

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 788 OF 2015

Shri. Ramji Shankarrao Rao

...Appellant.

Versus

Smt. Chhababai W/O. Tukaram Bhavnath
(Since Deceased Thr. Lrs)

...Respondents.

*Ms. Rukmini Khairnar i/b Mr. P. N. Joshi for the appellant.
Mr. Rameshwar N. Gite a/w. Mr. Rohit D. Gorade and Mr. S. Tare for
respondent No.1A.*

Coram : Sharmila U. Deshmukh, J.

Date : April 23, 2024.

P. C. :

1. Heard.
2. Being dissatisfied by judgment dated 21st April 2015 passed by the Appellate Court in Civil Application No.422/2012 partly allowing the appeal and setting aside the judgment and decree dated 13th July 2012 passed in RCS No.78/2000 declaring that the relinquishment deed dated 21st July 1993 is voidable and the same is not binding on

the Plaintiff, the original defendant is before this Court.

3. Briefly stated the facts of the case are that the suit was filed for declaration that the relinquishment deed dated 21st July 1993 registered with the Sub Registrars' office, Igatpuri at Sr. No.647 has been obtained through fraud and misrepresentation and is not binding on the Plaintiff and for injunction. The case of the Plaintiff was that the suit property mentioned in paragraph No.1 of the plaint was owned by the plaintiff's father Deoram Sakharam Rao who expired about 20-25 years prior thereto and apart from the Plaintiff there are no legal heirs. The Defendants in collusion with the Revenue Officials deleted the name of the plaintiff's father in 7/12 extract which came to be challenged by the Plaintiff and as the legal heir of Deoram Sakharam Raothe, name of the Plaintiff was mutated in the revenue records till date. The Plaintiff had received a notice dated 23rd June 1993 under the Land Acquisition Act to which a reply was expected by 31st July 1993. The Plaintiff was illiterate widow and was residing with her minor son. The Defendant along with his brothers approached the Plaintiff informing her that they have also received the notice of Land Acquisition Officer and for the purpose of responding to the said notice the Plaintiff will have to come to Igatpuri. On 21st July 1993 Plaintiff and her minor son were brought to

Igatpuri by defendant and his brothers and by misrepresentation and fraud her thumb impression was obtained before officials. By misrepresentation her thumb impression has been obtained for the purpose of issuing response to the notice. On 6th August 1993 her well wisher informed her that the document on which her thumb impression was obtained was in fact a relinquishment deed. Subsequently, the Plaintiff obtained copies of the document and realized the fraud which has been practiced and suit came to be filed. During the pendency of the suit, the Plaintiff expired and legal heirs were brought on record.

4. The contention of the defendant was that the plaintiff's father was not owner of the suit property and was not in possession of the suit property. Plaintiff herself has executed the relinquishment deed in favour of the defendants and on the basis of that document the name of the plaintiff was deleted from the revenue record. As the plaintiff's father's name was wrongly recorded in the column of other rights, special land acquisition officer has issued notice to the plaintiff while acquiring the suit land. It was contended that the suit property was owned by defendant along with his father as joint family property which was mortgaged and thereafter the mortgage was redeemed. In the partition between family *interse* the property came to share of

father of the defendant who cultivated the same as separate share and thereafter defendant is entitled to the property.

5. The Trial Court placed burden of proof upon the plaintiff to prove that relinquishment deed executed and registered on 31st July 1993 was executed by practicing fraud and therefore not binding and answered the issue against the Plaintiff and dismissed the suit. As against this, Regular Civil Appeal No.422/2012 was filed by the Plaintiff. The Appellate Court framed and answered the following points for determination:

Sr. No.	POINTS	FINDINGS
1.	Does the plaintiffs prove that, the release deed executed and registered on 21/7/1993 in respect of the suit property was got executed from her by the defendant by practicing deceiving fraud on her and therefore not binding on her ?	No.
2.	Does the plaintiffs prove that, is she entitled to declaration as prayed for ?	No.
3.	Does the plaintiffs prove that, is she entitled to the perpetual injunction as prayed for ?	No.
4.	Does the plaintiffs prove that, is suit within limitation ?	Yes.
5.	Does the plaintiffs prove that, they being the legal heirs of the deceased plaintiff are entitled to proceed the suit in the shoes of the plaintiff ?	No.
6.	Does the plaintiffs prove that, is the	No.

	suit maintainable by the legal heirs for non joinder of necessary parties at the time of the filing of suit by the plaintiff ?	
7.	What order and decree ?	<u>As per final order.</u>

6. The Appellate Court held that the Plaintiff being an illiterate lady the burden was upon the defendant to prove that the document was not valid and same was executed by the Plaintiff with free consent after understanding the contents. The Appellate Court considered the recitals in the sale deed and noted that there was no recital that document was read over by the scribe before obtaining the thumb impression of the executant. The Appellate Court on consideration of the evidence partly allowed the appeal and declared the relinquishment deed as voidable and not binding on the Plaintiff.

