

Unnao Commercial Bank Ltd., Unnao vs Kailash Nath And Ors. on 27 January, 1954

Equivalent citations: AIR1955ALL393, AIR 1955 ALLAHABAD 393

JUDGMENT

Randhir Singh, J.

1. This appeal has been referred to a Bench by a learned Single Judge as it appeared to him that some points of importance on which, in his opinion, the law was not uniform, arose in the case and required consideration by a Bench,

2. The appeal arises out of a suit brought by the Unnao Commercial Bank, Ltd., for a partition of a half share in two houses situate in Muhalla Bashiratganj in the city of Lucknow. Baiju and Lachman Prasad, who were brothers, owned two houses and certain other property. Lachman Prasad died in 1930 leaving a son Ram Prasad who is defendant 1. Baiju died in November, 1934, without any issue. His widow Smt. Janaka, is, however, alive.

3. On the death of Baiju, Bam Prasad executed a sale deed in favour of Batan Chand in respect of a half share in two houses and some moveable property which belonged to him and Baiju jointly. This sale deed was executed for obtaining money for filing a suit against Smt. Janaka and two others, Smt. Jasrath Dei and Mahadeo Prasad, in whose favour Baiju had executed a will which, according to Ram Prasad, was invalid. Bam Prasad was unable to finance the litigation and, in order to establish his claim to the property, he thought it fit to sell a half share of the property to Batan Chand in order to raise funds for fighting out the suit. This sale deed in favour of Batan Chand was executed on 14-12-1934. A suit was thereafter instituted jointly by Bam Prasad and Batan Chand against Smt. Janaka, Smt. Jasrath Dei and Mahadeo Prasad. The suit was decreed on 17-4-1935, for a declaration that Bam Prasad was the owner of a half share in the property and for possession. An appeal was filed against this decree by Smt. Janaka and others, but this appeal was ultimately dismissed for default of prosecution. A review application against the dismissal of the appeal was also dismissed on the 3-5-1940.

4. On 2-2-1937, Batan Chand, who was indebted to the Unnao Commercial Bank, sold away some property, including his half share in the two houses acquired from Bam Prasad. On 16-6-1937, Smt. Janaka, who was held to have a life interest in the other half of the two houses, executed a deed of relinquishment in favour of Ram Prasad. On 24-8-1940, a sale deed was executed by Bam Prasad in favour of Kailash Nath, defendant 3, in respect of a half share in the two houses. This was followed by a partition of the second house and the southern part of this house fell to the share of Ram Prasad, who then sold his undivided interest in the first house and the share allotted to him in the second house to defendant 2 on 31-8-1940, and defendant 2 sold a half of the second house which

she had acquired from Bam Prasad, to defendant 4 on 26-11-1942.

5. On the basis of the sale deed obtained by the Unnao Commercial Bank, the bank instituted a suit for a partition of a half share in the two houses. The suit was resisted by all the defendants on various grounds. It was alleged that the sale in favour of Ratan Chand was champertous and that Ratan Chand did not perform his part, of the contract under the sale deed executed in his favour and as such no title to any part of the house passed to him. It was also contended that Ratan Chand at best had acquired only a one-fourth share in the house & the plaintiff was, therefore, not entitled to claim a half share. Defendant 4 pleaded that he was a bona fide transferee for value and that the transaction in favour of the plaintiff was not binding on him.

6. Various issues were framed by the learned Civil Judge who heard the case. He ultimately came to the conclusion that, although the sale-deed which was executed by Ram Prasad in favour of Ratan Chand had been made for financing the litigation, the transaction was fair and equitable and as such was binding upon Bam Prasad and- his transferees. He also found that the transaction in favour of Ratan Chand was a completed sale and not an agreement to sell. The suit was, therefore, decreed by the trial Court.

