

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art.227) No.42 of 2019

Smt. Sushila Shyam W/o Shri Raja Ram Gond, age 50 years,
 occupation-service, R/o Village Bakda Gaon P.S.-Chalgali, Tehsil
 Wadrafnagar, District – Balrampur Ramanujganj (CG)

(Defendant No.1)
 ---- Petitioner

Versus

1. Smt. Bhagman W/o Late Shri Lal Chandra Gond, age 50 years, Caste Gond, Occupation-Agriculture, village Wadrafnagar P.S. Basantpur, Tehsil Wadrafnagar, District – Balrampur Ramanujganj (CG)
2. State of CG through Collector Balrampur Ramanujganj, District Balrampur Ramanujganj (CG)

---- Respondents

For Petitioner	:	Mr.Dev Ashish Biswas, Advocate
For Respondent No.1	:	Mr.Jitendra Shrivastava, Advocate
For Respondent No.2	:	Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/09/2019

1. This writ petition has been filed by the petitioner/defendant No.1 calling in question legality and validity of the order dated 16.10.2018, by which the trial Court has held that the suit has been properly valued by the plaintiff and rejected the application filed by the petitioner/defendant No.1 under Section 151 of the CPC.
2. Mr.Dev Ashish Biswas, learned counsel for the petitioner/defendant No.1, would submit that since the plaintiff's husband late Shri Lal Chandra has executed registered sale deed in favour of defendant No.1 for cash consideration of ₹ 4,00,000/-, therefore, the suit ought to have been valued for ₹ 4,00,000/- and the valuation made is improper, which deserves to be set aside.

3. Mr.Jitendera Shrivastava, learned counsel for respondent No.1/plaintiff, would support the impugned order.
4. I have heard learned counsel for the parties, considered their submissions thoughtfully and went through the records with utmost circumspection.
5. It is the case of the plaintiff that no sale deed was executed by her husband Lal Chandra, who died on 19.5.2012, but fraudulently sale deed was got executed in favour of the petitioner/defendant No1 by her husband and husband of the petitioner/defendant No.1 was taken to Ambikapur for the purpose of giving evidence and got the sale deed executed and got the forged Rin Pustika also prepared. In view of the matter, the plaintiff/respondent No.1 has claimed declaration that sale deed has been obtained by fraud and therefore, it be declared as null and void and has valued as ₹ 1000/- for declaration and ₹ 1000/- for permanent injunction and paid ₹ 100/- as court-fees for each relief. Thus, it is the case of the plaintiff that sale deed is void ab initio as it has been obtained by fraud and misrepresentation as to the character of the document itself and therefore, the contract is void and not voidable, whereas it is the case of the petitioner/defendant No.1 that it is an outright sale and title has been passed in her favour, therefore, the suit ought to have been valued for ₹ 4,00,000/-.
6. The question is, what would be the legal position if there is fraudulent misrepresentation not merely as to the contents of the document but as to its character also?
7. The question so posed is no longer res integra and stood determined authoritatively and conclusively as well way back in the

year 1968 by Their Lordships of the Supreme Court in the matter of Ningawwa v. Byrappa Shiddappa Hireknrabar and others¹ considering Section 19 of the Act of 1872 in which it has been held that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded. The legal position would be different if there is fraudulent misrepresentation not merely as to the contents of the document but as to its character also, then the transaction is void. It was observed in paragraph 5 of the report as under: -

“(5) The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document 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*, (1869) 4 C.P. 704 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 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 intended 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."

¹ AIR 1968 SC 956

This decision has been followed by the Indian Courts: Sanni Bibi v. Siddik Hossain, AIR 1919 Cal 728 and Brindaban v. Dhurba Charan, AIR 1929 Cal 606. It is not the contention of the appellant in the present case that there was any fraudulent misrepresentation as to the character of the gift deed but Shiddappa fraudulently included in the gift deed plots 91 and 92 of Lingadahalli village without her knowledge. We are accordingly of the opinion that the transaction of gift was voidable and not void and the suit must be brought within the time prescribed under Article 95 of the Limitation Act.”

8. The proposition of law laid down by Their Lordships of the Supreme Court in Ningawwa (supra) was followed with approval in the matter of Dularia Devi v. Janardan Singh and others² and the same proposition has been reiterated that where a document containing an agreement obtained by fraud and misrepresentation as to the character of the document itself, the contract is void and not voidable, and it was considered and held as under in paragraph 7 of the report: -

“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 honestly believed that the instrument which she executed and got registered was a gift deed in favour of her daughter. She believed that the thumb impressions taken from her were in respect of 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 she 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 (supra) and it was, therefore, a totally void transaction. Accordingly, as stated in Gorakh Nath Dube v. Hari Narain Singh³, the suit is not maintainable by reason of the bar contained in the Act.”

² 1990 (Supp) SCC 216

³ (1973) 2 SCC 535

9. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in above-stated judgments (supra), it is quite vivid that in the instant case question as to whether the sale deed was obtained by fraud and misrepresentation not merely as to the contents of the document but as to its character also has to be decided by leading evidence by the parties looking to the facts as noticed hereinabove. It could not have been decided by learned trial Court without recording evidence.
10. In view of above, the impugned order dated 16.10.2018 passed by the Civil Judge Class-II, Wadrafnagar in Civil Suit No.8A/2014 is set aside. Evidence of the parties have already been said to be concluded, the trial Court would decide the issue of valuation along with other issues.
11. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-