Mst. Sudama Devi And Anr. vs Ram Kishun Lal And Anr. on 13 October, 1953

Equivalent citations: AIR1954ALL348, AIR 1954 ALLAHABAD 348

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This second appeal arises out of a suit for recovery of money. The plaintiff-appellant is the legal representative of one Mukta Prasad. On the 30th September, 1918, Hubdar Khan, grandfather of defendant No. 3 mortgaged certain property to Mukta Prasad. On the 18th November, 1926, Fateh Mohammad son of Habdar Khan and father of defendant No. 3 executed a deed of further charge in favour of Mukta Prasad. In 1929 the same Fateh Mohammad executed a promissory note in favour of Mukta Prasad. On the basis of this promissory note, a suit was filed by Mukta Prasad against Fateh Mohammad in the year 1932 and a simple money decree was passed on the 6th May, 1932. On the 18th September, 1933 Fateh Mohammad sold his entire property to the respondents and in the deed of sale left the money in the hands of the respondents to pay off the debts due to Mukta Prasad. The present suit was brought by Mukta Prasad on the 27th September, 1945, with a prayer that a decree be passed in his favour against the vendee respondents in respect of the sums due to him from Fateh Mohammad on the basis of the deed of further charge dated the 18th November, 1926 and the promissory note executed by Fateh Mohammad in 1929.

2. The trial Court decreed the suit but on appeal the lower appellate Court set aside the decree holding that Mukta Prasad or after him his legal representatives had no right to obtain a decree against the respondents who were merely vendees of tne property of Fateh Mohammad. It is against this dismissal of his suit that the appellant has come up to this Court.

3. On the facts admitted and found by the lower Courts, it is perfectly clear that the appellant or his predecessor Mukta Prasad were no parties to the deed of sale executed by Fateh Mohammad on the 18th September, 1933. The question is whether in these circumstances the appellant is entitled to claim the benefit of the contract contained in that deed of sale and to obtain a decree against the respondents who retained the money for payment of the debt due to the appellant at the time of the sale.

The general principle which has been recognized by all the Courts in India is that a stranger to a contract is not ordinarily entitled to claim rights under the contract but there are a few exceptions.

One exception that is relevant to the argument advanced before me is that, if as a result of a contract between two persons a trust came into existence for the benefit of a third person, that third person can claim rights under the contract without being a party to that contract.

Learned counsel for the appellant has argued that in this case Fateh Mohammad sold his property to the respondents and the respondents retained the money out of the sale consideration for paying off the debts due to Mukta Prasad, a trust came into existence for the benefit of Mukta Prasad and consequently Mukta Prasad was entitled to claim a decree against the vendees who had retained the money for the debts which were due to him from Fateh Mohammad.

In support of this proposition, learned counsel has relied on a Division Bench decision of the erstwhile Chief Court of Avadh in -- 'Mt. Husaini Bandi v. Gauhar Begam', AIR 1932 Oudh 82 (A). In that case one Amir Jahan Begam was indebted to Naqi Ali Khan in the sum of Rs. 8512/12/-under a promissory note executed by her in favour of Naqi Ali Khan. She also held a decree in respect of certain zemindari property on the basis of a deed of mortgage. This decree was assigned by her in favour of one Aktar Begum and in the deed of assignment, the assignee was laid under an obligation to satisfy the debt due under the promissory note which had been executed by Amir Jahan Begam in favour of Naqi Ali Khau. It was held in these circumstances that the vendee, Akhtar Begam was in the deed of sale clearly laid under the obligation of paying the sum' of Rs. 8dl2/12 in discnarge of tne promissory note in favour of Naqi Ail Khan. She being a party to this transaction was taken to have accepted the obligation. The learned Judges, therefore, held that she was a trustee for the discharge of the liability of Amir Janan Begam for the debt due under the promissory note and the holder of the promissory note was the beneficiary. On this view a decree against Akhtar Begam was passed in favour of the holder of the promissory note.

There is no doubt that the decision in this case is to some extent in favour of the appellant but the recitation of facts in the report ot that case is indicative of one distinctive lecture, in that case, the learned Judges proceeded on the view that in the deed of assignment executed by Amir Jahan Begam in respect of the decree in favour of Akhtar Begam 'the assignee was laid under the obligation of satisfying the debt due under the promissory note' in favour of Naqi Ali Khan. It was because the learned Judges found in the deed of transfer of the decree that an obligation had been created under which the assignee was obliged to discharge the debt under the promissory note that they came to the view that a trust had come into existence, with the holder of the promissory note as the beneficiary.

