

Smt. Dularia Devi vs Janardan Singh & Ors on 2 March, 1990

Equivalent citations: 1990 AIR 1173, 1990 SCR (1) 799, AIR 1990 SUPREME COURT 1173, 1990 ALL. L. J. 245, 1990 ALL CJ 278, 1990 UJ(SC) 2 74, (1990) 1 JT 417 (SC), (1990) 1 ALL WC 471, (1990) 2 RRR 220, (1990) REVDEC 193, 1990 SCC (SUPP) 216

Author: T.K. Thommen

Bench: T.K. Thommen, L.M. Sharma

PETITIONER:
SMT. DULARIA DEVI

Vs.

RESPONDENT:
JANARDAN SINGH & ORS.

DATE OF JUDGMENT 02/03/1990

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
SHARMA, L.M. (J)

CITATION:
1990 AIR 1173 1990 SCR (1) 799
1990 SCC Supl. 216 JT 1990 (1) 417
1990 SCALE (1) 431

ACT:
U.P. Consolidation of Holdings Act, 1953: S. 49 Void
sale deed--Suit for cancellation of--Whether barred when
consolidation proceedings are pending.

HEADNOTE:
Section 49 of the U.P. Consolidation of Holdings Act, 1953 puts a bar on the civil and revenue courts in respect of disputes in regard to which proceedings could or ought to have been taken under the Act.
The plaintiff-appellant, an illiterate lady, wanted to make a gift of her properties in favour of her daughter. Defendant Nos. 3 and 4, who undertook to make arrangements to execute and register the necessary deed, however, prac-

tised a fraud on her. They made her put her thumb impression on two documents which she had been told and she honestly believed were the gift deed in favour of her daughter. She had in fact executed two deeds, one of which was a gift in favour of her daughter and the other a sale deed in favour of the defendants. Later when she came to know of the facts, she filed a suit for cancellation of the sale deed. Consolidation proceedings were then pending in respect of the property in question.

The suit was decreed by the trial court and that decree was confirmed in appeal by the First Appellate Court. The High Court, however, found that the plaintiff was totally deceived as to the character of the document which she had executed and the document was, therefore, void and of no effect whatsoever. Accordingly, it held that the suit was barred by reason of s. 49 of the Act.

In the appeal by special leave it was contended for the appellant that since it was a case of the document having been vitiated by fraud, the transaction was voidable but not void and, therefore, the bar of s. 49 of the Act was not attracted.

Dismissing the appeal, the Court,

HELD: 1.1 A voidable document is one which remains in force
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until set aside and such a document can be set aside only by a competent civil court. A suit for that purpose would, therefore, be maintainable. A claim that a transaction is void is, however, a matter which can be adjudicated upon by the consolidation authorities. [802E-F]

Gorakh Nath Dube v. Hari Narain Singh & Ors., [1974] 1 SCR 339, referred to.

1.2 In the instant case, the plaintiff-appellant was totally ignorant of the mischief played upon her. She honestly believed that the instrument which she executed and got registered was a gift deed in favour of her daughter. She believed that the thumb impressions taken from her were in respect of that single document. She did not know that she had executed two documents, one of which alone was the gift deed, but the other was a sale of the property in favour of the defendants. This was, therefore, a case of fraudulent misrepresentation as to the character of the document executed by her and not merely as to its contents or as to its legal effect. The plaintiff-appellant never intended to sign what she did sign. She never intended to enter into the contract to which she unknowingly became a party. Her mind did not accompany her thumb impressions. It was thus a totally void transaction. [804C-E]

Ningawwa v. Byrappa & Ors., [1968] 2 SCR 797, applied.

No suit was, therefore, maintainable by reason of the bar contained in s. 49 of the Act. [804E]

2. The remedy of the plaintiff lies in the proceedings pending before the consolidation authorities and it is open to the parties to approach them for appropriate relief.

[804F]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2998 of 1980.

From the Judgment and Order dated 17.11.1980 of the Allahabad High Court in S.A. No. 2954 of 1979. M.S. Gujral and Mohan Pandey for the Appellant. Satish Chandra, Praveen Swarup and Pramod Swarup for the Respondent.

The Judgment of the Court was delivered by THOMMEN, J. This appeal by special leave arises from the judgment of the Allahabad High Court in Second Appeal No. 2954 of 1979 whereby the learned Judges of the High Court, allowing the defendants' appeal set aside the decrees of the courts below. The High Court held that the suit was barred by reason of Section 49 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'the Act'). Hence the present appeal by the plaintiff.

