

Smt. Sohbatdei

Vs

Deviplal and Others

Civil Appeal Nos. 1451 And 1455 Of 1966

(J. M. Shelat, C. A. Vaidialingam JJ)

15.02.1971

JUDGMENT

VAIDIALINGAM, J. -

1. These two appeals by special leave are directed against the common judgment and decree, dated March 10, 1966, of the Allahabad High Court in Second Appeals Nos. 3583 and 5177 of 1961.
2. As there were two suits out of which these two appeals arise, we will now refer to the parties as they are arrayed in Civil Original Suit No. 14 of 1957. The appellant, who is the same in both the appeals, instituted Civil Original Suit No. 14 of 1957 in the Court of the Additional Civil Judge, Basti, for a declaration that she is the owner of the suit properties mentioned in list A of the plaint therein and was in possession of the same. In the alternative she prayed that the defendants may be directed to execute a sale deed in her favour in respect of the said properties on receipt of a sum of Rs. 6,500/- deducting the amount of Rs. 3,500/- already claimed to have been paid by her. In default of execution of the sale deed by the defendants, she prayed for the sale deed being executed through court. She also prayed for the issue of an injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit properties.
3. The case of the plaintiff was briefly as follows : She was the bhumidhar of certain plots of lands and owner of a house described in list B in the plaint. The first defendant and his father were owners of the plots and the house described in list A. The plaintiff wanted to dispose of properties mentioned in list B. Similarly the first defendant and his father wanted to dispose of their properties of referred to in list A. Negotiations were carried on between the father-in-law of the plaintiff and the first defendant and his father regarding the properties mentioned in list A. Ultimately in the month of Phagun, 1955, an agreement was entered into between the first defendant and his father-in law of the plaintiff on her behalf other, by which the first defendant and his father agreed to sell to the plaintiff the properties comprised in list A in the plaint for a sum of Rs. 10,000/- and the plaintiff agreed to purchase those properties. In pursuance of the agreement the plaintiff was put in possession of the lands and the house. The plaintiff sold in July, 1955, her properties shown in list B of the plaint to third parties and out of the sale proceeds paid a sum of Rs. 3,500/- to the first defendant and his father towards the sale consideration of Rs. 10,000/-. As per the agreement the plaintiff was to pay the balance of Rs. 6,500/- by January, 1956 and was to get the sale deed executed in her favour in the month of January, 1956 on receipt of the balance consideration. The plaintiff has made further averments that out of the proceeds realised by her from the sale of her properties shown in list B, she has paid to the first defendant and his father a sum of Rs. 787/- as the price of the implements of husbandry that were in the house and agreed to be sold to her. The plaintiff later on came to know that the first defendant had sold the suit properties to the second

defendant for a sum of Rs. 11,000/- with false recitals. The second defendant had taken the sale deed with full knowledge of the agreement in favour of the plaintiff. This led to a criminal cases and the second defendant was attempting to interfere with the plaintiff's possession of the properties.

4. The first defendant did not contest the suit. On the other hand, the second defendant claimed that the agreement pleaded by the plaintiff was false and that her claim that she was in possession of the suit properties was also equally untrue. On the other hand the second hand defendant pleaded that on the basis of an agreement entered into by him with first defendant and his father, he had agreed to purchase the suit properties for a sum of Rs. 11,000/-. In pursuance of the agreement he also paid earnest money as evidence by the receipt executed by the first defendant, dated June 5, 1955, and he was put in possession of the suit properties. Even regarding the corps on the hands he paid to the first defendant a sum of Rs. 1,500/-. After paying the balance consideration, the first defendant had executed a sale deed in his favour on November 21, 1955. The second defendant further pleaded that the he was a bona fide purchaser for value of the suit properties without notice of any agreement in favour on the plaintiff.

5. The second defendant and the other defendants as plaintiffs as plaintiff instituted in their turn in the same court Civil Original Suit No. 209 of 1958 for a declaration of title and possession of the same properties. In the alternatively prayed for the delivery of possession in case they were not found to be in possession of the same. The allegations in this plaint were on the same lines as in the written statement filed in Civil Original Suit No. 14 of 1957.

