Jagdeo Singh And Anr. vs Sitla Pd. on 4 August, 1953

Equivalent citations: AIR1954ALL71, AIR 1954 ALLAHABAD 71

JUDGMENT

Chaturvedi, J.

1. This is a defendants' appeal from a decree of the learned Civil Judge of Faizabad decreeing the plaintiffs suit.

2. The suit was for cancellation of a sale deed executed by the grandmother of the plaintiff as his guardian on 23-8-1939. The plaintiff's case was that the property was ancestral property of the plaintiff, and his grandmother was not his guardian inasmuch as his mother was also alive. It was next contended that the deed was executed without any legal necessity, and the guardian had failed to claim the benefits of the Agriculturists' Relief Act and the Debt Redemption Act.

3. The main defences to the suit were that the mother of the plaintiff had remarried soon after the death of the father, and the grandmother was the legal and de facto guardian of the plaintiff. She, therefore, could not act as his guardian. It was also alleged that the deed was executed for legal necessity, and for payment of the antecedent debts of the minor's father. The third plea was that the plaintiff brought a suit in 1942 under the guardianship of his mother; but this suit was withdrawn with liberty to bring a fresh suit. As a condition for granting leave to withdraw the suit, the court ordered that the suit was permitted to be withdrawn on two conditions, namely, that a fresh suit was to be instituted within a year of the date of the order, and that the plaintiff paid the costs incurred by the defendants, before bringing the suit. This order was passed on 14-3-1942. The present suit was brought in 1947 without paying costs, and the defence was that the suit was, therefore, not maintainable, though costs were subsequently deposited in the trial court.

4. The learned Munsif found that the plaintiff's grandmother was the de facto guardian of the plaintiff on the date when she executed the sale deed; that the sale deed was for payment of the antecedent debts of the father and was, therefore, valid, and that the suit was further barred because the conditions laid down in the order dated 14-3-1942 were not complied with.

The plaintiff went up in appeal, and the learned Civil Judge has agreed with the learned Munsif in so far that the grandmother of the plaintiff was held to be his de facto guardian on the date of the execution of the sale deed. He also appears to have agreed with the learned Munsif that the sale deed was executed in order to pay off the antecedent debts of the father. But, according to the learned Civil Judge, it was the father and the father alone who could execute the sale deed of the ancestral property in payment of his antecedent debts. No other relation of the minor could transfer the property in order to pay up the antecedent debts of the father, and the sale deed was therefore, an invalid document.

As regards the last point, the learned Civil Judge held that the court could not, by an order, reduce the period of limitation provided for bringing a suit in the Limitation Act. The condition, therefore, providing for the institution of a fresh suit within a year, was not enforcible. The costs were paid by the plaintiff during the pendency of the suit, and the learned Civil Judge was of the opinion that this was a sufficient compliance of the previous-order. In this view of the matter, the learned Civil Judge decreed the suit.

5. The defendants have now come up in appeal to this Court, and their learned counsel has also raised three points before me. The first contention is that the present suit was barred by time, inasmuch as more than three years have elapsed since the date of the execution of the sale deed, and the plaintiff can get the advantage of his minority only if the suit were brought after he had attained majority. It is next contended that, it having been proved that the deed was executed in order to pay up the antecedent debts of his father, it was quite open to the de facto guardian to execute the sale deed, and the view of law taken by the lower appellate court, to the contrary, was not correct. His last submission is that both the conditions laid down in the order dated 14-3-1942 having not been complied with, the present suit should have been dismissed.

6. The first point urged by the learned counsel for the appellants need not detain us. The plaintiff was a minor on the date of the previous suit, and he still continues to be a minor. He will have time till up to three years of attaining his majority to bring a suit for setting aside the sale deed executed by his guardian. The argument of the learned counsel, that in order to take the advantage of the three years' period, the suit must have been filed by the plaintiff himself on attaining the majority, does not appeal to me. The suit can be filed during his minority by a legal or de facto guardian of his, and it cannot be said that, three years' period having expired since the execution of the deed of sale, the suit has become barred by time. As already stated, the suit can be brought till the expiry of three years on attaining majority by the plaintiff. That period has not expired as yet, and the suit, therefore, cannot be said to be barred by time.

