

CASE NO.:
Appeal (civil) 1421 of 1999

PETITIONER:
Ramlal & Anr.

RESPONDENT:
Phagua & Ors.

DATE OF JUDGMENT: 19/10/2005

BENCH:
Arijit Pasayat & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

The above appeal was filed by the unsuccessful defendants against the final judgment and order dated 06.08.1998 passed by the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 500 of 1989 whereby the High Court allowed the Second Appeal filed by the respondent/Plaintiff.

The short facts of the case are as follows:-

The respondent/plaintiff executed a sale deed in favour of Mst. Hasrat Bi after obtaining a loan of Rs.400/- and also executed an agreement stating therein that in case she returns Rs.400/- to Mst. Hasrat Bi within 3 years, property shall be reconveyed to him. The respondent failed to repay the loan within the stipulated period of 3 years. Therefore, Mst. Hasrat Bi got her name recorded in the revenue and sold the property to the appellant Ramlal Shyamlal and one Pyarelal by a registered sale deed for a sum of Rs. 4,000/-. According to the appellants, they came in possession of the property and are cultivating since then.

Respondent No.1 - Phagua filed a suit for declaration that the sale deed dated 01.12.1965 executed by her in favour of Mst. Hasrat Bi was only a nominal sale and she continues to be the owner of the suit land. She also prayed for possession of the suit land. The trial Court held that the registered sale deed dated 01.12.1965 has not been executed nominally and accordingly the trial Court dismissed the suit. The plaintiff/respondent herein filed first appeal before the District Judge who also dismissed the appeal. The respondent filed second appeal before the High Court contending that the Courts below have failed to consider an admission by respondent No.8/defendant No.8 - Mst. Hasrat Bi that what was given was a loan committed an error in treating the document dated 01.12.1965 as a sale and not a nominal sale. It was submitted that the conclusion arrived at by both the Courts below are erroneous in law and facts and deserve to be set aside.

The High Court admitted the appeal and framed the following substantial question of law:-

"Whether the Court below was right in holding that the sale deed dated 01.12.1965 conveyed the title to respondent No.8"

The learned single Judge of the High Court allowed the appeal and set aside the judgment and order of the courts below and held that the respondent has title over the suit land and on his paying a sum of Rs.400/- to Mst. Hasrat Bi he shall have right to get possession of the suit land.

Being aggrieved by the above judgment and decree passed by the High Court, the above civil appeal was filed by the defendants.

We heard Mr. Manoj Swarup, learned counsel for the appellants/defendants and Mr. S.K. Dubey, learned senior counsel for respondent No.1/plaintiff.

Mr. Manoj Swarup, learned counsel for the appellants/defendants submitted as follows:-

- a) the High Court was not right in interfering with the concurrent findings of fact under Section 100 CPC;
- b) the vendor failed to institute any suit for specific performance in pursuance of a deed of reconveying of the property to him by the

vendee;

c) sale-consideration is not alone sufficient ground for interfering by the High Court in the second appeal and for holding that the object of the sale deed dated 01.12.1965 was not to convey the title in the property.

He also invited our attention to the relevant pleadings and the evidence on record and also relied on the following decisions and also referred to the provisions of Section 53 of the Transfer of Property Act, 1882:-

- 1) Mohan Lal vs. Nihal Singh, AIR 2001 SC 2942
- 2) Thiagarajan and Others vs. Sri Venugopalaswamy B. Koil and Others, (2004) 5 SCC 762
- 3) Manikkoth Narayani Amma and Others vs. P.C.Kalliani Amma and Others, (2003) 9 SCC 245
- 4) Makhan Lal vs. Asharfi Lal and Others, (1997) 9 SCC 604

Per contra, Mr. S.K. Dubey, learned senior counsel for respondent No.1/plaintiff submitted that the High Court has rightly come to the conclusion that the sale deed in question was not in fact a real sale deed, but was by way of surety and thus did not pass any right, title or interest in favour of the vendee which is clear from the admission of the vendee/defendant No.8 from para 8 of the impugned judgment under challenge in this civil appeal. He also invited our attention to the written statement filed by defendant No.8 whereby in para 2 (b) and (c) it is clearly admitted that the husband of vendee/defendant No.8 Mst. Hasrat Bi agreed to advance the loan and the nominal sale deed was executed in her name instead of in the name of her husband. He would further submit that from the sub-para (d) it is also admitted that an agreement was entered into between the vendor and the vendee that after repayment of the amount within 3 years, re-conveyance deed will be executed in favour of the plaintiff. He also invited our attention to the oral evidence of D.W.1 Mehboob Khan and the admission made by him in the witness box which reads as follows:-

"Plaintiff took a loan of Rs.400/- from me and that was to be repaid within three years and the same was not repaid even after three years. Had he repaid the loan within three years, then I would have executed a re-conveyance deed in his favour."

