

Kanak Lata Deb Sarkar and Others (Smt.)

Vs

Sanyashi Charan Paramanik (Dead) By Lrs. and Others

Civil Appeal No. 595 of 1974

(Dr. TK. Thommen, R. M. Sahal JJ)

24.01.1991

ORDER

1. The appellants are the defendants in a suit for declaration and injunction. The suit was decreed by the trial court, but that decree was reversed by the first appellate court. On appeal by the plaintiff, the High Court reversed the finding of the first appellate court and decreed the suit. Counsel for the appellants submits that the High Court had not expressed its view on many aspects which had been discussed in great detail in the judgment of the first appellate court.
2. The plaintiff sought a declaration that the three documents of sale by which properties had been sold by him to the defendants were null and void by reason of fraud and failure to give the agreed consideration. The trial court held that the defendants had failed to prove that they had the means to pay the agreed consideration as mentioned in the documents. The first appellate court, reversing the decree of the trial court, held that the plaintiff had failed to discharge the burden of proving that the statements in the documents of sale, and the agreements for sale preceding them, to the effect that the consideration had been received in full was wrongly stated and a fraud had been committed upon him by inducing him to sign the documents, the contents of which he was unaware. The first appellate court also held that the suit was barred by limitation.
3. Five agreements for sale preceded the three documents of sale. There is reference in them to receipt of consideration. Two of the agreements were allegedly written in the handwriting of the plaintiff. If all the five agreements to sell are read together, the consideration is shown to have been received in full by the plaintiff before the three documents of sale were executed on November 1, 1947, March 25, 1949 and June 23, 1950 respectively. These documents of sale acknowledge receipt of full consideration. They were duly registered. Witnesses had testified to this fact. The suit was filed on 30-5-1956.
4. The High Court without discussing the contentions of the parties on the question of consideration, as shown in the documents, came to the conclusion that a fraud had been perpetrated on the plaintiff by the defendants. The High Court so concluded, notwithstanding the clear admission of the plaintiff in all the documents that he had received the consideration in full. The High Court held that the plaintiff was the victim of a fraud and the documents were void ab initio. The High Court also did not consider whether or not the suit was brought within time. The question whether, notwithstanding the alleged invalidity of the documents, the suit for declaration had been brought within the time prescribed by the Limitation Act has not been discussed by the High Court.
5. Two questions loom large. One is, has full consideration been paid as stated in the documents or has the plaintiff become the victim of a fraud and the consideration stated to have been paid has not

in fact been paid ? The plaintiff, who was in military service, is stated to have written in his own handwriting two of the agreements to sell in which consideration in part has been stated to have been received. Whether a handwriting expert ought to have been summoned to examine the genuineness of these documents has not been considered by the High Court. The Munsiff says that he is not an expert in handwriting and yet no steps have been taken to have the documents examined by a handwriting expert.

6. The second question is regarding limitation. Are these documents void ab initio as contended by counsel for the plaintiff and, therefore, was the suit for declaration as to validity brought within time ?

7. The appellants' counsel points out that the High Court was wrong in reversing the finding of fact rendered by the first appellate court. This is an aspect of the matter which requires to be considered.

8. We do not have the advantage of a detailed discussion of the relevant points in the judgment of the High Court. It would be fit and proper if the questions involved in his case are considered afresh by the High Court and a detailed judgment rendered thereon taking into account all the aspects of the matter, particularly the various points discussed by the first appellate court.

9. Mr N.K. Puri, appearing for the respondents, strenuously contends that, in the light of the discussion of various aspects of the questions by the trial court, as affirmed by the High Court, there is no purpose in remanding this case at this distance of time. We do not agree. It would not be just and proper to dispose of this matter without the advantage of a more detailed judgment by the High Court.

10. In the circumstances, we set aside the judgment and decree of the High Court and remand this case to that court for a fresh consideration of the questions involved. The appeal is allowed in these terms. The parties shall bear their respective costs.

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