The plaintiff is an illiterate person. Her daughter Rameshwari Devi is the wife of the 6th defendant, Yogendra Prasad Singh. Arjun Singh and Janardan Singh, defendant Nos. 3 and 4, are the brothers of the 6th defendant. Defendants Nos. 3 and 4 had gained the confidence of the plaintiff and she confided in them her desire to make a gift of her entire properties in favour of her daughter. Defendant Nos. 3 and 4 readily agreed to make arrangements to execute and register the necessary deed. On 18.9.1971, these defendants took the plaintiff to the Office of the Sub-Registrar. The plaintiff paid the amount needed for expenses. The defendants purchased stamp papers in the name of the plaintiff. On two deeds, which had been prepared at the instance of the defendants, the plaintiff was made to put her thumb impressions. Being an illiterate person, she could not read the contents of the documents or understand their character. She had been told, and she honestly believed, that she was executing a gift deed in favour of her daughter, as desired by her, in respect of her properties. She had in fact executed two deeds, one of which was a gift in favour of her daughter and the other a sale deed in favour of all the defendants. The consideration for the sale shown in the document was Rs. 14,000. This was a clear case of fraud practised upon her by the defendants. The defendants and the Sub-Registrar as well as the document-writer had all conspired together to perpetrate the fraud. The plaintiff did not know that she had executed a sale deed in favour of the defendants in respect of her property until 25th June, 1974 when she found defendant Nos. 3 and 4 interfering with her possession of the property. They told her that she had executed a sale deed in their favour. It was only on 2nd July, 1974 that she came to know of the full facts. Accordingly, she filed a suit for cancellation of the sale deed. The suit was decreed by the trial court and that decree was confirmed in appeal by the first appellate court. Setting aside the decree in the defendant's second appeal, the High Court held that the plaintiff was totally deceived as to the character of the document which she executed and the document was, therefore, void and of no effect whatsoever. Accordingly, the suit was barred under section 49 of the Act under which consolidation proceedings had been pending at the time of the institution of the suit in respect of the property in question.

The facts are not in dispute. It is not disputed that the documents in question came to be executed in the manner alleged by the plaintiff. The appellant, however, contends that since it was a case of the document having been vitiated by fraud, the transaction was voidable, but not void, and, therefore, the suit to set aside the sale was rightly instituted by her and the bar of section 49 was not attracted. The appellant contends that the suit is perfectly maintainable and the High Court was wrong in holding to the contrary.

Mr. Satish Chandra, appearing for the respondents, rightly, in our view, submits that two principles enunciated by this Court in *Gorakh Nath Dube v. Hari Narain Singh & Ors.*, [1974] 1 SCR 339 and *Ningawwa v. Byrappa & 3 Ors.*, [1968] 2 SCR 797 squarely apply to the facts of this case and the document in question evidenced a void transaction, and not a mere voidable transaction, and no suit was, therefore, maintainable in view of the bar contained in section 49 of the Act.

In *Gorakh Nath Dube*, (supra), this Court held that the object of the relevant provision of the Act was to remove from the jurisdiction of any civil court or revenue court all disputes which could be decided by the competent authority under the Act during the consolidation proceedings. Questions relating to the validity of a sale deed or a gift deed and the like had to be examined in proceedings before the statutory authorities. The Court, however, drew a distinction between void and voidable documents and said a voidable document was one which remained in force until set aside, and such a document could be set aside only by a competent civil court, and a suit for that purpose would, therefore, be maintainable. On the other hand, a claim that a transaction was void was a matter which could be adjudicated upon by the consolidation courts. This is what this Court stated:

"We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiffs claim is that the sale of his half share by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts."

(emphasis supplied) In *Ningawwa v. Byrappa & 3 Ors.*, (supra), this Court referred to the well-established principle that a contract or other transaction induced or tendered by fraud is not void, but only voidable at the option of the party defrauded. The transaction remains valid until it

was avoided. This Court then said:

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable. In *Foster v. Mackinnon*, [1869] 4 CP 704, the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In holding that such a plea was admissible, the Court observed:

It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the 'actual contents' of the instrument."

(emphasis supplied) From the facts narrated above, about which, as stated earlier, there is no dispute, it is clear that this is a case where the plaintiff-appellant was totally ignorant of the mischief played upon her. She honestly believed that the instrument which she executed and got registered was a gift deed in favour of her daughter. She believed that the thumb impressions taken from her were in respect of that single document. She did not know that she executed two documents, one of which alone was the gift deed, but the other was a sale of the property in favour of all the defendants. This was, therefore, a case of fraudulent misrepresentation as to the character of the document executed by her and not merely as to its contents or as to its legal effect. The plaintiff-appellant never intended to sign what she did sign. She never intended to enter into the contract to which she unknowingly became a party. Her mind did not accompany her thumb impressions. This is a case that fails within the principle enunciated in *Ningawwa v. Byrappa & 3 Ors.*, (supra) and it was, therefore, a totally void transaction. Accordingly, as stated in *Gorakh Nath Dube* (supra), the suit is not maintainable by reason of the bar contained in the Act.

The High Court has, in our view, rightly held that the remedy of the plaintiff lies in the proceedings pending before the consolidation authorities and it is open to the parties to approach them for appropriate relief. In the circumstances, we see no merit in this appeal. It is, accordingly, dismissed, but we make no order as to costs.

P.S.S.
dismissed.

Appeal

