

CASE NO.:
Appeal (civil) 1619-1620 of 2001

PETITIONER:
Chacko and Another

RESPONDENT:
Mahadevan

DATE OF JUDGMENT: 29/08/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 1619-1620 OF 2001

Markandey Katju, J.

1. These appeals have been filed against the judgment of the Kerala High Court dated 27.5.1999 in Second Appeal No.960 of 1989. That Second Appeal arose out of a suit being O.S. No.431 of 1983 filed by the present appellant Chacko and his wife Annakutty against the defendant Mahadevan. The defendant in that suit Mahadevan in his turn filed suit O.S. 437 of 1983 against Chacko and Annakutty. Both these suits were tried together. The trial court dismissed the suit filed by Chacko and Annakutty and decreed the suit filed by Mahadevan. On appeals being filed, the appellate court reversed the decrees of the trial court and granted Chacko and Annakutty a decree and dismissed the suit filed by Mahadevan. Aggrieved Mahadevan filed the second appeal before the High Court, which was allowed and hence this appeal.

2. We have heard learned counsel for the parties and perused the record.

3. The facts of the case are that Chacko had land of an extent of 20 cents (100 cents being equal to 1 acre). By sale deed dated 4.9.1982, Ext.A2, Chacko sold one cent out of this land for Rs.18000. Thereafter Chacko sold another three cents of this land to Mahadevan for Rs.1000 vide sale deed dated 11.7.1983 Ext.A3. The suit O.S.431 of 1983 was filed by Chacko and Annakutty seeking to set aside that sale deed dated 11.7.1983, Ext.A3, on the ground that it was vitiated by fraud and was hence null and void and for a prohibitory injunction restraining Mahadevan from entering into that property. The averment in the plaint was that Chacko was given liquor by Mahadevan and others and under that influence the sale deed was got executed. Hence it was void. The defendant Mahadevan denied the plaintiff's allegations.

4. The trial court held that Chacko and Annakutty had not proved any vitiating circumstances to invalidate the said sale deed Ext.A3 dated 11.7.1983 and consequently title to the said land passed to Mahadevan.

5. Chacko and Annakutty filed an appeal before the First Appellate Court. The First Appellate Court held that the fact that one cent land was sold for Rs.18000 vide Ext.A2 (sale deed dated 4.9.1982) and three cent land was sold vide Ext.A3 (sale deed dated 11.7.1983) for a sum of Rs.1000, showed that this was an unconscionable transaction and hence the sale deed dated 11.7.1983 was liable to be set aside. Aggrieved Mahadevan filed a

Second Appeal, which was allowed by the impugned judgment.

6. It may be mentioned that in a First Appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a Second Appeal filed under Section 100 CPC the High Court cannot interfere with the findings of fact of the First Appellate Court, and it is confined only to questions of law. Hence we have to see the judgment of the First Appellate Court and its findings of fact.

7. A perusal of the judgment of the First Appellate Court dated 29.6.1988, copy of which is Annexure-P2 to this appeal, shows that it has been recorded therein that Chacko was not having sound mind when he executed Ext. A3, which is established from Ext.A4 which is the medical certificate. He was treated from 11.8.1983 to 14.8.1983 in Mental Hospital, Trichur for Alcoholic Psychosis. This is a finding of fact which could not have been interfered with by the High Court in Second Appeal. Moreover, it is established from the facts that one cent of land was sold for Rs.18000 on 4.9.1982 vide Ext.A2, while 10 months thereafter three cents of land was sold for only Rs.1000. This corroborates the finding of the First Appellate Court that Chacko was not of sound mind at least at the time when he executed the sale deed dated 11.7.1983. If one cent of land costs Rs.18000 then three cents of land should ordinarily cost Rs.54000. No one in his senses would sell property worth Rs.54000 for Rs.1000. According to the well known Latin maxim '*res ipsa loquitur*' i.e. the matter speaks for itself. Hence it is obvious that Chacko sold the land by sale deed dated 11.7.1983 when he was not of sound mind and some fraud was played on him at that time.

8. In the circumstances, we set aside the impugned judgment of the High Court and restore the judgment of the First Appellate Court dated 29.6.1988 and we quash the sale deed dated 11.7.1983.

9. The Appeals are allowed. There is no order as to costs.