B. Bhuwan Bhushan Shah vs B. Balbhaddar Das And Anr. on 9 February, 1950

Equivalent citations: AIR1950ALL460, AIR 1950 ALLAHABAD 460

JUDGMENT

P.L. Bhargava, J.

1. This is an appeal from an order, dated 28th July 1917, made by the Additional Civil Judge of Banaras, in a suit instituted by the plaintiff-appellant, Shri Bhuwan Bhushan Shah, against his father Shri Krishna Mohan Shah, and the latter's transferee, Shri Balbhaddar Das, by which the appellant was asked to make good the deficiency in court-fee paid on the plaint. On 1st December 1941, Krishna Mohan Shah, on his own behalf and as guardian of his minor son, Bhuwan Bhushan Shah, executed a sale-deed and later on, on 26th May 1942, a rent-deed in respect of certain property in favour of Balbhaddar Das. The appellant instituted the suit, referred to above, challenging the binding nature of the said deeds and to obtain a declaration that he was not bound by them. He treated the suit as a simple suit for declaration and paid a court-fee of Rs. 37-8-0 only. Later on, it was conceded on his behalf that the suit was one involving cancellation of the sale-deed and it was of the nature mentioned in Sub-section (2) of Section 7(iv-A), Court-fees Act. The defendant-vendee as well as the Inspector of stamps raised an objection that ad valorem court-fee should have been paid. The contention put forward on behalf of the defendant was that the suit fell within the purview of Section 7(iv)(a) of the Act, as it was a suit for declaration with a consequential relief and that, as the plaintiff sought to avoid the rent-deed also, he was to pay court-fee in respect thereof as well.

2. The learned Civil Judge held that the suit involved the cancellation of the sale deed to which the plaintiff was "apparently" a party; as such, he should have paid court-fee under Section 7(iv-A)(1) of the Act. He further held that the suit also involved the cancellation of the rent deed; but, as the plaintiff was no party to it, he should have valued it separately and paid court fees on one-fifth of the value of the subject-matter. Accordingly, he ordered the plaintiff to pay an additional court-fee of Rs. 2153-2-0 within one month from the date of the order.

3. The sole question for consideration in this appeal is whether the appellant can be considered to be a "party" to the sale-deed, within the meaning of Sub-section (1) of Section 7(iv-A), Court-fees Act As has already been stated, the sale, deed in question was executed by the appellant's father on his own behalf as well as on behalf of the appellant, acting as his guardian. The appellant alleges that the property transferred under the sale deed was ancestral property belonging to the joint Hindu family, consisting of himself and his father; consequently, the latter was not competent to execute the sale deed in respect thereof, more especially on his behalf as there was no legal necessity In other words he disowns the document, which purports to have been executed on his behalf by his

guardian. The question arises whether, in these circumstances, the appellant can be considered to be a "party" to the document.

4. Section 7(iv-A) of the Act is in these terms:

> "In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market-value, or an instrument securing money or other property having such value, (1) where the plaintiff or his predecessor-In-title was a party to the decree or the instrument, according to the value of the subject-matter, and (2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject matter, and such value shall be deemed to be . . ."

5. It has to be seen in what sense the term "party" has been used in this section, A person may directly be a party to an instrument and seek to avoid it on the ground of fraud, undue influence or on any other ground. Another person may seek to avoid an instrument to which he is not a party directly; for example, when the instrument has been executed on his behalf by his guardian or, if he is a member of a joint Hindu family by the manager of the family. A third person may seek cancellation of an instrument to which he is no party at all. There is no difficulty so far as the first and third cases are concerned, inasmuch as the former will be covered by Clause (1) and the latter by Clause (2) of Section 7(iv-A).

6. As far as the second case is concerned, the person challenging the instrument is no party to it by reason of his own act. He has been made a party thereto by another person who is entitled to act on his behalf in particular circumstances, but whose acts, in other circumstances, will not be binding upon him. If the particular circumstances in which that person could act did not exist, he could not act for or make the person challenging the instrument a party thereto. In the present case, the appellant's father, acting as his guardian could transfer the joint ancestral property only for legal necessity or for payment of antecedent debts so as to bind him and his interest in the property; and, if he were to transfer the property to secure money for any other purpose, the appellant would not be bound by his act and his interest in the property would also not be bound by his act and his interest in the property would also not be affected. In the latter case, the position will be as if the appellant were no party to the deed of transfer; and the provisions of Sub-section (2) of Section 7(iv-A), would become applicable to such a case.

7. In an unreported decision of this Court, in Birbal Singh v. Bang Bahadur Singh (Civil Misc. case No. 817 of 1940, decided on 10th August 1942), Bajpai and Dar JJ., had observed:

> "Ordinarily a person is said to be a party to an instrument when he had signed and executed it or possibly if he is a disqualified person when his guardian had signed and executed it for him. But if an instrument is not signed by a person but someone else has executed an instrument which in certain contingencies may bind not only the actual transferor but certain other persons whom the transferor represents, in such a case it cannot be said that the person who may be thus bound was actually 'party to

> the instrument'. Very often in transfers made by a manager or coparcener of a joint Hindu family property the authority of the manager to represent the family or the person who challenges the transfer is itself in question. In such cases it would be difficult to hold that the manager or the coparcener represents also those persons who did not execute the instrument and who repudiated the authority of the manager or coparcener to represent them." And they held:
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> "Sub section (1) of section 7(iv-A) must be confined to those cases where a person challenges his own transfer on grounds on which law allows a person to challenge his own transfer and it does not extend to those cases where a person is challenging an instrument which he has not executed and to which he is not directly a party, though in certain events the instrument may bind him and for certain purposes he may be regarded not directly but notionally as a party to an instrument."

8. Although the learned Judges in that case were not considering the case of an instrument executed by a guardian and envisaged the possibility of a disqualified person "being a party" to an instrument, if it was signed by his guardian, we consider that the reasoning of the learned Judges forming the basis of their decision in respect of an instrument executed by the karta applies equally to the case of an instrument executed by a guardian.

9. In our opinion therefore, the word "party" in Sub-section (1) of Section 7(iv-A), Court-fee Act, refers to the person who is directly a party to the instrument. In this view of the matter, we hold that the plaintiff, appellant was not a party to the sale-deed in question and as such his suit was covered by Sub-section (2) of Section 7(iv-A) of the Act and the court-fee should have been paid accordingly.

10. The appeal is, therefore, allowed and the order in question is set aside. The court-fee payable on the plaint will be calculated by the trial Court in the manner indicated above and shall be paid within the time allowed by the Court. We make no order as to costs of this appeal.