7. As regards the next point, the of both the courts below are that there were antecedent debts of the father evidenced by usufructuary mortgages executed by the lather. The learned Civil Judge, however, has set aside the sale deed on the ground that it is only the father who can alienate the joint family property in order to pay his own antecedent debts, and such a right cannot be exercised by any other member of the family. It is true that the father has certainly been granted that privilege, but I do not think that the learned Civil Judge is right, when he says that no other member of the family or a guardian, can execute a sale deed for the payment of the antecedent debts of the minor's father.

8. The learned counsel for the respondent cited a Full Bench decision reported in --'Chiranji Lal v. Bankey Lal', AIR 1933 All 273 (A), but that was a case where apart from the son, there were a number of other relations also of the debtor, who were all members of the joint Hindu family. The alienation of the family property, therefore, could not be considered to be an alienation in respect of ancestral debts of the father, because the family consisted of more persons than the sons of the elector only, in such a case, it must be proved that the alienation was for some legal necessity binding on the family. The case, therefore, can be easily distinguished.

9. The position has been made clear in a subsequent case reported in -- 'Ram Singh v. Sri Charan, AIR 1938 All 147 (B). In this case, the alienation was by one of the sons, while the other son was a minor, and a Division Bench of this Court held that if the debt contracted by the father was not tainted with immorality and if it could not be paid without the sale of family property, a case of the legal necessity for the son to transfer undoubtedly existed.

10. In another case reported in -- 'Lakhmi Singh v. Mahendra Singh', AIR 1949 All 501 (C), it has been laid down that the alienation of the joint family property by adult members for discharging the antecedent debts of the father may be supported on the ground of legal necessity. But such necessity must be of a type which entails a certain degree of pressure on the estate to justify the alienation. In this case, the alienation, it was held, would be justified on the ground of legal necessity provided it was proved that there was some pressure on the estate to justify the alienation. The important question, therefore, in such cases, is whether the alienation was justified on account of some pressure or necessity, apart from the fact that the debt was an antecedent debt of the father.

11. In the present case, there is a clear finding that the debt was an antecedent debt. But the further question whether there was any pressure on the family necessitating the execution of the sale deed appears to have been answered in favour of the plaintiff by the learned Civil Judge. The finding of the learned Civil Judge on this point is as follows : "The only grounds on which such transfer can be upheld are (1) that it was in the interest of the minor or (2) for the benefit of the minor's estate. No such consideration has been proved in the present suit. It is noteworthy that the creditors had not obtained any decree in respect of their previous debts; nor was the property in suit in any imminent danger of being sold. It is equally worthy of note that plaintiff's father had died in 1938, and that the present sale deed in question was executed nearly six months after his death without taking advantage even of the Agriculturists' Relief Act. There is absolutely no evidence on record to justify or warrant this unwholesome haste. Thus there being no pressing necessity for the sale in suit, it cannot be upheld." As would appear from the above extract of his judgment, the learned Civil Judge did consider the question whether, in this case, it was proved that, apart from the debt being an ancestral one, there was also any pressing necessity for the execution of the sale deed in question. After considering the fact, be came to the conclusion that no such pressing necessity had been established. In view of these findings, and in view of the decision in --'AIR 1949 All 501 (C)', mentioned above, it must be held that the present sale by the grandmother could not be upheld, and it was voidable at the instance of the minor.

12. The last point argued was that the plaintiff had failed to comply with the conditions laid down in the order dated 14-3-1942 permitting the withdrawal of the first suit. As already said, this order directed the plaintiff to bring the second suit within one year, and also directed that the costs incurred by she defendants must be paid before the institution of the second suit. The learned Civil Judge has held that the condition providing for the institution of a suit within one year is void, because it cuts down the period of limitation provided by the Limitation Act. I have already, while considering the first point, held that the present suit, when it was filed, was within time, according to the provisions of the Indian Limitation Act, and the question that has to be decided is whether the court could impose a condition reducing the period of limitation provided by the statute. The relevant provision on the point is contained in Order 23, Rule 2, C. P. C. This rule may be quoted in

full, "In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted."