6. The plaintiff in Civil Original Suit No. 14 of 1957 was the third defendant and the vendors were defendants 1 and 2. The vendors did not contest this suit. The plaintiff in Civil Original Suit No. 14 of 1957 contested this suit on the same grounds as those alleged in her plaint in the former suit.

7. Both the suits were tried together and evidence was common. It may be mentioned at this stage that the second defendant raised a plea that the agreement pleaded by the plaintiff was hit by Section 29 of the Contract Act and as such was void.

8. The trial court rejected all the contentions of the second defendant. It was held that the oral contract of sale pleaded by the plaintiff was true and that she was in possession of the house and the lands in pursuance of the contest. The payment of Rs. 3,500/- towards the sale consideration was held to be true. It was further held that the second defendant was not a bona fide purchaser as he had notice of the prior contract between the plaintiff and the first defendant. In this view it was held that the sale deed executed in his favour on November 21, 1955, is not binding on the plaintiff. The trial court further held that Section 29 of the Contract Act has no application and that the claim of the plaintiff is not barred by Section 41 of the Transfer of Property Act. On these findings the trial court decreed suit No. 14 of 1957 and directed the first defendant to execute the sale deed as prayed for the plaintiff. In default the plaintiff was held entitled to get the sale deed executed through court. An injunction was also issued restraining the defendants from interfering with the possession of the properties by the plaintiff, and the trial court dismissed suit No. 209 of 1958.

9. The second defendant filed two appeals in the District Court, Basti, being Civil Appeal Nos. 263 and 265 against Civil Original Suit No. 209 of 1958 and 14 of 1957 respectively. The learned district Judge accepted the findings of the trial court that the agreement pleaded by the plaintiff was true and that she was also in possession of the suit properties. The learned District Judge also agreed with the view of the trial court that the Section 41 of the Transfer of Property Act has no application and that the second defendant was not a bona fide purchaser in view of the fact that he had notice of

the agreement in favour of the plaintiff.

10. Having agreed on all these aspects with the trial court, learned District Judge held after the reference to the allegations in the plaint regarding the oral agreement that the contract pleaded by the plaintiff was void under Section 29 of the Contract Act. In this view the appeals filed by the second defendant were allowed resulting in the dismissal of Civil Original Suit No. 14 of 1957 and decreeing of Civil Original Suit No. 209 of 1958.

11. The plaintiff filed before the High Court of Allahabad Second Appeals Nos. 3583 and 5177 of 1961 against the decrees and judgment of the District Court in Civil Appeals Nos. 263 and 265 of 1960 respectively. The High Court did not think it necessary to go into the facts. On the other hand the High Court agreed with the view of the District Court that the contract pleaded by the plaintiff was void under Section 29 of the Contract Act and that she was not entitled to any relief. In this view the High Court dismissed the both the appeals on March 10, 1966.

12. The plaintiff has filed these two Civil Appeals Nos. 1454 and 1455 of 1966, challenging respectively the decision in Second Appeals Nos. 5177 and 3583 of 1966.

13. Mr. B. L. R. Iyengar, learned counsel for the appellant, urged that the view of both the District Court as well as the High Court that the agreement pleaded by the plaintiff is void under Section 29 of the Contract Act, is erroneous. The counsel pointed out that the various circumstances adverted to by the High Court do not in law make the agreement pleaded by the plaintiff void. The counsel pointed out that the agreement being oral, the plaintiff has set out in verbose and inartistic manner the circumstances under which the agreement was entered into as also the terms of the agreement. Those recitals if properly appreciated will clearly show that there is absolutely no ambiguity or uncertainty about any of the terms referred to by her. In this connection the counsel also placed reliance on the fact that even the second defendant did not specially plead as to how the agreement is hit by Section 29 of the Contract Act. On other hand, there was only a very bald pleading to that effect.

14. Mr. J. P. Goyal, learned counsel for the contesting respondent, on the other hand, urged that the view taken by the High Court regarding the agreement pleaded by the plaintiff being hit by Section 29 of the Contract Act, is correct. According to the counsel the various matters mentioned by the plaintiff as the terms of the agreement clearly establish that the terms and conditions are either not certain or capable of being made certain.

15. We have gone through the various averments made by the appellant in the plaint in Civil Original Suit No. 14 of 1957. We are free to admit that the plaintiff has referred to various matters relating to the contract in a very clumsy manner, but if the unnecessary details referred to by her are eliminated, the position becomes clear. In view there is nothing in the agreement, the meaning of which is not certain or capable of being made certain.

