

SUPREME COURT OF INDIA

Balkrishna S. Dalwale (Dead) by Lrs.

Vs.

Vithabai C. Rathod (Dead) by Lrs.

C.A.No.3372 of 2003

(P. Sathasivam and Dr.B.S.Chauhan JJ.)

18.10.2010

JUDGMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and decree dated 18.10.2001 passed in Second Appeal No. 191 of 1991 by the High Court of Bombay by which the Second Appeal filed by the appellants against the judgment and decree of the First Appellate Court dated 31.12.1990 passed in Civil Appeal No.828 of 1987 by which it reversed the judgment and decree of the Civil Court dated 18.2.1987 passed in Civil Suit No.558 of 1975 filed by the respondents, has been dismissed.

2. Facts and circumstances giving rise to this appeal are that one Smt. Ratnabai Shankar Dalwale had inherited the suit property from her father. She had four daughters, two of them namely, Champabai and Sitabai died long back i.e. prior to the date of receiving the property by Smt. Ratnabai Shankar Dalwale. The original owner, Ratnabai Shankar Dalwale died on 2.5.1965 and her husband Shankar Dalwale had died in 1952. Thus, at the time of her death, Smt. Ratnabai Shankar Dalwale had two daughters, namely Vithabai and Krishnabai, who acquired the suit properties by Will dated 24.6.1963, executed by Smt. Ratnabai Shankar Dalwale. After the death of Smt. Ratnabai Shankar Dalwale, her two daughters Vithabai and Krishnabai (respondents/plaintiffs) (hereinafter called `respondents') become absolute owners of the properties. The Will stood proved upto the High Court and attained finality. The said Vithabai and Krishnabai, sisters permitted their deceased sister Champabai's son Balkrishna (appellant/defendant) (hereinafter called the `appellant') to occupy two rooms free of rent out of love and affection. Subsequently, respondents, the original owners sent a notice to said Balkrishna-appellant to vacate the said premises on 21.2.1975. However, Balkrishna-appellant vide reply dated 10.3.1975 resisted his eviction claiming ownership of the House No.621, Ganesh Peth, Pune. Respondents, the original owners of the suit property, namely Smt. Vithabai and Smt. Krishnabai filed Civil Suit No.558 of 1975 before the Civil Court, Pune in 1975 for eviction of the said Balkrishna-appellant.

3. During the pendency of the suit, a document was prepared on 27.10.1981 purported to be a partition suit, wherein the appellant-Balkrishna had been given the accommodation which he was occupying and some additional open space for lavatory and bathroom. However, the document was duly signed by the respondents-plaintiffs and their sons also appeared as marginal witnesses. Appellant-Balkrishna also signed the said document as a witness. It was an unstamped and unregistered document. The appellant- Balkrishna filed the said document dated 27.10.1981 by amending the written statement on 1.4.1986 and claiming the title of that part of the property on the basis of the same.

4. The trial court vide its judgment and decree dated 18.2.1987 dismissed the suit relying very heavily on the document dated 27.10.1981, which made it clear that appellant was not the licensee and therefore, question of revoking the licence and further asking the court to evict him could not arise.

5. Being aggrieved, respondents filed Civil Appeal No.828 of 1987 which has been allowed by the First Appellate Court vide judgment and decree dated 31.12.1990. The First Appellate Court held that the purported compromise-cum-partition deed was unregistered, unstamped and not signed by the appellant as a party but merely as a witness. Thus, the said document dated 27.10.1981 did not create any right and title in favour of the appellant nor the said document was admissible in evidence.

“Being aggrieved, the appellant-Balkrishna filed Second Appeal No.191 of 1991 which has been dismissed vide judgment and order dated 18.10.2001. Hence, this appeal.”

6. Shri Makarand D. Adkar, learned counsel appearing for the appellant, has fairly conceded that the appellant- Balkrishna, is not entitled to any title in the suit property for the reason that he could not claim any partition as he was not the co-sharer, nor the said document dated 27.10.1981 could be held to be a gift deed as it remained unstamped and unregistered. His only contention has been that if during the pendency of the suit the original respondents have, out of love and affection allowed the appellant permissible possession of suit property, their conduct estopped them from seeking his eviction.

“Therefore, the judgments of the High Court as well as the First Appellate Court have to be reversed and the suit is liable to the dismissed.”

7. On the contrary, Shri A.S. Bhasme, learned counsel appearing for the respondents, has vehemently opposed the appeal contending that the appellant had been in possession of the property for more than 35 years without making any payment. The building is in a dilapidated condition and requires repair and maintenance. The appellant has never paid any amount either as rent or for maintenance. The family members of the respondents/original plaintiffs have grown up and they need the accommodation for them. The accommodation might have been given out of love and affection to the original defendant-Balkrishna. However, he is no more alive and the present appellants cannot claim any benefit of such

permissible use of the suit property for an indefinite period. The appeal is liable to be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. Before the High Court, appellant raised the sole question regarding the nature of the document dated 27.10.1981 and all other issues had been given up. Admittedly, the said document does not create any legal title in favour of the appellant. Appellant had signed the said document as a witness and not as a party. The said document had neither been exhibited nor was admissible in evidence. This document cannot be termed as contract as the appellant was not a party to it. Even, otherwise, terms of a contract can be read and enforced only in consonance with law. (See: *Union Territory, Chandigarh Administration & Ors. v. Managing Society, Goswami, GSDSC*¹, and *V. Karnal Durai v. District Collector, Tuticorin & Anr.*²). Thus, it would not confer any right or interest in appellants' favour. At the most, it can be held that out of love and affection the respondents/original plaintiffs had permitted the appellant/ original defendant to occupy the premises. However, as none of the original parties is alive, the said love and affection does not subsist. The present appellants being the descendants of the original defendant cannot take the benefit of such magnanimity shown by the original plaintiffs to the original defendant.

10. In view of the above, no legal issue is involved in this appeal. Therefore, we do not see any cogent reason to interfere with the impugned judgment and order of the High Court. The appeal is liable to be dismissed and stands dismissed.

“However, in the facts and circumstances of the case, as the appellants had been living in the suit property for the last 35 years and it may be difficult for them to get a suitable accommodation in Pune, they may hand over the vacant and peaceful possession of the premises on or before 31.10.2011. The appellants shall file an undertaking before this Court within a period of four weeks in this regard. There shall be no order as to costs.”

¹(1996) 7 SCC 665

²(1999) 1 SCC 475)