7. Defendant 3, who was a transferee from Ram Prasad in respect of the share which had been originally sold by him in 1937, then went in appeal to the District Judge. The learned Judge held that under the agreement, which was executed in the shape of a sale-deed, Ratan Chand was only to get half of the fruits of the decree in the suit instituted by Ram Prasad and Ratan Chand against Smt. Janaka and others. He held that the transaction was not unfair and unconscionable, as it appeared to him that one-fourth share in the two houses was meant to be conveyed and this would be a sufficient recompense to Ratan Chand. He therefore allowed the appeal and decreed the plaintiff's suit for a partition of one-fourth share in the two houses. He also allowed Rs. 100/- as mesne profits. The plaintiff has now come up in appeal.

8. The first point which has been pressed on behalf of the appellant is that the transaction entered into between Ram Prasad and Ratan Chand on 14-12-1934, was in substance a completed sale and not an agreement to sell. A copy of the sale deed Ex. 2 was filed by the plaintiff. A perusal of this document shows that Ram Prasad sold a half share in the two houses in dispute, as also in some moveable property to Ratan Chand for a sum of Rs. 400/-. There is a recital in the sale-deed to the effect that Ram Prasad was not possessed of sufficient funds to enable him to institute a suit against Smt. Janaka, Jasrath Dei and Mahadeo Prasad, who had obtained a will from Baiju which was invalid. It was, therefore, necessary for him to obtain funds for financing the litigation by the sale of a half share in the property.

It is also mentioned in the sale deed that Ratan Chand was to defray the costs of the litigation out of the sale consideration which was left in deposit with him and that he was not to get any further sum from Ram Prasad if the expenses incurred by him in the litigation exceeded the sale consideration. It was further stipulated that Ratan Chand was to do the entire Pairvi of the case and if the costs were less than the sale consideration, Ram Prasad would not be entitled to get that amount from Ratan Chand.

9. The learned Counsel for the respondent has relied on some cases relating to champertous transactions -- 'Ram Coomar v. Chunder Canto', 4 Ind App 23 (PC) (A); -- 'Raja Mohkam Singh v. Raja Rup Singh', 15 All 352 (PC) (B); and -- 'Soon Thin v. Mg. Than Gywe', AIR 1934 Rang 346 (C). In none of these cases has it been held that if a transaction is on the face of it a completed sale it should be taken to be an arrangement to sell. The mere fact that the consideration was unascertainable on the date of the sale would also not make the transaction of sale an agreement to sell, and this point has been discussed in -- 'Beni Madho v. A. U. John', AIR 1947 All 110 (D); and -- 'Parmeshwar Bux Singh v. Bachcha Singh', AIR 1945 Oudh 161 (E) also.

There is nothing in the sale deed to show that Ratan Chand was to share in the fruits of the decree passed on the basis of the suit which was to be instituted by Ram Prasad and Ratan Chand. He was given a half share in the property in all events. The consideration of the sale-deed was also mentioned as Rs. 400/- in the sale-deed, although it appears that the true consideration was the amount of the money which Ratan Chand was to spend on behalf of Ram Prasad in the litigation. The consideration was also, therefore, ascertainable, though not on the date of the sale but after the decision of the suit which was to be financed by Ratan Chand. Under the circumstances we are unable to agree with the contention that the transaction embodied in the document Ex. 2 was only an agreement for sale and not a completed sale.

10. The second point, which is more important, which arises for consideration is whether the transaction dated 14-12-1934, embodied in Ex. 2 was champertous and, if so, was it not binding on the parties. The law on the subject of agreements or contracts which are champertous, as administered in India, has been the subject of various rulings of the Privy Council as also of the various High Courts. There is no specific law against champerty in India and although champertous transactions are prohibited in England, such agreements have not been held to be invalid except in certain circumstances. The leading case on the subject is '4 Ind App 23 (PC) (A)', which has also been referred to in the judgment of the trial Court in which it has been held "that a fair agreement to supply funds to carry on a suit, in consideration of having a share of the property if recovered, ought not to be regarded as being 'per se' opposed to public policy, but agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, or made not with the bona fide object of assisting a claim believed to be just but for the purpose of gambling in, litigation, should not be given effect to."