Simultaneously, an agreement was also entered into between the parties for execution of the re-conveyance deed, in favour of the plaintiff as is admitted at page B of the list of dates and events by the appellants. Therefore, learned senior counsel submitted that by the said sale deed no right, title or interest ever passed in favour of Mst. Hasrat Bi and that mere mutation of the name of Mst. Hasrat Bi in the revenue records does not confer any right, title or interest in her favour in the absence of the real transaction of the property. Learned senior counsel also invited our attention to annexures R1 series filed along with the counter filed on behalf of the contesting respondent No.1. Learned senior counsel cited the case of Smt. Indira Kaur and Others vs. Sheo Lal Kapoor, (1988) 2 SCC 488 in support of his contention. We have carefully perused the pleadings and judgments passed by both the courts below and of the High Court and also the annexures filed by both the parties in this appeal.

In our opinion, the High Court has rightly come to the conclusion that the sale deed in question was not in fact a real sale deed but was by way of surety and thus did not pass any right, title or interest in favour of the vendee which is clear from the admission of the vendee/defendant No.8. We have already extracted the contents of the written statement in paragraphs (supra). We have also perused the document executed by the plaintiffs/respondents herein in favour of Mst. Hasrat Bi. It did not pass any right, title or interest in her favour and in all probabilities the transaction was only by

way of loan and the so called sale deed executed by the respondent/plaintiff in favour of Mst. Hasrat Bi was nothing but by way of surety.

D.W.1 Mehboob Khan, the husband of defendant No.8 has clearly admitted in his evidence as follows:-

"it is true that Phagua took the amount from me as loan. Phagua is resident of Village Mangla and he has his house and immovable property there."

In the instant case, in addition to the sale deed executed on 01.12.1965 an agreement was also entered into between the parties simultaneously for execution of

the re-conveyance deed in favour of the respondent/plaintiff as is admitted by the appellant herein. Therefore, by the said sale deed, no right, title or interest ever pass i

n favour of Mst. Hasrat Bi and that mere mutation of the name of Mst. Hasrat Bi in the revenue records does not confer any right, title or interest in her favour in the absence of the real transaction of the property. It is seen from the records that since the respondent/plaintiff failed to repay the loan within the stipulated period of 3 years, Mst. Hasrat Bi got her name recorded in the revenue records and sold the property to the appellants herein by a registered sale deed for a sum of Rs.4,000/-. In our view, since Mst. Hasrat Bi had no right, title or interest over the suit property she was not competent to execute the sale deed in favour of Ramlal Shyamlal and Pyarelal for any consideration and if Mst. Hasrat Bi executed the sale deed in favour of the appellants it never conferred any right, title or interest in favour of the subsequent purchasers i.e. the appellants. Therefore, the respondent filed a suit for declaration that the sale deed dated 01.12.1965 executed by him in favour of Mst. Hasrat Bi was only a nominal sale and he continues to be the owner of the suit land and also prayed for possession of the suit land as he was forcibly dispossessed by the appellant after purchasing the land from Mst. Hasrat Bi. A copy of the Complaint has been filed and marked as Annexure-R3. The trial Court dismissed the suit on the wrong premises holding that the respondent/plaintiff has failed to prove that amount of Rs.400/- was taken from Mehboob Khan, husband of Mst. Hasrat Bi by way of loan.

The respondent/plaintiff has clearly stated that he has repaid the entire loan by paying the cash amount to Mehboob Khan. The first Appellate Court has not given any finding in respect of the issues framed by the trial Court. The Appellate Court disposed of the appeal in a very casual manner without discussing the evidence and the document available on record held that the respondent/plaintiff did not repay the loan to Mst. Hasrat Bi. The Appellate Court also did not give any finding whether Mst. Hasrat Bee was competent to transfer the property to the appellants or not. Therefore, there is no concurrent finding by the courts below and the High Court was absolutely justified in reversing the judgment and decree passed by the courts below. The respondent, as already noticed, has filed relevant documents in support of the findings arrived at by the High Court as Annexures R1-R4.

