Sethani

Vs

Bhana

Civil Appeal No. 6479 of 1983

(M. M. Punchhi, S. Mohan, G. N. Ray JJ)

12.02.1992

JUDGMENT

1. This appeal by special leave is against the judgment and order of the High Court of Madhya Pradesh at Jabalpur in S.A. No. 642 of 1973.

2. The plaintiff-appellant is named Sethani. She is pitted against her paternal uncle Bhana. The bone of contention is a piece of agricultural land measuring little over 23 acres in village Cival, Tehsil and, District Burhanpur in the State of Madhya Pradesh.

3. She filed a suit for partition in the Court of Civil Judge, Class I, Burhanpur claiming half share in the aforesaid land representing her father Dalpat's share. The plea of the defendant-respondent was that she had nothing to do with the lands which had been settled on him by a family arrangement. The trial Court dismissed the suit but the lower Appellate Court passed a preliminary decree for partition. The defendant respondent filed a Second Appeal before the High Court where an application for amendment of the written statement was made to assert the plea that though at one time the plaintiff had a right in the land in dispute, she had lost it because her mother Putlibai had transferred the same to him for a sum of Rs. 1,000/- by a Registered Sale Deed dated 1-4-1963. On this premises the defendant respondent claimed that the plaintiff had no title to the suit land. The amendment was allowed. The plaintiff-appellant countered that the facts as pleaded by the defendant were wrong and in any case she was not bound by the said sale deed it having been executed under undue influence. It was further pleaded that Putlibai was a tribal and illiterate woman besides being old and blind and was under the total domination of the defendant-respondent Bhana. Thus, the deed was got executed from her under undue influence. The High Court framed a suitable issue and remitted the case to the trial Court for a finding. The trial Court recorded the finding in favour of the plaintiff-appellant. The High Court received objections against that finding and upset the finding of the trial Court. As a result the appeal of the defendant-appellant was allowed giving rise to the present appeal.

4. We have heard learned counsel for the parties. The facts are so glaring, still the onus to prove the issue has been over-emphasised. It is true that the initial onus to prove undue influence was on the plaintiff-appellant, but the onus, in the facts and circumstances of the case, was easily discharged. It is the respondent who had obtained the sale deed in his favour way back on 1-4-1963 by a registered sale deed, which saw the light at a late stage of the trial. From the certified copy thereof it was evident that no consideration passed at the time of the sale. Nobody from the registration office was examined to explain the sale. No evidence was led by the respondent to discharge the onus that the

sale deed was executed under no undue influence, even though the vendor was old, blind, illiterate and tribal woman totally at the mercy of the respondent, with whom she was living till her death. The parties were so situated that Bhana-respondent was in a position to dominate the will of Putlibai and was in a position to obtain any unfair advantage over her. It is also in evidence that Putlibai was dependent on the respondent. The trial Court had given cogent reasons to come to the finding that the sale deed was vitiated on account of the condition in which Putlibai was put due to her relationship with Bhana-respondent, as well as the manner and nature of the transaction. The High Court, in our view, erroneously took the view that the plaintiff-appellant was unable to discharge the onus that the transaction was as a result of undue influence. There was no cogent reason to come to that view and more so to upset the well reasoned finding recorded by the trial Court. Therefore, opting for the view of the trial Court, we reverse the finding that the sale deed was executed by the mother of the appellant under undue influence of the respondent who took advantage of the helplessness of the old widow of his brother. The advantage thus obtained by him must thus be returned.

5. Accordingly, we allow the appeal, set aside the judgment of the High Court restoring the judgment and decree of the lower Appellate Court so as to sustain the preliminary decree but at the same time we correspondingly require the appellant to reimburse the respondent not only with the sum of Rs. 1,000/-, the price said to have been paid for the land but also interest thereon for all these years which we quantify at a sum of Rs. 2,000/-. The appellant is thus required to pay to the respondent the total sum of Rs. 3,000/- adjustable at the time of the passing of the final decree, since the appellant claimed to be in joint possession of the properties in question and presumably not having lost any usufruct. With these observations and in the aforesaid manner we allow this appeal but with no order as to costs. Appeal allowed.

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