

Rao Saheb

Vs

Rangnath Gopalrao Kawathekar (Dead by L. Rs.) and Others

Civil Appeal No. 1658 of 1967

(K. S. Hegde, A. N. Grover JJ)

28.01.1971

JUDGMENT

HEGDE, J. -

1. Defendant No. 2 in the suit from which this appeal arises is the appellant before this Court. The plaintiffs sued for the possession of the suit properties on the basis of their title. Their case was that defendant No. 1 Dagaduba, who was the owner of the suit properties sold the same to the plaintiffs on January 12, 1952; but some of the defendants had trespassed on those properties and hence they were constrained to file the suit. The suit was filed on February 14, 1953.

2. The first defendant in his written statements pleaded that the suit properties originally belonged to his family; there was a division in the family between himself and his brother, the second defendant; in that division that suit properties fell to his share; thereafter he became the absolute owner of the same and he mortgaged the same to the plaintiffs. But later he changed that version and admitted that he sold the suit properties to the plaintiffs. The second defendant admitted that the suit properties originally belonged to his family. He also admitted that there was a partition in his family but his case was that as a result of that partition, the suit properties fell to his share and that he was in possession of the same. He denied that his brother had any right to alienate the suit properties or in fact he had alienated the same.

3. The two primary questions that arose for decision before the trial Court were (1) whether in the partition in the family of defendants 1 and 2, the suit properties fell to the share of the first defendant or the second defendant and (2) whether the first defendant had sold the suit properties to the plaintiffs. The trial Court decided both these question in favour of the plaintiffs and decreed the plaintiffs suit. In appeal the learned District Judge held that the suit properties belonged to the joint family of defendants 1 and 2 and that it had never been partitioned. He further came to the conclusion that the sale put forward by the plaintiffs has not been established. The High Court reversed the decree of the first appellate Court and restored that of the trial Court. Thereafter this appeal has been brought after obtaining special leave.

4. As seen earlier both the first defendant as well as the second defendant had pleaded that there was partition in the family. Therefore the only question that fell for decision was whether the suit properties fell to the share of the first defendant or the second defendant. There was no basis in the pleadings for the finding of the learned District Judge that the suit properties were the joint family properties of the first and the second defendants. This was entirely a new case made out by the District Judge. The pleadings in the case did not permit learned District judge to come to such a conclusion. Hence in our opinion the High Court was justified in reversing that finding of the first

appellate court. An attempt was made before us to justify the finding of the first appellate court that the suit properties were joint family properties of defendants 1 and 2 by referring to the evidence in the case. We are not satisfied that there is any evidence to support that case. Further a case not pleaded cannot be made out by evidence.

5. Now coming to the question whether the suit properties fell to the share of the first defendant or the second defendant, it was pleaded in the plaint that the second defendant had specifically admitted in a document executed by him on January 12, 1952 that the suit properties were of the exclusive ownership of his brother and that he had no right on the same. In his written statement, the second defendant had pleaded that the deed in question is a forgery and that he had not executed it. The trial Court came to the conclusion that the said deed was executed by the second defendant. The first appellate court also did not accept the contention of the second defendant that he did not execute that deed. On the other hand, the first appellate court held that the same was obtained on misrepresentation. No plea of misrepresentation was taken in the written statement. No issue as to whether the said deed was obtained by misrepresentation was raised. Therefore it was not open to the first appellate court to consider whether the deed in question was invalid on the ground that it was obtained by misrepresentation. The only plea put forward by the second defendant was that the deed was a forgery. Both the trial Court as well as the first appellate court have rejected that plea. Mr. Sanghi, the learned Counsel for the appellant contended that when the execution of a document is denied, the party seeking to prove that the document must not only prove that the alleged executant has signed that deed, but he must also prove that the executant had signed the same with the knowledge of its contents. What facts and circumstances have to be established to prove the execution of a document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and that the document need not adduce evidence to show that the party who signed the document knew the contents of the document. Ordinarily no one is expected to sign a document without knowing its contents but if it is pleaded that the party who signed the document did not know the contents of the document then it may in certain circumstance be necessary for the party seeking to prove the document to place material before the Court to satisfy it that the party who signed the document had the knowledge of its contents.

6. Now we come to the question whether the sale deed put forward by the plaintiffs is true and genuine. As mentioned earlier, the first defendant, the alleged executant of the document had admitted its execution. It is said that the sale deed was a registered sale deed. The plaintiffs' case is that they produced that sale deed in a civil Court records were burnt during the police action in Hyderabad. Their further case is that most of the records of the registration office in which the sale deed was registered were also burnt at that time and one of the books that were burnt was that in which the sale deed in question was copied. In support of that case he examined his lawyer who produced the sale deed into civil Court on his behalf. His evidence has been accepted both by the trial Court as well as by the first appellate Court. In order to prove the destruction of the book maintained in the registration office, where in copies of the registered deeds were mentioned, the plaintiffs examined P.W. 7 Syed Ahmedulla to support that case. He was the Kabala Navis of the registration office in which the sale deed executed by the first defendant in favour of the plaintiff is said to have been registered. The said sale deed is said to have been executed in the year 1335 F. He deposed that the Bahi of 1335 F had been destroyed in the police action. That evidence of his was not challenged in cross-examinations. On the other hand in his cross-examination, it was brought out that many other Bahis pertaining to the other sale deeds were also destroyed.

