

Smt. Bismillah

Vs

Janeshwar Prasad and Others

Civil Appeal No. 4884 of 1989

(M. N. Venkatachaliah, M. M. Punchhi JJ)

05.12.1989

JUDGMENT

VENKATACHALIAH, J. -

1. The question raised in this petition for special leave is whether the jurisdiction of the civil court to entertain appellant's Suit No. 254 of 1980 in the Court of Additional Civil Judge, Saharanpur for cancellation of certain sale deeds respecting agricultural lands, and for possession is barred by section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 (Act).
2. The High Court by its order dated November 30, 1984, in Civil Revision No. 379 of 1983 was persuaded to the view, in reversal of the finding to the contrary on the preliminary issue as to jurisdiction recorded by the trial court that the averment in the plaint in substance amounted to a plea of nullity of the transactions and that the main relief in the suit was really one for "possession", grantable exclusively by the Revenue Court. Accordingly, the High Court directed to return of the plaint for presentation to the proper court.
3. We have heard Dr. Shankar Ghosh, learned Senior Advocate for the appellant and Shri R. K. Jain, learned Senior Advocate for the respondents. Special leave is granted. The appeal is taken up for final hearing, heard and disposed of by this judgment
4. Appellant's case before the trial court was that she, as the only daughter of Nawab Nurul Rahaman Khan inherited his estate; that as she was pardanashin she on the representation of respondents 1 to 3 appointed them as her agents to manage the estate under an instrument of agency dated April 17, 1969; that the said document drafted in Hindi, a language not known to the appellant, was later discovered by her to have contained an unauthorised clause empowering sale of the properties; and that taking advantage of appellants absence from India, the said agents had entered into fraudulent and collusive sales respecting the properties in favour of the other respondents, who are their close relatives and confidantes. Appellant sought the cancellation of the sale deeds, delivery of possession and rendition of accounts of incomes and profits.
5. Respondents, inter alia, pleaded that the jurisdiction of the civil court to take cognizance of such a suit was barred under Section 331 of the 'Act'. The issue No. 4 framed in this behalf was tried as a preliminary Court, in revision, has reversed that finding and has held the suit not maintainable in the civil court.
6. Section 331 of the Act provides :

"Cognizance of suits etc. under this Act. - (1) Except as provided by or under under this Act no court other than mentioned in column 4 Scheduled II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1980) take cognizance of any suit, application or proceeding mentioned in column 3 thereof, or of a suit, application or proceeding based on a cause of action in respect of which any relief could be obtained by means of any such suit application : Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications, or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation. - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

(1-A) Notwithstanding anything in sub-section (i) an objection that a court mentioned in column 4 of Schedule II, or as the case may be, a civil court, which had no jurisdiction with respect to the suits, application or, proceedings, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases which issues are settled, at or before such settlement, and unless there has been consequent failure of justice."

7. It is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of a law which seek to oust the jurisdiction of civil court need to be strictly construed. Section 331 of the Act has been the subject of series of pronouncements of the High Court as to the circumstances and the nature of the suits in which its exclusionary effect operates. Distinction was sought to be drawn between the class of cases where the binding effect of deed had had to be got rid of by an appropriate adjudication on the one hand and the class of cases in which a transaction could be said to be void in law where what the law holds to be void, there is nothing to cancel or set aside on the other. In the former case, it was held, a suit was cognisable by the civil court while in the latter, it was not, it being open to the statutory authority to take note of the legal incidents of what was non est.

8. In the instant case, the High Court has construed, in our opinion not quite correctly, appellant's pleadings to amount to a plea of nullity of the sales and has held that the prayer for cancellation of the sale deeds was 'simply illusory' and that such a relief was neither necessary nor appropriate in the context of a plea of nullity. The High Court has further held that the relief of possession, though appearing to be a consequential relief, was really the main relief and would fall within the statutory jurisdiction.

9. It is true that the question of jurisdiction depends upon the allegations in the plaint and not the merits or the result of the suit. However, in order to determine the precise nature of the action, the pleadings should be taken as a whole. If as, indeed, is done by the High Court the expression 'void' occurring in the plaint as descriptive of the legal status of the sales is made the constant and determinate and what is implicit in the need for cancellation as the variable and as inappropriate to a plea of nullity, equally, converse could be the position. The real point is not the stray or loose expressions which abound in inartistically drafted plaints, but the real substance of the case gathered

by construing pleadings as a whole. It is said "Parties do not have the farsight of prophets and their lawyers the draftsmanship of a Chalmers".

10. Indeed in *Gorakh Nath Dube v. Hari Narain Singh* ((1973) 2 SCC 535 : (1974) 1 SCR 339) this Court, dealing with the provisions of the U.P. Consolidation of the Holdings Act, 1954 where the provision excluding the civil court's jurisdiction is even wider, has had occasion to observe : (SCR p. 342 : SCC p. 538, para 5)

'... but, where there is a document the legal effect of which can only be taken away by setting it said or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it"

11. The assumption underlying the reasoning of the High Court is that if the action had really been has been one based on the need for the cancellation of the deeds, without which possession could not be granted, the civil court would have had jurisdiction. The cause of action in the appellant's suit does admit of being brought within this clause of cases.

