

13.01.2023
SL No.10
Court No.8
(gc)

SAT 521 of 2015
CAN 1 of 2016 (Old No: CAN 103 of 2016)

Ashok Kumar Maity & Ors.
Vs.
Durga Maity

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. Since then the matter is appearing in the list. The appeal is of the year 2015. The appellants have due notice about the listing of the matter. The appellants are not represented.

The Section Officer in its report dated 4th January, 2023 has stated that the defect no.-1 has not removed as yet. Long 7 years have passed but no attempt has been made to remove the said defects. Ignoring such defect, we have decided to take up the second appeal on the basis of the memorandum of appeal and the judgment of both the Courts below with a view to finding out if the second appeal involves any substantial question of law.

The First Appellate Court in its judgment and decree dated 18th June, 2015 affirmed the judgment dated 31st January, 2011 in a suit for declaration and permanent injunction against the defendant on contest. Briefly stated, the “A” and “B” Schedule suit properties previously belonged to Madhu Sudan Maity, who happens

to be the late husband of the plaintiff. The plaintiff is the second wife of Madhu Sudan Maity, whom he married after the death of his first wife Matangini. Madhu Sudan died issueless in spite of both the marriage. Madhu Sudan adopted the minor son and daughter of his elder brother, namely, Priyanath Maity, Asish and Bina who became the son and daughter of the late Madhu Sudan Maity and the plaintiff. Madhu Sudan was a religious and pious person who worshipped the deity 'Sri Sri Raghunath Jew Thakur' whose idol was established and/or installed by his ancestors at his ancestral house. Madhu Sudan used to enjoy the usufructs of the "A" and "B" Schedule suit properties for the purpose of performing daily 'Seba Puja' and for that purpose he also created a charge over the suit property. Under a registered gift deed dated 27.07.1979, Madhu Sudan transfer the said properties in favour of the plaintiff. In the said deed, however, he mentioned that the usufructs would remain charged for the 'Seba Puja' of the deity. Asish and Bina, however, did not look after the plaintiff after the death of their adopted father. The plaintiff is an illiterate and rustic and Pardanashin lady who could only put her signature but she is not worldly-wise. Neither one Bijoy Krishna Das nor late Ganga Narayan Maity was the permissive possessor of the land in question. They fraudulently obtained signature on certain blank papers with a view to record their right as licensee and bargadars in the

settlement record of rights in collusion with the Revenue Officer taking advantage of illiteracy and helplessness of the plaintiff is in the garb of correction of the erroneous settlement of record of rights in respect of 'A' and 'B' Schedule property. These deeds have been challenged by the plaintiffs in the suit. Bijay Krishna, the defendant No.1, was contesting the suit along with the defendant Nos.2 to 5. The defendant No.1 died during the pendency of the suit. Bijay Krishna in his written statement stated that the suit is not maintainable as a suit is vague and indefinite and bad for non-joinder of necessary parties. The other defendants contended that Krishna Prasad, Gaya Prasad, Jogendra and Upendra were four brothers. Krishna Prasad had five sons namely, Ramanath, Priyanath, Madhu, Kali and Srinath. Ramanath had three daughters, namely, Sandhya, Kanakprava and Snehalata. Chinmoy, Mrinmoy and Saibal are the sons of Snehalata. Priyanath had three sons, namely, Asish, Dilip and Dipak and seven daughters. Madhu died leaving behind his widow, i.e. the plaintiff herein, whereas Kali died leaving his son Ananta who died leaving behind his widow Dhirabala and a daughter Sandhya. Pitambar was the son of Gaya Prasad. Pitambar died leaving widow Charubala and four daughters namely Narmada, Sarasi, Kalyani and Bhabani and two sons namely Amarendra and Samarendra. Sadhan is the son of Amarendra. Charubala died subsequently. Jogendra had two sons

namely Surendra and Debendra. Surendra died leaving behind only one son namely Ganga Narayan and the defendant Nos.2 to 5 are the sons of the said Ganga Narayan. Debendra died leaving behind Dwijendra and Sarod Jamini. Upendra had two sons namely Bhupendra and Jatindra. Bhupendra had one daughter namely Niyati whereas Jatindra died issueless.

It is further case of the defendants that by virtue of a registered gift deed dated 27.7.1979, the said late Madhu Sudan Maity transferred his share in the suit properties in favour of the plaintiff and the said properties were charged with the 'Seba Puja' of the family deity of the said Madhu Sudan Maity. Inasmuch as, it became difficult for the plaintiff to perform the 'Seba Puja' of the family deity, by virtue of a registered gift deed dated 07.03.1988, the plaintiff out of her own consent transferred the "B" Schedule suit property in favour of the defendants and entrusted them with the duty of performing 'Seba Puja' of their family deity out of the income generated from the said property. The said gift deed was legally executed and attested and the plaintiff put her signature therein after contents of the same were read over and explained to her. Furthermore, by virtue of a registered Sale Deed dated 07.03.1988, the plaintiff also transferred her "A" and "C" Schedule suit property in favour of the defendants for sale consideration. Both the Deeds were acted upon and the possessions of the "A", "B"

and “C” schedule suit properties were delivered to the defendants. The defendants have since then been performing the ‘Seba Puja’ of their family deity therein out of the income generated from the said suit properties. After transfer of the suit properties, the defendants have been in peaceful possession therein and have been paying rent in respect thereof. The plaintiff has no right, title and interest in the suit properties. Inasmuch as both the said deeds have been legally and validly executed and registered, the defendants came to have and are having right, title and interest and possession in suit properties. Furthermore, there was no element of either ‘fraud’ or ‘undue influence’ or ‘misrepresentation’ involved in the execution of either of the said deeds, as alleged by the plaintiff. In the premises, the defendants have prayed for dismissal of the instant suit with costs.

