not seriously pressed inasmuch as there was no evidence worth the name adduced to show that there was really any fraud practised for the execution and registration of the Kobala in favour of Defendants 1 and 2 (Chapalabala and Banikana) by Sarala Bala Dasi."

The High Court without adverting to this state of the record observed that the case of the plaintiffs

that Sarala was induced to sell the land because of persuasion and undue influence of Sakha Nath Ghosh must be accepted. The High Court also observed that it was doubtful whether full consideration for the sale was paid, and that since Sakha Nath Ghosh was "a rent collector under one of Roy Babus of Behala, in order to grab the valuable property belonging to Sarala he had induced Sarala to enter into a transaction of sale". These observations of the High Court are not supported by any evidence and they seriously vitiate their appreciation of the evidence on record.

7. In the sale deed it was expressly recited that Rs. 101/- were paid at the time of the agreement of sale. That recital was supported by the recital in Ext. E, in the agreement of sale. It was also recited in the sale deed, Ext. C, that Rs. 899/- were received before the date of the sale, and Rs. 500/- were received before the Sub-Registrar. Payment of Rs. 500/- is supported by the endorsement on the sale deed itself. It is true that apart from the recital about the payment of Rs. 899/- there is no other documentary evidence to prove that payment. The burden of proving that the consideration was not received by the vendor, however, lay upon the plaintiffs and no serious attempt was made to discharge that burden. The plaintiffs set up the case that Rs. 500/- were taken back from Sarala after she left the Sub-Registrar's office.

The High Court disbelieved this part of the case about repayment of the amount of Rs. 500/- by Sarala received by her before the Sub-Registrar. The High Court observed that about the payment of the balance of the consideration, namely Rs. 899/- "there was no evidence at all on the side of the defendants that the same was paid". In our judgment, the High Court misconceived the nature of the onus which lay upon the plaintiffs to prove that the consideration which it was recited in the deed was received by Sarala was not in fact received by her and false recital was made. The recitals in the deed are supported by the testimony of Sailendra Nath Nandi who said that the entire consideration was received by Sarala. We are unable to accept the view of the High Court that the sale deed was not supported by full consideration.

8. The agreement of sale and the sale deed, it may be remembered, were attested by Gobinda son of Sarala. Before us it was contended that Gobinda was at the date of the agreement of sale, and at the date of the sale deed, a minor and his attestation was of no value. But on this part of the case there is no reliable evidence.

9. Jogindra Nath Mondal who wrote the two deeds was examined on behalf of the defendants. He deposed that Ext. E - the agreement of sale - was read over and the contents were explained to Sarala after it was written, and she understood the implications of the deed and also received Rs. 101/-. In his cross-examination he stated that he had written down the deed according to what was said to him by Sarala, Gobinda and by Sakha Nath Ghosh and thereafter Sarala executed the deed. There is no reason to disbelieve the testimony of this witness. Abinash Chandra Chakravarty who attested the sale deed - Ext. C - and the agreement of sale - Ext. E - could not be examined for he had died before the date of trial. Attestation by him of the two deeds has significance. Gobinda Chandra Debnath a witness examined on behalf of the plaintiffs stated that the family of the plaintiffs had confidence in Abinash Chandra Chakravarty as he was "the friend and well-wisher of the family". There is no ground for believing that Abinash Chandra Chakravarty who was present at the time of the execution and had attested the two deeds misused the confidence reposed in him and was guilty of being a party to the bringing into existence a deed containing false recitals to defraud Sarala and her sons.

10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the

property for legal necessity or benefit to the estate. In adjudging whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistence must be considered. Legal necessity does not mean actual compulsion : it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was responsible to satisfy himself as to the existence of the necessity.

11. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstance in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and in within the special knowledge of the person who seeks to set aside, the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession.

12. Kunja Behari, husband of Sarala had died in 1937 after a protracted illness : there is no reliable evidence that he left any property except the residential house, built on a part of the land which Sarala had inherited from her father. Sarala had two sons who were then minors and two daughters who were yet to be married. There were five members in the family to be fed and clothed, and the marriage expenses of the two daughters had to be met. The case that Tulsi the eldest son obtained gainful employment shortly after his father's death and before the sale deed was executed was rightly disbelieved by the Trial Court. The story that Gobinda had taken to hawking vegetable has also been rightly disbelieved by the Trial Court. Sarala had to meet several obligations : she had to pay the annual rent accruing due in respect of the land in dispute and also to pay municipal taxes : she had to feed and clothe herself and her children and to perform the marriage of her daughter Radha. She had no other property and she had no income. The recitals in the deed about the existence of pressure upon the estate are, therefore, amply corroborated by the circumstances.

13. Mr. Purshottam Chatterjee appearing on behalf of the plaintiffs contended that there was evidence only of the debts amounting to Rs. 75/-, Rs. 25/- as rent for the land payable to the head- lessor and Rs. 50/- expenditure incurred for the marriage of the daughter Mangala. Counsel relied upon the recitals made in a plaint filed in a suit for recovery of rent by the landlord against Sarala after the sale deed in which the rent for the years 1941, 1942 and 1943 was claimed. Counsel also relied upon the evidence that in the community to which Sarala belonged, the marriage of a daughter only costs Rs. 50/-. That evidence, in our judgment, is wholly unreliable. In any event apart from the obligation to pay rent and to meet the expenses of marriage of her daughter Mangala various other obligations had to be met. The argument that Sarala belonged to a community in which the male members used to be employed as "household servants" and that Tulsi and Gobinda were so employed is also not supported by any reliable evidence. In our judgment, the High Court ignored the strong inference which arose out of the these circumstances and especially out of the participation by Gobinda in the execution of the agreement of sale and the sale deed.

14. In our view the case of the Defendants 1 and 2 that the sale deed was supported by legal necessity of Sarala was amply made out and the Trial Court was right in holding that the sale deed was executed for legal necessity. From the attestation by Gobinda, one of the sons, of the agreement

of sale and the sale deed and the recitals in those deeds, viewed in the light of the other evidence, we are of the opinion that the legal necessity set up the Defendants 1 and 2 is amply proved.

15. It was urged before us that because the 10th defendant died before the certificate was given by the High Court for appeal to this Court, and the heirs of the 10th defendant were not brought on the record, the appeal abates in its entirety. There is, however, no clear evidence whether the 10th defendant died before or after the judgment of the High Court. Again, the plaintiffs had in the suit only claimed a relief for declaration that the alienation in favour of Defendants 1 and 2, i.e. Chapalabala and Banikana made on March 13, 1942 was without legal necessity and was not binding upon them, and for a declaration of their title to the disputed land. The alienees from Defendants 1 and 2 were, it is true, impleaded as parties, but no relief was claimed against them. Nor was any averment made in the plaint about the reasons for and the circumstances in which they were so impleaded. Since the plaintiffs only claimed relief against Defendants 1 and 2, and that relief cannot be granted to the plaintiffs, we think, the circumstances that the heirs of the 10th defendant are not impleaded in this appeal does not affect the right of the defendants to claim that the appeal must be dismissed.

16. The appeal is therefore allowed and the suit filed by the plaintiffs is dismissed with costs throughout.

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