

PETITIONER:
SMT. SUKHDEI (DEAD) BY L.RS.

Vs.

RESPONDENT:
BAIRO (DEAD) & ORS.

DATE OF JUDGMENT: 09/04/1999

BENCH:
D.P.Wadhwa, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

This appeal is preferred against the Judgment and decree made by the High Court of Judicature at Allahabad dated 7th October, 1980 in Second Appeal No.896 of 1972.

The original plaintiff (since deceased and now represented by the legal representatives) had filed a suit for ejection and recovery of arrears of rent regarding House No.124, Madhwapur, Allahabad, against the original respondents. The case of the plaintiff was that one Smt. Parago was the owner of the house in question and she sold the same on 8th of April, 1958 for a consideration of Rs.1500/- which sale deed is registered and exhibited in the suit as Ex.10. It is further contended in the plaint that she also executed a rent note Ex.3 in favour of plaintiff and she occupied the said house from the date of the sale deed as a tenant on a monthly rent of Rs.45/-. On the same day, a document of re-conveyance of the very same house was executed by the plaintiff in favour of Smt.Parago which was to take place within a period of 5 years. The said document was produced as Ex.7.

The suit in question came to be filed after the death of Smt. Parago which occurred on 5.2.1964. The original first defendant in the suit was one Sukhdei who claimed to be in possession of the house, being a close relative of Smt. Parago. Defendant No.2 contested the suit on the ground that he was brought up by Smt. Parago like a child and who had gifted the said house to him and since then he is in occupation as an owner thereof. Defendant No.3 did not contest the suit. Defendant No.4 contested the suit on the ground that he was the tenant of Smt. Parago. Defendant Nos.1 and 2 further contended that Smt. Parago was an illiterate woman and was not earthly wise and she having been in need of Rs.1500/- to renovate her house had borrowed the said sum of money from the plaintiff and as a security for the repayment of the said loan, she had executed a mortgage deed in favour of the plaintiff which was in fact a mortgage deed, but the plaintiff being a lawyer and in a dominant position, had taken undue advantage of the ignorance of Smt. Parago and obtained her signatures

on a document which he now claims to be the sale- deed. The said defendants contended that the document in question, apart from being obtained by fraud, is in fact only a mortgage deed.

This suit had a chequered career. It was earlier decreed by the Trial Court and on appeal, the same was remanded. It was decreed for the second time by the trial court and was again remanded by the Appellate Court. However, in the second judgment of the appellate court i.e. in C.A.No.143/67, the said court permitted the defendants to amend their written statement by giving more particulars of fraud so as to bring the pleadings of the defendants in conformity with the requirement of Order VI, Rule 4 of the Civil Procedure Code. This order allowing the amendment has since become final. In view of the fact that in the impugned judgment of the High Court, which is primarily based on the insufficiency of pleadings of fraud in the written statement of the defendants, it is necessary for us to extract the relevant portion of the amended written statement which is as follows :-

"That for purposes of repairs and reconstruction of the house the said Mst.Parago had to raise a loan for Rs.1500/-. The plaintiff a shrewd lawyer and money lender agreed to advance the loan desired against hypothecation of her house in suit which is no less valued at less than Rs.10,000/-. It was clearly given out by the plaintiff to the said Mst. Parago a woman simple and honest with no clever wits and proper understanding that no sooner than the advanced loan will be repaid with nominal gain of interest her house shall stand released. Believing the words of the plaintiff as also her lawyer as stated above Mst.Parago took the loan of Rs.1500/- against the security of her house on a clear understanding that she was mortgaging the house for a sum of Rs.1500/- and the same shall be released as soon as the amount was paid up.

That it was under the above circumstances that the transaction was entered into. No sale was intended to take place nor any transfer of possession took place. That the alleged document of sale deed dated 8th April, 1958 was executed and signed by Parago as a documents of mortgage as given out and as she was made to understand. She did not sign the documents of mortgage as given out and as she was made to understand. She did not sign the document as a sale deed nor was she made to understand that she was executing a sale deed . That in this fraudulent and deceitful device..... to dupe the said Parago a simple, illiterate woman and simple habits, several other signature may have been obtained on documents such as rent notes which are false and fraudulent. Mst.Parago did not consciously and voluntarily with full understanding and independent advice executed any sale deed agreement of tenancy or a pronote. That, as stated above, the alleged deed of sale dated 8th April, 1958 and the agreement of tenancy are all tainted with fraud and is illegal and inoperative. That there has been no valid and conscious agreement of tenancy between the plaintiff and Mst.Parago."

"16-A. That Smt. Parago agreed to execute a mortgage deed in favour of the plaintiff for a sum of Rs.1500/-. Consequently she executed the deed dated 8.4.58 as a mortgage deed and the plaintiff represented to her that it

was a mortgage deed. Parago was an illiterate old lady having full confidence in the plaintiff. Taking advantage of it, the plaintiff played fraud on her. The T.I. of Parago were taken on all the papers without reading them out or explaining the contents of the same to her. She had been paying interest and principal all along and the parties were treating the transaction in suit as a loan and thus the plaintiff by his own conduct all along represented that the transaction was a loan and the deed was mortgage deed. He had been varying interest according to payments and increase or decrease of the amount of loan. The plaintiff without reading the contents had given a paper of assurance to Parago and had admitted on the back of it on 24.3.61 that the deed in suit was a loan deed in presence of respectable persons."

As stated above after the amendment, the matter was remanded back to the Trial Court and on the second remand the Trial Court dismissed the suit of the plaintiff as per the judgment of the Second Additional Munsif, Allahabad dated 12.5.1969. The Trial Court came to the conclusion that the document dated 8.4.1958 produced in the suit as Ext.10 was obtained by fraud and even otherwise the said document was not a deed of sale but was only a deed of mortgage. The Trial Court also held that Smt. Parago had repaid the entire amount with interest. Plaintiff had no right, title or interest in the suit property.