The plaintiff has examined himself as P.W.1. He was severely cross-examined by the counsel appearing for the respective defendants. Nothing could be elicited from P.W.1 to dislodge his suit claim. From the evidence on record, it is apparent that the respondent's/plaintiff's stand is that he has taken Rs.400/- as loan from defendant No.8 and the said fact had been admitted by her. Further, it is evident that the respondent and defendant No.8 agreed that the latter (defendant No.8) shall re-convey the property to the former on payment of Rs.800/-. According to the appellant/defendant, the outer time limit for such re-conveyance is 3 years whereas the plaintiff has not stated anything in this regard in the plaint but admitted in his cross-examination that the amount was to be paid within 3 years. From the evidence on record, we are of the opinion that the sale deed in question has been executed only as a security for loan. There is no dispute about the fact that in the year 1958 property was sold to Jagdish for Rs.400/- and the respondent/plaintiff purchased the said property in the year 1964 for Rs.700/- and, therefore, sold to defendant No.8 for a sum of Rs.400/- on 01.12.1965 is unimaginable.

In our opinion, agreement to re-convey the property will not ipso facto will lead to the conclusion that the sale is not nominal and in view of the stand of defendant No.8 as also of the fact that the property worth Rs.700/- has been purportedly sold for Rs.400/-. We are of the considered opinion that the sale deed dated 01.12.1965 did not convey any title to defendant No.8. It is well settled by catena of decisions that vendor cannot convey to the vendee better title than she herself has.

1) Mohan Lal vs. Nihal Singh, AIR 2001 SC 2942

In the instant case, the trial Court dismissed the suit for the reasons recorded therein on the basis of the record and oral evidence. The lower Appellate Court, as noticed earlier, has not considered oral and documentary evidence properly. The lower Appellate Court which is the final Court of fact mechanically confirmed the findings of the trial Court and upheld the judgment of the trial Court dismissing the suit. The High Court for the cogent and convincing reasons recorded in the judgment has rightly interfered with the concurrent findings of both the Courts. In our view, both the lower courts have concurrently erred in not appreciating the oral and documentary evidence properly and, therefore, the High Court is at liberty to re-appreciate the evidence and record its own conclusion for reversing the orders passed by the lower Court. The

judgment of this Court in the case of Mohan Lal vs. Nihal Singh (Supra) cited by the learned counsel for the appellant will not be of any assistance to the appellant herein. 2) Thiagarajan and Others vs. Sri Venugopalaswamy B. Koil and Others, (2004) 5 SCC 762

In the instant case, the High Court has framed a substantial question of law as extracted in paragraphs (supra). Learned counsel for the appellants submitted that the High Court has not framed any other substantial question of law at the time of hearing except framed at the stage of admission. Sub-section 5 of Section 100 says that the appeal shall be heard on the question so formulated and the respondent shall at the hearing of the appeal be allowed to argue that the case does not involve such a question. The proviso states that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is specified that the case involves such question. As could be seen from the High Court records, no attempt was ever made by counsel for the appellants to formulate any other substantial question of law at the time of hearing. Therefore, the case of Thiagarajan and Others vs. Sri Venugopalaswamy B. Koil and Others, (supra) is not applicable to the case on hand and is distinguishable on facts and law.

3) Manikkoth Narayani Amma and Others vs. P.C.Kalliani Amma and Others, (2003) 9 SCC 245

4) Makhan Lal vs. Asharfi Lal and Others, (1997) 9 SCC 604

In view of our foregoing discussions, on facts and on law, we are of the opinion that these two judgments will not be of any aid or assistance to the appellant.

5) Smt. Indira Kaur and Others vs. Sheo Lal Kapoor, (1988) 2 SCC 488

The above judgment was cited by the learned senior counsel appearing for respondent No.1 in regard to the scope of Article 136. In the above judgment, this Court in para 7 held that Article 136 does not expressly forge any fetters on the power of this Court to interfere with the concurrent findings of fact. Though, this power has to be exercised sparingly but if and when the Court is satisfied that grave injustice has been done it is not only the right but also the duty of the Court to reverse the error and the injustice and to upset the finding notwithstanding the fact that it has been affirmed earlier. This Court also held that it is not the number of times that a finding has been reiterated that matters. What really matters is whether the findings is manifestly unreasonable and unjust one in the context of evidence on record. This judgment squarely applies to the case on hand. In the instant case, the High Court has rightly exercised its right and discharged its duty to reverse the error and removed the injustice done by the courts below. The High Court is right in exercising its duty, rightly so in interfering with an unreasonable and unjust findings by both the Courts below. On a careful perusal of the materials on record, it will be clear that both the courts below did not appreciate the evidence on record both oral and documentary and, therefore, the findings arrived at by the High Court, in our opinion, does not call for any interference under Article 136 of the Constitution of India and the civil appeal deserves to be dismissed.

In the result, the appeal stands dismissed and the judgment and decree of the High Court is affirmed and of the lower courts are set aside. However, we order no costs.