SUPREME COURT OF INDIA

Sumesh Singh

Vs.

Phoolan Devi

C.A.No.2537 of 2009

(S.B. Sinha and P. Sathasivam JJ.)

15.04.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.

2. The defendant in a suit praying for a decree to set aside a deed of sale purported to have been executed by the 8th respondent (original defendant No.2) as a Power of Attorney holder of the original plaintiff (her father), is before us aggrieved by and dissatisfied with a judgment and order dated 24.10.2007 passed by the High Court of Himachal Pradesh at Shimla dismissing a revision application filed before it from an order dated 20.12.2005 of the learned trial judge allowing an application for amendment of the written statement filed by the 8th respondent.

3. The following facts are not disputed:

> "The original plaintiff Sh. Babu was the owner of the suit land. He executed a Power of Attorney on or about 13.2.1998 in favour of one Kartari Devi - Respondent No.8 (original defendant No.2). The 8th respondent executed a deed of sale on 3.3.1998 in favour of the original defendant No.1 in the aforementioned capacity. However, inter alia, on the premise that the said Power of Attorney was illegal and the same had been fraudulently obtained, original plaintiff filed a suit for declaration before the Subordinate Judge, First Flass, Amb, District Una in the State of Himachal Pradesh.
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> Indisputably, relying on or on the basis of the said deed of sale, the appellant filed an application for partition before the Revenue Court of the Tehsildar which was decided in his favour. Possession of the land in question is said to have been handed over by the Revenue Officer.

Appellant's name was also entered in the Revenue Records. On or about 3.5.2000, the 8th respondent filed a written statement raising various pleas that the suit of the plaintiff be dismissed.

In her written statement, the 8th respondent stated as under:

"6. That after plaintiff waited the summons of partition case and enquired from the defendant No.1 but the defendant No.1 lingered on the matter and in the month of Jan 1999 started extended threats and proclaimed that the suit land has been sold to him by defendant No.2. The plaintiff was astonished and approached the Halqua Patwari. The Patwari Halqua who is also hand in glubs with the defendant No.1 did not co-operated nor provided the particulars till June 99 and after obtaining the certified copies it has transpired that the defendant No.1 got manufactured a power of attorney of plaintiff alleged to be executed on 13.02.98 Regd. No.41, Sub- Registrar Amb in favour of defendant No.2. At any rate even if any such power of attorney is proved to be bearing signatures of plaintiff, the plaintiff never give any power of attorney consciously to sell or alienate his property to defendant No.2 and the power to the contrary in the alleged power of attorney was got entered as a result of fraud, mis-representation taking advantage of old age, sickness, illiteracy of plaintiff and defendant No.2, physical and mental weakness and in breach of trust and confidence reposed in the defendants. Actually, the intention of defendant No.1 in active connivance with Halqa Patwari Revenues Officer and marginal witness was to pilfer away the property of plaintiff. The plaintiff did not sell any property or never agreed to execute sale deed qua the suit land to defendant No.1 nor ever received any consideration. The allegedly sale deed No.202 dated 03.03.1998 alleged to be executed by defendant No.2 is contrary as attorney of plaintiff are and further entries got repeated by defendant No.1 in his favour of back of plaintiffs are bogus, fabricated documents result of fraud, mis-representation, undue influence without consideration without delivery of possession, in breach of trust and confidence reposed in defendants. Moreover, the plaintiff had no necessity to sell the property and was incompetent to sell being landless person having meager holding.

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12. It is, therefore, prayed that decree for declaration to the effect that land measuring 0- 07-14 Hects being half share out of land measuring 0-14-28 Hects as fully detailed in the head note of plaintiff as owned and possessed by the plaintiff. The defendants have no right, title or interests in the same. The alleged power of attorney Regd. No.41 dated 13.02.1998 is illegal, result of misrepresentation, fraud, breach of trust and confidence reposed on defendants, taking advantage of old age, sickness, physical mental weakness, illiteracy of plaintiff and does not in any (sic) give right to defendant No.2 to deal with andalenate the properties of plaintiff and further alleged sale deed No.202 dated 3.3.1998 alleged to have executed by defendant No.2 in favour of defendant No.1 in respect of suit land and subsequent entries in favour of defendant No.1 in the revenue record are wrong, illegal, void, baseless, contrary to

factual position without consideration, without delivery of possession and in breach of trust and confidences reposed on defendants and result of fraud, undue, influence, mis-representation fictitious and fabricated one. The some gets have not binding effect on the right, title or interest of plaintiff in the suit land and for issuance of permanent injunction as a consequential relief restraining the defendants from interfering in any manner whatsoever raising any constructed, taking forcible possession, cutting and removing trees, taking the suit land, in any manner may please be passed in favour of plaintiff and against the defendant with cost. In the alternative decree for possession of suit land may kindly be passed in favour of plaintiff and against defendant No.1 with cost and any other further relief to which plaintiff is found entitled in the circumstances of the case may also be awarded in favour of plaintiff with cost."

4. The original plaintiff died during the pendency of the said suit.

"The respondent Nos.1 to 7, being the legal heirs of the original plaintiff, filed an application for bringing on record the legal representatives which was allowed. It is stated that the evidence in the suit stands also concluded.

