

Thakur Dongar Singh

Vs

Dr. Ladli Prasad Bhargava

Civil Appeal No. 1340 of 1967

(D.G. Palekar, A. Alagiriswami JJ)

04.05.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal relates to a house situated in Ujjain City of Madhya Pradesh. The respondent purchased it from Jassabai, the widow of one Guman Singh. The appellant attached the suit house and the respondent preferred a petition under Order 21, Rule 58, Civil Procedure Code. That petition having been allowed the appellant filed a suit under Order 21, Rule 63, C.P.C., out of which this appeal arises.

2. The appellant (he died during the pendency of the appeal and his eldest son was brought on record) averred in the suit that Guman Singh and his cousin Onkar Singh who were members of a joint Hindu family were having monetary dealings with him and on May 27, 1945, executed an agreement Ext. P-2 admitting their liability for Rs. 32,50 and also undertaking to pay it by the year 1951. The dispute between them was referred to arbitration and on the basis of the award given by the arbitrator a decree was obtained and in execution of the decree the disputed house was attached by him and the respondent had no title to it. The trial court held that Guman Singh and Onkar Singh were members of a joint Hindu family of which Guman Singh was the karta and that the decree in favour of the appellant was one validly obtained. The High Court on appeal by the respondent took the view that Ext. P-2 was a collusive document, that the evidence as to Guman Singh and Onkar Singh being joint is equally worthless and highly interested, and allowed the appeal, and set aside the judgment of the trial court. The plaintiff has, therefore, filed this appeal. We find ourselves in agreement with the learned Judges of the High Court.

3. The land on which the house has been built was purchased in the name of Guman Singh in 1939. He had executed three mortgages over this property in favour of one Rajabai even before the date of Ext. P-2. It was to discharge those mortgage deeds that Guman Singh's widow executed the sale deed in favour of the respondent on August 1, 1951. The very recitals in Ext. P-2 on which the claim of the appellant depends are telltale and seem to have been prepared with an eye on litigation. It is not necessary to set out the contents of the documents at length. But it is obvious that it is intended, as the learned Judges of the High Court have rightly held, more for supplying evidence about the preferential claim of Onkar Singh as against Guman Singh's widow, Jassabai rather than for making provision for securing the amount due to a creditor. It contains a testamentary disposition by Guman Singh in favour of Onkar Singh of all his properties and makes no provision whatsoever for his wife. It may also be mentioned that Guman Singh had executed a registered will on June 8, 1945, in favour of his wife, Jassabai giving absolute powers of disposition in respect of all his properties and its truth and validity cannot be doubted. Admittedly the appellant's knowledge

of court proceedings was of nearly 50 years; yet this document, which creates a mortgage, was not even on a stamped paper, nor was it registered. It was signed not only by Onkar Singh and Guman Singh but also by one Mangilal, who is described as Mukhtyar Aam of Guman Singh. Curiously enough it was to this very Mangilal that the disputes between the parties are said to have been referred for arbitration. The arbitration agreement was executed on February 29, 1952, and the award is said to have been given on March 4, 1952. The suit was filed on March 5, 1952, as one for enforcement of the award and on the same day Onkar Singh appeared and consented to a decree being passed in terms of the award. The indecent haste with which all these proceedings have been gone through shows the collusion between Onkar Singh on the one hand and the appellant on the other. That Ext. P-2 has been executed so as to bear a date before the will in favour of Jassabai and after the three mortgages in favour of Rajabali by Guman Singh also shows the purpose for which it was executed. Curiously, Mangilal who has signed Ext. P-2 as the Mukhtyar Aam of Guman Singh and is, therefore, a party to the document, and was also the arbitrator was not examined in court. It is true that Onkar Singh's son as well as his nephew gave evidence on behalf of the appellant but this is one of those cases where the circumstances speak more eloquently than the witnesses.

4. There are some other circumstances which make it clear beyond doubt that this document is a fraudulent one. From 1940 the appellant's estate was under the Court of Wards. The appellant gave evidence that he was keeping his accounts in a regular fashion, that they were given to the Court of Wards but have been lost by them. When a person's estate is taken over for management by the Court of Wards all that he receives is an allowance for his maintenance and all his assets and liabilities are taken over and managed by the Court of Wards. So if the transaction between the appellant on the one hand and Guman Singh on the other was entered in the account books of the appellant the Court of Wards would have taken steps to realise those amounts. The appellant gave evidence that on the date of execution of the agreement he paid Rs. 20,000/- from his home though earlier he had stated that Rs. 20,000/- had been paid on various dates before the date of Ex. P-2. In the circumstances neither is possible nor probable. He has not even taken any receipts for any of the amounts he claims to have paid. One finds it difficult to believe that sums up to Rs. 32,500/- would have been advanced even without a receipt. One does not understand why he should agree to wait till 1951 for collecting this amount. Though under Ext. P-2 the interest payable was at 6% per annum the award is for Rs. 41,000 towards principal alone. That means that between 1945 and 1951 the appellant must have advanced a further sum amounting to Rs. 8,500. The interest on Rs. 32,500 alone would by that time have exceeded Rs. 12,000 but the award mentions it as Rs. 5,000 which was to be given up. One fails to understand why the matter should have been left to the arbitrator at all. The whole proceedings are a mere make-believe. We find, therefore, ourselves in agreement with the High Court that the appellant could not have lent money to Guman Singh and the whole proceedings right down from the agreement Ex. P-2 up to the decree in the suit on the basis of the award are fictitious proceedings.

5. We also agree with the High Court that the evidence as to Guman Singh and Onkar Singh being joint is equally worthless and the fact that a number of witnesses have spoken about their being joint does not establish that they were so joint. After all they were not brothers but only cousins. They were living in two different villages and looking after the lands in those village separately. Except the mere oral evidence of a few witnesses there is nothing to show that they were in fact joint. And the whole of the proceedings connected with Ex. P-2 establish beyond doubt that they were brought into existence merely to enable Onkar Singh to claim to property of Guman Singh in collusion with the appellant who was also to be benefited incidentally.

6. This is a case where the circumstances speak more eloquently than the witnesses and the tell-tale

recitals in Ex. P-2 are enough to stamp it as a fraudulent document. In the circumstances we do not consider it necessary to discuss any points of law.

7. We agree with the conclusions of the High Court and dismiss this appeal with costs to be paid by the appellant to the respondent.

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