The principles laid down in this leading case still hold good and a transaction made for the purpose of financing a litigation would not 'per se' be held to be invalid. The Court should, however, refuse to give effect to such transactions if it appears that they are unconscionable or unfair or are otherwise opposed to public policy. Financing a poor litigant who would otherwise not be able to maintain even a just claim would not be opposed to public policy, and if a person advances money to such a poor litigant in order to enable him to fight out a righteous dispute, he would be entitled to get the property sold to him for raising the funds. If, however, it appears to the Court that the transaction was substantially unfair, or that the sole object of the transaction was to finance or promote any unrighteous cause, the Court would relieve the party from the effect of such a transaction. Even where it had been found that the transaction was unfair, a decree for the amount spent by the financier was passed in his favour to compensate him, in lieu of the property which was the subject

of the unfair bargain.

The main question which arises for consideration in this case therefore is, if there are circumstances which lead to the inference that the transaction was unfair or unconscionable.

11. That Ram Prasad had a righteous claim against Smt. Janaka and others cannot be disputed. He was the own nephew of Baiju and, if his assertion that they were members of a joint Hindu family was correct, he was entitled to the entire property of the family on the death of Baiju. Even if he was a separated member of the family, Baiju could not will away the entire property of the family in favour of Smt. Janaka and others. The litigation on which Ram Prasad proposed to embark was, therefore, by no means speculative in nature nor was there any immoral or bad motive behind it. Ratan Chand could, therefore, validly finance Ram Prasad in this litigation and any agreement for financing Ram Prasad could not be said to be opposed to public policy.

12. Then remains the other question as to whether the transaction was unfair or unconscionable. It has been argued on behalf of the appellant that the property which Ram Prasad purported to transfer to Ratan Chand by means of the sale-deed Ext. 2 was comprised of a half share in two houses and some other moveable property the value of which was in the vicinity of Rs. 3750/- and that a transfer of this property for a sum of Rs. 400/- was an unfair transaction against which Ram Prasad or his transferee should be relieved.

Unfortunately no plea that the transaction was unfair or unconscionable was specifically raised by the defendants in this suit. All that was said on behalf of defendant 1 was that the transaction was champertous in nature. Even if it be assumed that, where it appears that the transaction was champertous in nature, the burden of proving that the transaction was fair lay upon the person who seeks to rely on the transaction, the circumstances have to be weighed as a whole and it is not the mere disparity in consideration which should be the sole criterion for deciding whether a particular transaction was or was not fair.

Although the sale consideration mentioned in the sale-deed was Rs. 400/-, it was expressly stipulated that Ratan Chand was to bear the entire costs of the litigation and was not entitled to recover any amount from Ram Prasad even if the expenses 'exceeded Rs. 400/-. This would in effect mean that the consideration of the sale deed was the amount to be spent in litigation. Ratan Chand entered the witness box. and stated that he had spent Rs. 1400/- towards the costs of the suit instituted by him and Ram Prasad Jointly, for declaring the will invalid and for possession of the property. The witness was not cross-examined on this point and no details of the expenses incurred by him were inquired into. The costs mentioned in the decree and awarded to the plaintiffs in that suit no doubt amounted to Rs. 429/12/-, but it is a matter of common knowledge that parties have to incur a good deal of expenditure which is not taxed in the decree. It is, therefore, not improbable that Ratan Chand might have spent much more than what is taxed as costs in the decree.

Moreover, it is not the market-value of the property which has to be taken into consideration. At the time when such transactions are entered into, the title of the vendor is itself in jeopardy and as the result of the litigation is always problematical, it is the commercial value of the claim which should

be taken into consideration, vide -- 'Ram Sarup v. Court of Wards', AIR 1940 PC 19 (F). The fact that a half share in the two houses was sold for Rs. 8007- to the appellant even after the matter had been finally decided itself goes to show that the commercial value of the claim was not much at the time when the sale deed was made by Ram Prasad in favour of Ratan Chand. Taking all the facts into consideration it appears to us that the transaction was neither unconscionable, extortionate nor unfair.