The Trial Court framed ten issues out of which main issue was Issue No.6 which reads:-

6. Whether the Gift Deed and the Sale Deed both dated 07.03.1988, bearing Deed Nos.1343 and 1344 for the year 1988 respectively, executed by the plaintiff in favour of the defendants in respect of the suit properties is vitiated by ‘fraud’, or ‘undue influence’, or illegal, inoperative and not binding?

The plaintiff along with Ashutosh Giri and one Radhagobinda Panigrahi adduced evidence as P.W.1, P.W.2 and P.W.3. The plaintiff relied upon the following documentary evidence:-

- (i) *Original Gift Deed dated 27.07.1979, bearing Deed No.4013 for the year 1979, executed by late Madhu Sudan Maity in favour of the plaintiff Shrimati Durga Maity in favour of the plaintiff Shrimati Durga Maity in respect of the suit properties and other properties, marked as "Exhibit-1"; and*
- (ii) *Certified copy of the L.R.R.O.R. in respect of some of the suit properties, marked as "Exhibit-2 (series)".*

The defendants have adduced evidence of defendant No.5 Arun Kumar Maity as D.W.1, one Paban Patra as D.W.2, and one Rata Panigrahi as D.W.3. They have relied upon the following documentary evidences:-

- (i) *Original rent receipt in respect of the suit property, marked as "Exhibit-A";*
- (ii) *Original registered Gift Deed dated 07.03.1988, executed by the plaintiff in favour of the defendants in respect of the "B" schedule suit property, marked as "Exhibit-B";*
- (iii) *Original registered Sale Deed dated 07.03.1988, executed by the plaintiff in favour of the defendants in respect of the "A" and "C" schedule suit property, marked as "Exhibit-C";*
- (iv) *Certified copy of the registered Sale Deed dated 19.5.1997 executed by the plaintiff in respect of her non-suit properties, marked as "Exhibit-D (with objection)"; and*
- (v) *Certified copy of the registered Sale Deed dated 26.02.1997 executed by the plaintiff in respect of her non-suit properties, marked as "Exhibit-E (with objection)".*

The Trial Court in arriving at a finding has taken into consideration, inter alia, the evidence of P.W.1 in his

cross-examination stated that "...The 'C' schedule land is an ejmal where I am in possession along with Ganga Narayan, Amarendra Maity and Niyatibala..." This evidence read with the other documentary evidence produced by the parties would show that the plaintiff is in joint possession of 'C' schedule suit land along with other co-owners. The 'C' schedule property belongs to the plaintiff as co-sharer. The dispute involved is whether or not the plaintiff has executed the said gift deed and sale deed both dated 07.03.1988, being Exhibit "B" and "C" respectively. The plaintiff categorically stated in his plaint and also in his deposition that taking advantage of his illiteracy and helplessness, the defendants by misrepresentation obtained the said two documents without her free will consent and without intimating the contents of the said two deeds to the plaintiff. The plaintiff specifically denied the execution of the said two deeds. At the trial, it was proved that she was an illiterate and Pardanashin, accordingly, the onus shifted upon the defendants to establish that the said two deeds were executed with her free will and consent. The P.W.1 and D.W.1 during their cross-examination have stated:-

"Cross-examination of P.W.1:

"...I know what is stated in my Affidavit-in-Chief. I'm an illiterate one.... After the demise of my husband, I along with my brother used to look after my property. Ganga Narayan babu used to look after my property also. That is why I didn't inform my brothers about the matter of going to Registration

office with Ganga Narayan babu....I kept the accounts of income and expenditure verbally...I'm an illiterate lady...I pay Rs.150 to the priest. About Rs.1000/- is expended in the worship in the month of Bhadra. I obtain that expenditure by selling the paddy. I obtain Rs.2000/- approx by selling paddy produced from the land of Thakur. I expend the rest amount in the other works of worship....I don't know how to read settlement record... Not a fact that I'm a literate lady and I'm not a Pardanashin lady..."

Cross-examination of D.W.1:

"...I do not know what is the educational qualification of the plaintiff. I do not know whether the plaintiff knows how to read and write. I have seen the plaintiff reading books in this year in the Bengali month of "Agrahan" on a Thursday. Apart from me, I do not remember who had seen her reading books...So long Madhusudan was alive, he used to look after the property matters. During this time, the plaintiff used to stay indoors...The relation between my father deceased defendant No.1 with the plaintiff was good..."

Either she was Pardanashin or not involved in managing the properties is also implicit from the evidence of D.W.1. The evidence of the plaintiff could not be demolished during the cross-examination. On such evidence, the Trial Court decreed the suit in favour of the plaintiff.

The First Appellate Court in affirming the judgment of the Trial Court on re-appreciation of the evidence, both oral and documentary, has concurred with the findings of

the learned Trial Court. Both the Courts have relied upon relevant provisions of law, namely, the Indian Evidence Act and the judgments of the Hon'ble Supreme Court and other High Courts in decreeing the suit in favour of the appellant.

On such consideration, we do not find any reason to interfere with the order passed by the First Appellate Court.

The second appeal, accordingly, stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)