In the case before me, the deed of sale executed by Fateh Mohammad on the 18th September, 1933, does not lay any obligation on the vendees to discharge the debts due to Mukta Prasad. All that the deed lays down is that a certain sum of money was left in the hands of the vendees so that they might pay off the debts due to Mukta Prasad from Fateh Mohammed. It cannot be said that when the deed does not create any obligation, mere retention of money for the purpose of payment can bring into existence a trust. That case is distinguishable and cannot apply to the case before me.

4. On the other hand there is a series of cases where the document did not lay down that an obligation was to come into existence requiring the vendee to discharge the debt of the vendor but

the deed merely left the money in the hands of the vendee to pay the debts of the vendor. It was held that no trust came into existence. In most of the cases considered, the property which was already under mortgage was transferred by the mortgagor to a third person and the vendee was allowed to retain the money to pay oi'f the mortgagee. In every case the question arose whether the mortgagee could obtain a personal decree against the vendee on the basis of the obligation created by the deed of sale in his favour under which he had retained the money to pay off the mortgage. It was invariably held that no right to obtain a personal decree against the vendee came into existence in favour of the mortgagee.

The first of these cases that may be cited is a decision of their Lordships of the Privy Council in -- 'Jamna Das v. Ram Autar Pande', 39 Ind App 7 (B). This view was followed by Various High Courts as well as the erstwhile Chief Court of Avadh. The Division Bench of the Chief Court of Avadh in -- 'Wali Uddin Ahmad v. Ram Rakhan Singh', AIR 1936 Oudh 313 (C), held the view that no trust came into existence where money was merely left in the hands of the vendee to discharge a debt of the vendor for the benefit of the creditor of the vendor. The same principle was laid down by a Full Bench of the Madras High Court in -- 'Subbu Chetti v. Arunachalam Chettiar', AIR 1930 Mad 382 (D), in two cases by the Nagpur High Court in -- 'Mt. Saraswatibai v. Haibatrao Ramji', AIR 1945 Nag 261 (E) and -- 'Gajadhar Prasad v. Rishabkumar', AIR 1949 Nag 319 (F) ana by a learned single Judge of the Avadh Chief Court in -- 'Kali v. Ram Autar', AIR 1945 Oudh 65 (G). It appears to me that the view taken in all those cases is clearly applicable to the case before me. In all of them, when money was left in the hands of the purchaser of mortgaged property to discnarge the mortgage, it was held that no trust had come into existence entitling the mortgagee to obtain a personal decree against the vendee. In my opinion, there is no difference in principle if the money left in the hands of the vendee is for discharging a simple debt due from, the vendor instead of the deot due under the mortgage itself, in the case of a simple debt like the present one, the creditor seeks to obtain a personal decree against the vendee as the mortgagee sought to do in those cases and on the principle applied in those cases, this claim must fail.

5. It appears to me that in a case like the present wnere the deed of transfer of the property merely leaves a part of the consideration in the hands of the vendee for discharging a debt of the vendor, the vendee held the money merely as an agent of the vendor and not as a trustee. There may be special cases where a trust might come into existence but that would depend on the exact terms of the deed of transfer. It appears that the language of the deed which came up for consideration in -- 'AIR 1932 Oudh 82 (A)', was such that there was not merely a liability of the vendee or the assignee "to discharge the debt of the vendor or the assignor but a legal obligation was created which was of the nature of a trust. In the present case, however, the language of the deed of sale executed by Fateh Mohammad on the 18th September, 1933 can in no way be construed as imposing any obligation on the vendee to say nothing of such an obligation as might bring into existence a trust. On this ground alone, therefore, the appeal fails.

6. There is also another point that may be briefly mentioned. The major part of the claim of the appellant is based on the promissory note of 1929 executed by Fateh Mohammad in favour of Mukta Prasad. On that promissory note Mukta Prasad had obtained a decree on the 6th, May, 1932. Any subsequent transaction entered into by Fateh Mohammad would give no fresh cause of action to

Mukta Prasad to file another suit against the transferee and obtain a decree on the basis of the promissory note. Even if a trust had come into existence when Fateh Mohammad transferred his property on the 18th September, 1933, it might have been possible for Mukta Prasad to enforce his rights under the decree of the 6th May, 1932 against the trustee tout in no case could Mukta Prasad bring a fresh suit against the trustee. No rights superior to the rights available against Fateh Mohammad could be enforced against a trustee in a trust created by him. In fact, the liability of the respondents was sought to be fastened through Fateh Mohammad and consequently a fresh suit in respect of the amount due under the promissory note could not be entertained. Even on this ground the major part of the claim of the appellant would fail. The appeal is consequently dismissed with costs.