12. The common law defence of non est factum to actions on the specialities in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind is the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended" (*Chitty on Contracts*, 25th edn., p. 341).

13 Authorities drew a distinction between the fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

14. In *Foster v. Mackinnon* ((1869) LR 4 CP 704 : 38 LJCP 310), Mackinnon, the defendant was induced to endorse a bill of exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said :

"... 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 as to the 'actual contents' of the instrument."

15. This decision was referred to with approval by this Court in *Ningawwa v. Byrappa* ((1968) 2 SCR 797 : AIR 1968 SC 956). It was observed : (SCR pp. 800-01)

"It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the

meantime acquire rights and interests in the matter which they may enforce against the party defrauded."

This would be voidable transaction. But the position was held to be different if the fraud or misrepresentation related to the character of the document. This court held : (SCR p. 801)

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void while in the case of the latter, it is merely voidable."

However the House of Lords in *Saunders v. Anglia Building Society* (1971 AC 1004 : (1970) 3 All ER 961) reviewed the law and held that the essential features of the doctrine, as expressed by Byles, J. in *Foster v. Mackinnon* (Chitty on Contracts, 25th edn., p. 341), had been correctly stated. Lord Reid, however, observed : (AC headnote at p. 1005)

"The plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing."

16. However the distinction based on the character of the document and the contents of the documents was considered unsatisfactory. The distinction based on the character and contents of a document is not without its difficulties in its practical application; for, in conceivable cases the 'character' of the document may itself depend on its contents. The difficulty is to be resolved on a case by case basis on the facts of each case and not by appealing to any principle of general validity applicable to all cases. Chitty on Contracts ["General Principles" 25th edn, para 343, page 194] has this observation to make on Saunders decision ((1968) 2 SCR 797 : AIR 1968 SC 956) :

".... It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity has signed a written document embodying contractual terms. But it was nevertheless held that in exceptional circumstances the plea was available so long as the person signing the document has made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated on the disparity between the effect of the document actually signed, and the document actually signed, and the document as it was believed to be (rather than on the nature of the mistake) stressing that the disparity must be "radical", "essential", "fundamental", or "very substantial."

In the instant case, prima facie appellant seems to proceed on the premises that she cannot ignore the sales but that the sales require to be set aside before she is entitled to possession and other consequential reliefs.

17. Even in case where the transaction was assailed as void, the High Court of Allahabad in *Indra Dev v. Ram Pyari* (1982 All LJ 1308 : 1982 (8) ALR 517 (All HC) held the civil court's jurisdiction not barred. The facts in that case were that : (All LJ p. 1309)

"..... plaintiff-appellants claimed a decree for cancellation of the sale deed dated July 10, 1969 executed by Smt. Ram Pyari Devi, mother of appellant 1 Indra Deo, minor, in favour of Bramha Nand respondent 1 in respect of certain agricultural plots. The cancellation was sought on the ground that Smt. Ram Pyari has no interest in the property in suit and, therefore, she was not entitled to execute the sale deed."

In that case the learned District Judge had held that the allegations made in the plaint amounted to saying that the sale deed was a void document. The civil court was held to have no jurisdiction.

18. The High Court, allowing the plaintiff's appeal and reversing the finding of the District Judge, held : (All LJ pp. 1313 and 1314)

"A survey of the above decisions shows that the consistent view of this Court; is that the cause of actions in a suit for cancellation of sale deed is not the denial of plaintiff's title which may be said to be implicate on the execution of the sale deed by the defendant but is the execution of the deed itself".

... Therefore, under the provisions of the Act itself, the jurisdiction of the civil court would not be barred when declaration is sought against a person who has transferred agricultural property which the plaintiff claims to be his. Section 229-B does not contemplate all kinds of declaratory suits. It deals with declaratory suits of the specific type hereinbefore mentioned."

This case has since been approved by a Full Bench of that Court in Ram Padarath v. Second ADJ, Sultanpur ((1989) RD 21 (AII) (FB)). The Full Bench held :

"We are of the view that the case of Indra Dev v. Smt. Ram Pyari (1971 AC 1004 : (1970) 3 AII ER 961), has been correctly decided and the said decision requires no consideration, while the Division Bench case, Dr. Ayodhya Prasad v. Gangotri Prasad (1981 A WC 469 (DB)) is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status and a tenure holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court."

In any view of the matter, the present action would be covered by the pronouncement of the Full Bench. It is not necessary to go into the correctness of the view of the Full Bench as its correctness was not assailed before us.

19. In the result, this appeal is allowed, the order of the High Court dated November 30, 1984 in Civil Revision No. 379 of 1983 set aside, the order dated April 20, 1983 of the trial court on the preliminary issue (issue No. 4) restored and Civil Suit No., 254 of 1980 remitted to the trial court for disposal in accordance with law on the merits.

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