

Dularia Devi

Vs

Janardan Singh and Others

Civil Appeal No. 2998 of 1980

(L. M. Sharma, Dr. T. K. Thommen JJ)

02.03.1990

JUDGMENT

THOMMEN, J. –

1. This appeal by special leave arises from the judgment of the Allahabad High Court in Second Appeal No. 2954 of 1979 whereby the learned Judge of the High court, allowing the defendants appeal set aside the decrees of the courts below. The High Court held that the suit was barred by the reason of Section 49 of the U. P. Consolidation of a Holding Act, 1953 (herein after referred to as "the Act") Hence the present appeal by the Plaintiff.

2. The plaintiff is an illiterate person. Here daughter Rameswari Devi is the wife of defendants 6, Yogendra Prasad Singh. Arjun Singh and Janardan Singh, defendants 3 and 4 are the brothers of defendants 6. Defendants 3 and 4 had gained the confidence of the plaintiff and she confided in them her desire to the make a gift of her entire properties in the favour of the her daughter. Defendants 3 and 4 readily agreed to make arrangements to execute and register the necessary deed. On September 18, 1971. these defendants took the plaintiff to the office of the Sub-Registrar. The plaintiff paid the amount needed for expenses. The defendants purchased stamp papers in the name of the plaintiff. On two deeds, which had been prepared at the instance of the defendants, the plaintiff was made to put her thus impressions Being an illiterate person, she could not read the contents of the documents or understand their character. She had been told and she honestly believed, that she was executing a gift deed in favour of her daughter, as desired by her, in respect of her properties. She had in fact executed two deeds one of which was a gift deed in favour of her daughter. as desired by her, in respect of her properties. She had in fact executed two deeds, one of the which was a gift in favour of her daughter and the other a sale deed one of the which was a gift in favour of her daughter and the other a sale deed in the favour of all the defendants. The consideration for the sale shown in the documents was Rs. 14,000. This was a clear case of fraud practiced upon her by the defendants. The defendants and the Sub-Registrar as the document-writer had all conspired together to perpetrate the fraud. The plaintiff did not know that she had executed a sale deed in favour of the defendants in respect of her property until June 25, 1974, when she found defendants 3 and 4 interfering with her possession of the property. They told her that she had executed a sale deed in their favour. It was only on July 2, 1974 that she came to know of the full facts. Accordingly, she filed a suit for cancellation of the sale deed. The suit was decreed by the trial court and that decree was conferred in appeal by the first appellate court. Setting aside the decree in the defendants second appeal the High Court held that the plaintiff was totally deceived as to the character of the documents. Which she executed and the document was, therefore void and of no effect whatsoever. Accordingly, the suit was barred under the section 49 of the Act under which consolidation proceedings had been pending at the time of the institution of the suit in respect of the

property in question.

3. The facts are not in dispute. It is not disputed that the documents in question came to be executed in the manner alleged by the plaintiff. The appellant, however, contends that since it was a case of the document having been vitiated by fraud, the transaction was voidable, but not void, and, therefore, the suit to set aside the sale was rightly instituted by her and the bar of Section 49 was not attracted. The appellant contends that the suit is perfectly maintainable and the High Court was wrong in holding to the contrary.

4. Mr. Satish Chandra, appearing for the respondents, rightly, in our view, submits that the two principles enunciated by this Court in *Gorakh Nath Dube v. Hari Narain Singh and Ningawwa v. Byrappa* squarely apply to the facts of this case and the documents in question evidence a void transaction, and not a mere voidable transaction, and no suit was, therefore, maintainable in view of the bar contained in Section 49 of the Act.

5. In *Gorakh Nath Dube* this Court held that the object of the relevant provision of the Act was to remove from the jurisdiction of any civil court or revenue court all disputes which could be decided by the competent authority under the Act during the consolidation proceedings. Questions relation to the validity of a sale deed or a gift deed and the like had to be examined in proceedings before the statutory authority. the court, however, drew a distinction between void and voidable documents and said a voidable document was one which remained in force until set aside, and such a document could be set aside only by a competent civil court, and a suit for that purpose would, therefore, be maintainable. On the other hand, a claim that a transaction was void was a matter which could be adjudicated upon by the consolidation courts. This is what this Court stated : (SCC p. 538 para 5)

"We think that a distinction can be made between cases where a document is wholly or partially invalid so that the it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of the power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with the jurisdiction, by the necessary implication of their statutory powers to adjudicates which would be deemed to be invested with jurisdiction, by the necessary implication of the their statutory powers to adjudicate upon such rights and interests in land, to the declare such documents effective or ineffective, but where there is a document the legal effect of which can only be taken away by setting its aside 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 canceled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts."

6. In *Ningawwa v. Byrappa* this Court referred to the well established principles that a contract or other transaction indeed or tendered by fraud is not void, but only voidable at the option of the party defrauded. the transaction valid until it was avoidable. this Court then said : (SCR p. 801)

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the documents 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., In Foster v. Mackinon the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In the holding that such a plea was admissible the court observed :

It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer 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... The defendant never intended to sign that contract or any such contract. he never intend 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."

7. From the facts narrated above, about which, as stated earlier, there is no dispute it is clear that this is a case where the plaintiff appellant was totally ignorant of the mischief played upon her. She registered was a gift deed in favour of her daughter. She believed that the thumb impressions taken from her were in respect of the that single document. She did not know that she executed two documents one of which alone was the gift deed, but the other was a sale of the property in favour of all the defendants. This was therefore a case of fraudulent misrepresentation as to the character of the document executed by her and not merely as to its contents or as to its legal effect. The plaintiff-appellant never intended to sign what she did sign. She never intended to enter into the contract to which the unknowingly became a party. Her mind did not accompany her thumb impressions. This is a case that falls within the principle enunciated in Ningawwa v. Byrappa and it was, therefore a totally void transaction. Accordingly as stated in Gorakh Nath Dube, the suit is not maintainable by reason of the bar contained in the Act.

8. The High Court has in the our view rightly held that the remedy of the plaintiff lies in the proceedings pending before the consolidation authorise and it is open to the parties to approach them for appropriate relief. In the circumstances, we see no merit in this appeal. It is accordingly dismissed but we make no order as to costs.

</html