13. The third point which has been urged on behalf of the appellant is that Ratan Chand did not perform his part of the contract inasmuch as he did not defray the costs in appeal. As remarked above, the appeal was instituted by Smt. Janaka against the decree passed in favour of Ram Prasad and Ratan Chand, but this appeal was dismissed for default of prosecution inasmuch as the appellant did not deposit the full court-fee. It has been contended on behalf of Ratan Chand that he was bound under the terms of the sale deed only to defray the costs of the suit and there was no mention of the costs of the appeal in the sale-deed. The lower appellate Court has interpreted the word "muqadma" to mean the entire litigation including the appeal.

This interpretation, though not unreasonable, however, does not affect the merits of the case inasmuch as the appeal was dismissed for non-payment of the court-fee on the grounds of appeal, and there was thus hardly any occasion for Ratan Chand to do any pairvi in the appeal. Moreover, the sale-deed was a completed transaction, and if Ram Prasad had to spend any money in defending the case in appeal, it was open to him to have sued Ratan Chand for the recovery of that amount. It has been remarked by the trial Court that there is no sufficient evidence in support of the contention that any money was spent in the proceedings in appeal on behalf of Ram Prasad. It is difficult, therefore, to find that Ratan Chand did not perform his part of the contract.

14. Another circumstance which has to be taken into consideration is that there was no stipulation in the sale deed, that if Ratan Chand did not defray the entire costs of the litigation the sale deed would be ineffectual. At the worst if Ratan Chand had not defrayed the costs of the appeal it would amount to non-payment of a part of the consideration and the only remedy open to the vendor was to sue for the recovery of that amount. No amount has been satisfactorily proved to have been spent by Ram Prasad in the proceedings in appeal.

15. It has been held in some cases that it is not open to a third party to challenge a transaction as champertous and this plea is open only to the vendor. In the present case Ram Prasad only half-heartedly raised the plea in the trial Court but did not join defendant 3 in the appeal. He submitted to the findings of the trial Court and as such this plea taken by defendant 3 loses much of its force in the absence of any support from Ram Prasad himself. In the deed which was executed by Ram Prasad subsequent to the sale deed made in favour of Ratan Chand, he did not challenge the validity of the sale in favour of Ratan Chand. In fact in the mortgage Ex. A4 made by him in favour of the appellant in 1937 he admitted the sale deed made in favour of Ratan Chand. It was for the first time in the deed, in favour of defendant 3 executed in 1940 that Ram Prasad disputed the validity of the sale deed in favour of Ratan Chand. We are, therefore, in agreement with the view taken by the trial Court that Ratan Chand did not omit to perform his part of the contract in the sale deed.

16., The lower appellate Court has held Ratan Chand entitled to a one-fourth share in the property transferred to him. We have not been able to appreciate the reasoning behind this decision arrived at by the lower appellate Court. There was no mention in the sale-deed that Ram Prasad & Ratan Chand would share the fruits of the decree to be passed in the suit, in equal shares. Ratan Chand was to get half of the property specifically in all events, and it would therefore be difficult to conclude that the vendor and the vendee were to share the fruits of the decree equally. The sale deed was therefore effective in respect of half of the property comprised in the sale deed and not in respect of one-fourth share only.

17. Lastly, it has been argued that Kailash Nath respondent was entitled to a half share in the two houses in dispute even if the sale in favour of Ratan Chand was found to be good. It was expressly mentioned in the sale-deed made in favour of Kailash Nath that the same property which was earlier sold to Ratan Chand was being transferred to Kailash Nath. The suit which has given rise to this appeal was for a partition of a half share and it will not be necessary to determine the respective claims of the defendants in respect of the other half of the property if it is found that the plaintiff appellant is entitled to a half share in the houses. He is also not bound by the partition in respect of house No. 2 made behind his back.

18. The learned Civil Judge who heard the case has dealt with all the points in detail and we are in agreement with the views expressed by him. The view taken by the lower appellate Court that the appellant was entitled to one-fourth share of the houses does not appear to us to be the correct view.

19. As a result we allow the appeal and set aside the decree passed by the lower appellate Court and restore the decree passed by the trial Court. The appellant shall get the costs of this appeal from respondent 1 who alone has contested the appeal in this Court.