Aggrieved by the said judgment of the Trial Court, the plaintiff preferred C.A.No.118/69 before the Learned Civil Judge, Allahabad, the said appeal came to be dismissed by a judgment of the First Appellate Court dated 6.12.1971. In the said judgment, Learned Appellate Judge while agreeing with the findings of the Trial Court independently considered the case of fraud putforward by the defendant and also the nature of the document Ext.P10 and concurred with the finding of the Trial Court.

In the second appeal filed by the plaintiff before the High Court of Judicature at Allahabad, the High Court was pleased to allow the appeal on the ground that the defendants had failed to plead and prove the fraud alleged by them, and the High Court also came to the conclusion that in view of Sections 91 and 92 of the Evidence Act, it was not open to the courts below to rely upon the oral evidence adduced by the defendants to establish the fact that Ex. P-10 was in fact a mortgage deed and not a sale deed. In the said view of the matter, the suit of the plaintiff came to be decreed by the High Court. Consequently, this appeal by special leave is preferred against the said judgment.

We have heard the learned counsel for the parties and perused the record. We are unable to agree with the findings and conclusions arrived at by the High Court. We are of the opinion that the High Court was wrong in coming to the conclusion that the pleading as to fraud was either not in conformity with Order VI Rule 4 of C.P.C. or was insufficient so as to reject the plea of the defendants. We have deliberately extracted the amended plea of the defendants regarding fraud. It is clearly stated in the amended written statement that Kirayanama dated 8th April, 1958 was not voluntarily executed by Smt.Parago and that fraud has been practised upon her regarding the execution of

the Kirayanama. It is contended that the plaintiff being a shrewd lawyer and money lender agreed to advance the loan desired by Smt. Parago against hypothecation of the house which is of a value of not less than Rs.10,000/- and Smt. Parago being a simple and honest woman with no clever wits and proper understanding believed the words of the plaintiff that the document in question was being executed as a security for a loan of Rs.1500/- and got the same executed. It is specifically alleged that Smt.Parago executed the document of 8th April, 1958 as a document of mortgage because she was told so and she understood it to be so and she did not sign the document as a sale deed and that the plaintiff fraudulently and by a deceitful device to dupe the said Parago got a sale-deed executed. It is also stated that Parago did not consciously and voluntarily with full understanding and independent advice executed any sale deed and that the document of 8th April,1958 is tainted with fraud and is illegal and inoperative. There can be no quarrel in regard to the requirement of law as found in Order VI Rule 4 which merely requires that if fraud is being pleaded, the particulars necessary for establishing the fraud should be stated in the pleadings. In our opinion, the pleading, as extracted above, comes within the requirement of Order VI Rule 4 and there is no shortfall in the said pleading as held by the High Court.

The lower appellate court as well as the Trial Court have given a number of reasons for dismissing the suit of the plaintiff, which are as follows :- (a) The plaintiff had not disclosed material facts pertaining to variation of rent claimed by him in the plaint. (b) There was no regular monthly payment of rent and plaintiff has established only one such alleged payment of rent. (c) While alleged rent was Rs.45/- there is evidence to show that the plaintiff collected at a given point of time a sum of Rs.200/-. (d) There was no payment of alleged rent on regular basis and no suit for recovery of arrears of alleged rent or no other action was taken against Smt.Parago. (e) Though Smt.Parago inducted sub-tenants no action was taken against her for ejectment. (f) No suit was filed during life time of Smt.Parago. (g) No steps were taken to get plaintiff's name mutated ever since the alleged sale deed. (h) The original of the alleged sale deed dated 8.4.58 was in the possession of the defendants. (i) The property in question was of the value of at least Rs.10,000/- while the consideration for sale was only Rs.1500/-, totally disproportionate to the market value. (j) Smt.Parago and her successors continued to pay the municipal taxes and Bhumi Bhawan Kar and plaintiff at no point of time paid these taxes. (k) Smt.Parago was an illiterate, innocent and helpless woman whereas plaintiff was a lawyer and a money lender.

The above findings of facts arrived at by the lower appellate court while concurring with the judgment of the trial court, in our opinion, cannot be faulted since the same is borne out from the records of the case. Once we come to the conclusion that the finding of fraud arrived at by the Trial Court and the first Appellate Court is based on material on record and there is no infirmity in arriving at the said finding, the logical conclusion is that the High Court was in error in upsetting this finding while entertaining an appeal under Section 100 of CPC. Though the High Court has endeavoured to bring the case of the

plaintiff on a question of law, as already referred to hereinabove, we are unable to agree with the High Court for the reasons already given. We having accepted the case of the defendants on the question of fraud, in our opinion nothing further survives for consideration in this appeal. However, we may observe that we have also carefully considered the findings of the Trial Court and the lower Appellate Court in regard to the nature of Ex.10 and we agree with the said finding of the Trial Court and the lower Appellate Court that the document in question is a mortgage deed and not a sale deed and that the entire amount due under the said document has been recovered by the plaintiff. Consequently, plaintiff cannot have any claim based on the said document.

Before parting with this appeal, we must observe that in case the appellants are dispossessed from the suit property either by virtue of any interim order obtained by the plaintiff or by virtue of the decree passed by the High Court, then the appellants/defendants will be entitled to the restitution of the property.

In the said view of the matter, this appeal is allowed, judgment and decree of the High Court is set aside, restoring the judgment and decree of the Trial Court with costs throughout.