In 2004, an application for amendment of the plaint was filed which was allowed. On or about 13.5.2005, the 8th respondent also filed an application purported to be under Order VI Rule 17 of the *Code of Civil Procedure*. The said application was allowed by the learned trial judge by an order dated 20.12.2005, inter alia, opining :

"6. In addition to it, plaintiff has since deceased and defendant No.2 being daughter of plaintiff also claims herself to be Lrs. of deceased plaintiff. She, therefore, also wants to insert prayer to the effect that suit be decreed in favour of deceased plaintiff through Lrs. and defendant No.2. The aforesaid amendment even if allowed would not change the position since there is specific issue which was framed as issue No.1 i.e. if power of attorney dated 23.2.1998 allegedly executed by plaintiff in favour of defendant No.2 is result of misrepresentation and fraud. The plaintiff has to affirmatively prove the allegations of fraud and misrepresentation. However, at the same time if stand being taken by defendant No.2 is allowed to be incorporated in the pleadings, it will also give a fair chance even to defendant No.1 to justify his position and effectively defend the case coming against him. Hence, narration of facts disclosed in application as a whole are such where rejection of application is unjust and unreasonable whereas if pleadings sought to be incorporated by defendant No.2 are allowed to be introduced in the pleadings that it will also give fair chance to defendant No.1 to defend the case. Hence, this application of defendant No.2 is allowed. Amended written statement is already on record. It be tagged with case filed."

5. Appellant filed a revision petition thereagainst before the High Court which by reason of the impugned order has been dismissed opining that as the application for amendment filed by the plaintiff was allowed by an order dated 20.12.2005 which having not been challenged;

the defendants had a right to file an amended written statement to the amended plaint. It was observed that the said right to file amended written statement to the amended plaint is independent of any right which might accrue to the respondent to file an amended statement pursuant to the permission granted to do so in an application seeking amendment of the written statement.

6. Mr. P.S. Rana, learned counsel appearing on behalf of the appellant, would submit that keeping in view the stand taken by the 8th respondent in her original written statement in terms whereof she prayed for dismissal of the suit, again at a later stage, should not have been permitted to turn round and take a plea that the suit filed by her father should be decreed. It is not in dispute that the 8th respondent is one of the heirs and legal representatives of the original plaintiff. On the death of the original plaintiff, his legal representatives were brought on record.

> "Certain subsequent events occurred. Amendment of the plaint was carried out by an order dated 20.12.2005. The correctness of the said order was not in question."

7. The 8th respondent along with the other heirs and legal representatives of the original plaintiff claimed to be in possession of the property.

8. It is pursuant to the liberty granted that application for amendment in the written statement was allowed. The learned Trial Judge while passing its order dated 20.12.2005 opined that the 8th respondent never admitted that she had sold the suit land on the basis of the purported Power of Attorney of plaintiff. It was held:

> "During the pendency of suit, application has been filed by defendant No.2 alleging that the she never sold suit land nor even received any consideration. According to her, plaintiff never gave or executed any power of attorney dated 13.2.1998 in her favour. She further alleges that she never went to sub-Registrar in connection with power of attorney dated 13.2.1998 or sale deed dated 3.3.1998. She claims to be an illiterate lady. These facts are, therefore, sought to be incorporated in written statement."

9. It is true that ordinarily, an amendment of pleadings should not be allowed by reason whereof a party to the suit would resile from the admission made by him in the same proceedings at an earlier stage. This aspect of the matter has been considered in *Gautam Sarup v. Leela Jetly & Ors.*[1] wherein it was held:

> "28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

10. In this case, however, the averments made in the plaint have merely been denied. There is no categorical or unequivocal admission as such.

> "It is, thus, not a case where a party to the suit is resiling from his statement made in the earlier part of the proceedings. The learned trial Judge, in a case of this nature, had not or could not have taken recourse to the provisions of Order VIII Rule 3 and Order VIII Rule 5 of the Code of Civil Procedure. An issue has been framed by and between the plaintiff and the contesting defendant. The said issue is required to be determined.
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> Parties are required to adduce evidence thereupon."

11. Mr. Rana would submit that having regard to the proviso appended to Order VI, Rule 17 of the Code of Civil Procedure, the amendment could not have been allowed. The said proviso has been added by Act 22 of 2002 w.e.f 1.7.2002.

12. By reason of Section 16(2)(b) of the *Code of Civil Procedure (Amendment) Act, 2002*, the amendments carried out therein shall only apply to in respect of the suits which were filed thereafter. {See *State Bank of Hyderabad v. Town Municipal Council*[2] }. As the suit had been filed in the year 1999, the proviso appended to Order VI, Rule 17 shall not apply.

13. In the peculiar facts and circumstances of this case, we do not think that any useful purpose would be served in interfering with the impugned judgment at this stage particularly having regard to the observations made by the High Court. The appeal, therefore, is dismissed without any order as to costs.

[1]*(2008) 7 SCC 85*
[2]*(2007) 1 SCC 765*