This rule lays down that the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

13. The learned counsel for the respondent has drawn my attention to a case where a direction, given in the order permitting the withdrawal of the suit, which extended the period of limitation, was held to be inoperative. In a case like that, of course, there is no difficulty in applying the provision of this rule, because the rule makes the plaintiff bound by the law of limitation in the same manner as if the first suit has not been brought. In that case it was the plaintiff, who was seeking to extend the period of limitation because of the order passed by the court, and it was held that the plaintiff was not entitled to any such extension of time, and the direction of the court in that respect was ultra vires. See --'Virupakshappa v. Veerabhadra Gowd', A. I. R. 1943 Mad 80 (D).

14. The position in the present case is slightly different. Here it is to the advantage of the plaintiff to say that the suit should be governed by the statute law irrespective of the condition laid down in the order permitting the withdrawal of the suit. In spite of this difference, I think that, on a proper reading of this rule, the position is that the law of limitation laid down in the Limitation Act would apply to a suit brought by the plaintiff, and a court has no right to cut down the law of limitation provided by the statute.

The wordings of the rule that 'the plaintiff shall be bound by the law of limitation in the, same manner' suggest that the binding force that applies to the suit is the force of the statute of limitation and not the force of the order that may have been passed by any Court. In case, it is held that the court could reduce the period of limitation, the position would be that it could not be said that the plaintiff was bound by the law of limitation in the same manner, because he would then be bound by the limitation provided in the order of the court, and not by that provided in the law of limitation. For these reasons, I agree with the learned Civil Judge in holding that the order of the court, directing the institution of the suit within one year, was not an enforcible order and was ultra vires the powers of the court.

15. This brings me to the second question, namely, whether the plaintiff has complied with the other portion of the order concerning the deposit of costs. In one way, the order may be interpreted to mean that costs were also to be deposited within one year, because the suit itself was directed to be brought within a year. But what the order actually said was that costs should be deposited before bringing the suit, and no period of time was expressly provided for depositing the costs. If the condition reducing the period of limitation to one year was void, then it might well be said that the only effective part of the order was that the costs were to be deposited before bringing the fresh suit. In the present case, the costs were deposited after the suit had been brought.

16. In a Division Bench case of this Court reported in -- 'Jadu Teli v. Mahboob Raza Khan', AIR 1933 All 810 (E), a distinction has been drawn between a case where a specific period of time is provided

for depositing the costs and in a case where no specific period of time is provided, but there is a direction that costs should be deposited before the institution of the suit. The decision of the Bench is to the effect that in a case where specific period of time is provided, costs must be deposited within that period. In case the plaintiff fails to comply, the second suit would be barred. But if the order does not specify any exact period, and only says that the costs should be deposited before the institution of the suit, then it is open to the court, before which the second suit is brought, to accept the costs during the pendency of the suit.

Even in a case like this, the court may refuse to accept the costs on the ground that the condition had not been, fulfilled. At the same time there is nothing to prevent the court from allowing the plaintiff to fulfil that condition by depositing the costs, where no question of limitation arises. In such a case the suit should be taken to have been instituted on the date when the costs were deposited, and if it was within time on that date, the provisions of the previous order are sufficiently complied with.

In the present case, there is no doubt that the suit was within time, even on the date that the costs were deposited, and it was open to the court to have accepted the deposit, which it did in this case. I have already held that, in my opinion, the correct interpretation of the order dated 14-3-1942 is that no specific period of limitation was provided for depositing the costs, though it was directed that the costs were to be deposited before bringing the suit. The learned Civil Judge has also taken the same view of the matter, and I agree with the conclusions arrived at by him.

17. The result is that the appeal fails and is hereby dismissed with costs.

18. Leave to appeal to a Division Bench is granted.