7. Heard Ms. Rukmini Khairnar for the appellant and Mr. Rameshwar N. Gite for respondent No.1A.

8. Learned counsel for the Appellant would submit that substantial question of law which arises in the present case is the burden of proof placed on the defendant. According to her, mere fact that the Plaintiff was an illiterate lady was not sufficient to carve out an exception to the general rule of evidence. She would submit that

the pleadings would indicate that the Plaintiff was aware of the entire issue as she has already filed RTS Appeals. She would further submit that the admitted position is that stamp paper was purchased in the name of the Plaintiff and she had affixed her thumb impression and the story put forward by the Plaintiff was therefore improbable. She would further submit that the Plaintiff was accompanied by her son. She relies on the decision of the Apex Court in ***Ali Hussain (Dead) thr. Legal representatives vs. Rabiya and Others, (2019) 9 Supreme Court Cases 353*** in support of her proposition that the burden of proof was wrongly cast upon the defendant.

9. *Per contra*, learned counsel for the respondent would submit that there is a specific pleading in the Plaint that the Plaintiff is an illiterate widow and that her son was minor. He submits that the case of fraud and misrepresentation has been pleaded in the plaint wherein it is stated that under misrepresentation that the notices of the land acquisition officer was to be replied, the Defendant and his family members had taken Plaintiff to the Sub Registrars' office. He would further point out the findings of the Apex Court as regards recitals in the relinquishment deed which does not state that document was read over to the executant by the scribe before affixing thumb impression of the executor. He relies upon the

decision of the Apex Court in the case of ***Mst. Kharbuja Kaur vs. Jangbahadur Rai, AIR 1963 SC 1203.***

10. Considered the submissions and perused record.

11. Plaintiff has come with case of fraud and misrepresentation that the relinquishment deed which was executed by her was obtained by playing fraud. The factum of the thumb impression of the Plaintiff on the relinquishment deed is not disputed. However the case is that the contents of the document were not read over to her and she was informed that the same was in response to the notice issued by the land acquisition officer. Although accompanied by her son, the fact remains that the son was a minor. In the plaint there is a specific pleading that the plaintiff is an illiterate woman. Considering the said position the recital in the sale deed that the document has been "read" and voluntarily executed would establish that the document was not read over to the plaintiff by the scribe before the thumb impression was affixed on the said document. The Appellate Court has therefore rightly held that the executant was illiterate lady and she herself could not read the document and it was incumbent upon the scribe to read the contents of the document to her. Substantial question of law which is sought to be raised is the

rule of burden of proof. The Apex Court in the case of ***Mst. Kharbuja Kaur vs. Jangbahadur Rai (supra)*** relied upon by the respondent and which is also noted by the Appellate Court in the judgment which held that the burden of proof in the case of transaction with *pardanashin* and illiterate woman would rest upon the person who seeks to sustain the transaction to establish that the said document was validly executed after clearly understanding the nature of transaction.

12. Considering the decision of the Apex Court, the Appellate Court has rightly passed the burden upon the defendant to prove the execution of valid relinquishment Deed. Mere fact that the plaintiff had in the past instituted revenue proceedings will not enure to the benefit of the defendant in view of the admitted position that the plaintiff was an illiterate lady. That apart, the Appellate Court on consideration of evidence has held that the recitals of the document discloses that contents of the document were not read over to the plaintiff. It is also an admitted position that the scribe of the document was not examined by the defendant to establish that the contents were read over before obtaining thumb impression of the plaintiff on the said document. Learned counsel for the appellant would read the recital as to the contents having been read over to the plaintiff. However in the absence of examination of the scribe of the

witness, the recitals in the document when read would make it clear that the contents of the document was not read over to the plaintiff.

13. In that view of the matter no substantial question of law arises in the present case. Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]