16. We will now briefly refer to the nature of the agreement pleaded by the plaintiff. She refers to the fact that she owns landed property and house described list B. She then adverts to the first defendant owning landed property and the house described in list A. She proceeds to state that the first defendant and his father were finding it difficult to manage their properties referred to in list A. Similarly the plaintiff's father-in-law, who was managing the properties on behalf found it difficult to manage the plaintiff's properties referred in list B. The plaintiff wanted to dispose of her properties referred in list B and the first defendant and his father similarly wanted to dispose of the

properties described in list A. The first defendant and his father approached the plaintiff's father-in-law offering to sell the properties mentioned in list A. After consulting the plaintiff, her father-in-law agreed to purchase from the first defendant the properties described in list A for a sum of Rs. 10,000/-. It was agreed that the plaintiff will pay towards sale price from and out of the proceeds she will be realising from the sale of her properties mentioned in list B. The first defendant and his father also agreed to sell the implements of husbandry such as bullocks etc., which were in the house for a price to be fixed by them. The first defendant is to put the plaintiff in possession of the properties mentioned in list A together with the entire implements of husbandry which were in the house. After deducting the amount that is paid towards the sale consideration from the proceeds of the sale of items in list B, the plaintiff will pay the balance sale price to the first defendant by January, 1956 and the first defendant and his father are to execute the sale deed in her favour.

17. The plaintiff further proceeded to state that her properties in list B were arranged to be sold to third parties. She describes the manner in which the sale deed is to be executed by her in respect of those items to the said parties. The plaintiff then states that in pursuance of the agreement with the first defendant and his father, the latter delivered possession of the properties mentioned in list A together with the implements of husbandry to the plaintiff in the month of Baishak, 1955 and she has been in possession and enjoyment of the lands and the house. She has further stated that the value for the implements of husbandry was fixed by the first defendant at Rs. 787/- which amount was separately paid by her. From and out of the sale proceeds of her properties mentioned in list B, she paid to the first defendant a sum Rs. 3,500/- towards the sale consideration and she was also prepared to pay the balance price of Rs. 6,500/- by January, 1956. But she later on came to know that the second defendant in collusion with full knowledge of the agreement in her favour had managed to obtain sale of the identical properties from the first defendant and attempted to interfere with her possession. According to the plaintiff, the second defendant is not a bona fide purchaser and that he has no right in the properties. In view of the fact that her possession was sought to be disturbed by the second defendant, she had to institute the suit for declaration of title and in the alternative for having sale deed executed in her favour as per the agreement entered into with the first defendant.

18. The father of the first defendant appears to have died at the time of the institution of the suit. The first defendant, as we have already mentioned, did not contest the claim of the plaintiff nor did he appear to support the second defendant in the latter's suit. The second defendant in a joint written statement filed along with the defendants Nos. 3 to 9, who are claiming rights in the properties under him, stated that the averments made by the plaintiff in sub-paragraphs 1 to 5 of Paragraph 5 relating to the agreement pleaded by her were not admitted. It was further pleaded that the agreement pleaded by the plaintiff was not fit to be considered as it was void in law and it was barred by Section 29 of the Contract Act. The other averments in the written statement related to the claim made by the plaintiff on facts. It will be seen that the second defendant gave no particulars as to why the agreement pleaded by the plaintiff is barred by Section 29 of the Contract Act.

The trial court held that Section 29 of the Contract Act is not applicable. Before the learned District Judge the following six circumstances were relied on by the second defendant in support of the plea based on Section 29 of the Contract Act.

"(1) It was not known for how much the plots of Smt. Sohbat Dei would be sold.

(2) It was also not known as to what would be the necessary expenses referred to in para No. 1 mentioned above.

(3) It was not certain if Smt. Sohbat Dei would be able to sell her plots.

(4) It was not stated in the agreement as to what would happen regarding the unknown part payment of consideration in case Smt. Sohbat Dei was unable to sell her plots.

(5) The time of payment of part of the consideration was also uncertain.

(6) The amount of the balance of consideration which was to be paid in January, 1956, as well was uncertain."