7. The trial Court accepted his evidence. Curiously enough the first appellate Court thought that the plaintiff should have produced better evidence for the proof of the destruction of the Bahis and the

witness in question was not a competent witness to speak to the destruction of the records in question. In our opinion the learned appellate Judge erred in thinking that P.W. 7 was not competent witness to speak to the destruction of the Bahis. P.W. 7 also proved Ex. 1, a copy of Ferist No. 2 giving the extract of a sale deed executed by the first defendant in favour of the plaintiffs. That exhibit reads :

# "An Extract re.registration of Documents In the Court of the Munsif Tuljapur (Translation of a copy of the Extract in Urdu) Exhibit I S.A. 1106 of 1960A copy of the Extract (Ferist No. 2) Under Section 89 of the Rules of the Registration concerning the Register No. 1 of 1355 F. OFFICE OF SUB-REGISTRAR, TALUKA TULJAPUR1. Name of place where the property is situated Sindphal2. Property mentioned in the document S.No. Acres Gun- Rev. Share thas Asst. 455 2 20 8-0-0 Whole 456 2 19 7-8-0 do 457 2 30 8-8-0 do 458 2 19 7-8-0 do 459 15 37 20-0-0 do3. Kind of the document Sale deed4. Name of the executant of document Dagdu s/o Dattatraya5. Name of the person in whose favour documents is executed (1) Rangnathrao s/o Gopalrao (2) Vasantrao s/o Digambarrao6. No. of the documents 1887. No. of the page 28-838. Volume One of 1955 F.9. Date of registration 20th Khurdad 1355 F."##

8. That exhibit shows the names of the concerned parties, the nature of the document and description of the properties dealt with. It shows that the document executed was a sale deed. The vendor is the first defendant and the vendees are the plaintiffs. The description of the properties shown therein tallies with the suit properties. It is true, as contended by Mr. Sanghi that the nature of the document mentioned therein is not conclusive. But so far as the nature of the document is concerned, both the vendor and the vendee admit that it was a sale deed. Therefore that question does not arise for consideration. We agree with the High Court that the learned district Judge erred in thinking that the secondary evidence afforded by Exh. 1 is not a satisfactory one.

9. The only question that remains for consideration is whether the suit properties fell to the share of the first defendant in the partition that took place between him and the second defendant. On this question, we have the unimpeachable evidence afforded by Ex. 2 executed by the second defendant in favour of the plaintiffs on January 12, 1952. That document styles itself as an arrangement. English translation of that document reads as follows :

"Agreement deed executed by Raosaheb Duttoba Bandgar r/o Sindphal at present Tuljapur 1952 on Shake 1873 'Khar' Name Sawanchere, Miti Poush Sudh 15, in favour of Shri Rangnath Gopalrao Kawthekar and Vasant Digamberrao Kawthekar r/o Kasba Tuljapur. The terms of the agreement are that you both are the absolute owners of the lands bearing Survey Nos. 455, 456, 457, 458, 459 named Thike Nagral, situated at Sinaphal which were sold by my elder brother Dugdoba Duttoba Bandgar through Registered sale-deed along with the mango trees situated in the said lands and right to use that water of the well as an owner. I agree that I will not interfere or obstruct in your right of possession. You are the owners as per the said registered sale-deed and I accordingly apply to Patel, Patwari of the said village to make necessary entries in the (D) Form (in vernacular). If registered I will fail to do so you can do it as per terms of this agreement and registered Sale-deed. Neither I nor my heirs have any right in it. The sale-deed of the said land is registered on July 20, 1955. I admit it. You enjoy the land as before so the Agreement Deed is executed with the consent. Dated January 12, 1952."

10. From this document it is clear that the second defendant admitted that the suit properties were of the exclusive ownership of the first defendant, his brother and that he had no right in the same. The plaintiffs evidently were put to the necessity of taking this document from the second defendant in view of the destruction of the records referred to earlier. It is clear that the second defendant after executing that document is now trying to resile from the admissions made by him with a view to take advantage of the situation in which the plaintiffs are placed. Mr. Sanghi contended that unless we come to the conclusion that in view of Ex. 2, the appellant is estopped from putting forward his title to the suit properties, Ex. 2 is irrelevant. We are unable to accept this contention. Exh. 2 is relied on by the plaintiffs to prove the admission of the second defendant that the suit properties belonged to his brother and that his brother had sold the same to the plaintiffs. Admission is an important piece of evidence. But it is open to the person who made the admission to prove that those admissions are not true. It was not the case of the appellant that the admissions contained in Ex. 2 are wrong admissions and he made those admissions under some erroneous impression or that they were obtained from him by misrepresentation. His case was that he never executed Ex. 2. We have already rejected that case. Hence the admissions contained in Ex. 2 assume importance. Admission is one thing, estoppel is another. Admission is a piece of evidence but estoppel creates title. Ex. 2 was relied on as an admission and not as an estoppel. We agree with the High Court that Ex. 2 affords satisfactory evidence to prove the first defendant's title to the suit properties. It further proves the alienation effected by the first defendant in favour of the plaintiffs.

11. The only other contention advanced on behalf of the plaintiffs is that the alienation put forward in the plaint is an invalid as it contravened the provisions of Agricultural Lands Alienation Act inasmuch as the purchaser did not obtain the sanction of the Collector before purchasing the properties as the first defendant was a shepherd and as such a member of a protected tribe. The trial Court came to the conclusion that the first defendant was not shepherd and it was not proved that he was inclined to of a protected tribe. In appeal the learned District Judge was inclined to think that the first defendant was a member of a protected tribe but it left open the issue relating to the validity of the sale and chose to decide the case on other grounds. In the High Court the plea covered by the afore-mentioned issue was not agitated. The High Court did not consider that plea and as such we did not permit Mr. Sanghi to raise that plea in this Court.

12. In the result this appeal fails and the same is dismissed with costs.

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