L. Mangilal vs Barkatulla And Ors. on 29 September, 1955

Equivalent citations: AIR1956ALL118, AIR 1956 ALLAHABAD 118

JUDGMENT

V.D. Bhargava, J.

1. This is a second appeal arising out of a suit brought by the plaintiff against defendant 1, Madan Mohan who is the mortgagor, and Barkat Ullah, Mohammad Taj and Mohammad Yusuf who are transferees from his mother Chhutia, by virtue of a sale deed executed in their favour by her.

2. The property originally belonged to one Rai Bahadur Radha Kishen. He died leaving be-laind one sister, Smt. Chhutia, and a half sister Smt. Taro. Smt Chhutia had a son Madan Mohan and Smt. Ganga, a predeceased sister of Radha Kishen, had a son Govind Charan. On 19-6-35 a deed of surrender was executed by Smt. Chhutia in favour of her son Madan Mohan. On the same day a mortgage was executed by Madan Mohan in favour of Dr. Mangi Lal, the plaintiff-appellant in this case.

This mortgage deed was executed for a sum of Rs. 1600/-. On the date when the suit was filed, the amount due had become Rs. 2768/- and the suit was accordingly brought on the basis of this mortgage for ther realisation of this amount by the sale of the house mortgaged. Ignoring this deed of surrender, Smt. Chhutia executed a sale deed in favour of Barkat Ullah, Mohammad Taj, Mohammad Yusuf defendants, and one Mohammad Bashir deceased, whose heirs are the aforesaid three defendants.

The suit was not contested by Madan Mohan, the executant, but it was contested by two of the other three defendants. It may be noted that these three defendants have now gone to Pakistan and their property has become evacuee property. Accordingly the Custodian, Evacuee Pro-perty is contesting this appeal on behalf of the three defendants.

3. The defence of the defendants was that the deed of surrender by Smt. Chhutia in favour of Madan Mohan was invalid because there was another reyersioner Govind Charan who was equally entitled to inherit the property. Further, though on the date on which this deed was executed Smt. Taro was not entitled to inherit, but now according to the latest decisions of the Privy Council Smt. Taro was also entitled to" inherit.

In these circumstances the surrender was not in favour of the next reversioner. The trial Court held that the plaintiff had taken the mortgage after making full enquiry that there was no other heir except Madan Mohan and it was not proved or established in the case that he was aware of Govind Charan's existence. The trial court be-lieved this evidence and the lower appellate Court has not upset that finding.

On this finding the trial court came to the conclusion that Section 41, Transfer of Property Act applied to the case of the plaintiff as he had taken this transfer from the ostensible owner. The lower appellate court was of the opinion that it could not be said that, he had taken the property from the ostensible owner, that the plaintiff himself knew that Madan Mohan, who was the son of Smt. Chhutia, was not the real owner because a deed of relinquishment had been executed that very day and it cannot be said that he was not aware of this fact.

4. Be that as it may, the question that arises is whether the transferees from a limited owner can challenge the validity of a prior transfer by the same owner. Smt. Chhutia had executed a deed of surrender on that day. The surrender will not be void but voidable at the instance of the next reversioner, heir or one, who may be entitled to claim by escheat. If a deed of surrender cannot be challenged by a stranger, much less can he challenge a mortgage executed by the person in whose favour the surrender had been executed.

Madan Mohan after having obtained the property by surrender was entitled to execute a mortgage on its basis and the only person who could challenge it, in my opinion, would be one of those persons whom I have stated above. The three transferees from Smt. Chhutia stand on the same footing as the mortgagee in this case. He is a stranger to the family and is neither a reversioner nor an heir nor can he say that he can claim this property by escheat.

5. Sir Dinshah Mulla in his treatise on Hindu Law in para. 185A has said:

> "The persons entitled to impeach unauthorised alienations by a widow or other limited heir are obviously the next reversioners. It is not the law, however, that reversioners alone can impeach such alienations. Any person who has an interest in the succession is entitled to impeach them., e. g., the Crown taking by escheat. But a stranger to the reversion, e. g., a mortgagee from a widow, cannot impeach them."

6. In 'Sitaram Ravaji Bhosle v. Khandu Mairala', AIR 1921 Bom 413 (A), the plaintiff's who were the donees from a Hindu widow sued to redeem the land in the possession of the defendants as mortgagees. The defendants contended that the alienation in favour of the plaintiffs was void after the widow's death. A bench of the Bombay High Court held that "the alienation was only voidable, not void and the mortgagees had no 'locus standi' to resist the claim of the person who on the face of it had a perfectly good title to equity of redemption granted by a Hindu widow, and the only person who could dispute the validity of such a grant was the reversioner."

7. In another case, 'Bipat Mohton v. Kul-pat Mahton', AIR 1934 Pat 498 (B), a bench of the Patna High Court held as follows:

> "A Hindu widow is the owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death, and her alienation is not absolutely void but is only 'prima facie' voidable at the election of those who would be entitled to the property by survivorship, inheritance or escheat."

8. I would, therefore, hold that these three defendants had no right to challenge the validity either of the mortgage or the deed of surrender by Smt. Chhutia in favour of her son Madan Mohan. Accordingly, I allow the appeal set aside the decree of the lower appellate court and restore that of the trial court. The appellants will be entitled to costs throughout.