19. The learned District Judge in a very short paragraph has held that the above circumstances and therefore the agreement suffered from uncertainties and therefore the contract pleaded by the plaintiff is void under Section 29 of the Contract Act and cannot be enforced. We find that the learned District Judge has given no reason whatsoever as to why any or all the above circumstances make the contract void. The High Court also has in a rather summary manner accepted the views of the District Judge in this regard. The learned Judge has stated that the amount of sale consideration was not certain and the terms of the agreement set out in the plaint show that there is no mutuality between the parties. The learned Judge has further stated that the purchase to be made by the appellant under the contract was dependent upon the sale of her properties enumerated in list B and, as it was highly doubtful as to whether she would be able to find any purchaser at all, the agreement pleaded by her cannot be considered to be certain. According to the High Court the cumulative effect of all these circumstances make the agreement uncertain and vague and as such the agreement was void.

20. We are of the opinion that the approach made both by the learned District Judge and the High Court is erroneous. None of the circumstances relied on by the learned District Judge and enumerated above nor the other circumstance relied on by the High Court will attract Section 29 of the Contract Act to the agreement in question. The fallacy underlying the reasoning of the High Court is in construing the recitals in the plaint as if a document of title was being interpreted or construed by a court. In our opinion, there is absolutely no ambiguity or uncertainty in any of the terms pleaded by the plaintiff. As we have already mentioned the consideration amount is fixed, namely, Rs. 10,000/- the view of the High Court that the amount of sale consideration was not certain, is erroneous.

21. Regarding the price to be paid by the plaintiff for the implements of the husbandry in the house, it is clearly mentioned by her that she will pay the price fixed by the first defendant. There is no ambiguity whatever in this term as wrongly assumed by the High Court. In fact the plaintiff has further averred that the price for those items was fixed by the first defendant and his father in the sum of Rs. 787/- which amount was paid by her. The question whether the plaintiff was able to get a purchaser for her properties shown in list B has no relevance in considering the applicability of Section 29 of the Contract Act to the agreement set up by the plaintiff. She has only referred to her owning the items mentioned in list B, and that she was making efforts for the sale of those items. According to the plaintiff the amount that will be realised by her from the sale of those properties will be paid to the first defendant towards the sale consideration. The reference to the proposed sale of the items mentioned in list B is only to indicate the source of fund for payment of part of the sale consideration. Nowhere has she pleaded that the payment of the sale price to the first defendant depends upon her being able to sell her properties in list B, because it is made clear by her that by January, 1956, she will pay the entire amount of consideration and have the sale deed executed by

the first defendant.

22. Another circumstance relied on by the High Court against the plaintiff is that in the agreement pleaded by her there is no term as to what is to happen if she does not purchase the property from the first defendant. The High Court has missed that if there is no provision made in the agreement, as to what are the rights of parties in such a contingency the aggrieved party will be entitled to seek his remedy available to him in law. This circumstance will also no make the contract void.

23. From the agreement pleaded by the plaintiff the following facts are clear : (a) price is fixed at Rs. 10,000/-; (b) items of properties to be sold are definite; (c) plaintiff being put in possession in pursuance of the agreement; (d) the entire sale consideration to be paid by the plaintiff by the January, 1956; and (e) any amount that is paid by the plaintiff before January, 1956 is to be adjusted towards the sale price and the balance alone is to be paid by January, 1956. On receipt of the balance amount or the full amount of Rs. 10,000/- as the case may be, the first defendant was to execute the sale deed in January, 1956.

24. All the above facts establish that the agreement pleaded by the plaintiff cannot be considered to be one the meaning of which is not certain or capable of being made certain.

25. To conclude Section 29 of the Contract Act has no application to the facts of this case. The trial court and District Court, as we have pointed out earlier, have concurrently found on all other points in favour of the plaintiff, and the High Court has not differed from these findings. The plaintiff's suit has been dismissed by the District Court and the High Court only on the ground that the agreement pleaded by the plaintiff void under Section 29 of the Contract Act. This view has been held to be erroneous by us.

26. In the result the judgments and decrees of the High Court in both the Second Appeals are set aside and these appeals are allowed. The judgments and decrees of the trial court in both the suits are restored. The appellant will have her costs throughout. However, in this Court there will be only one hearing fee.

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