Bijraj Nopani Vs. Sreemutty Pura Sundary Dassee

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Court : Mumbai

Decided On : May-11-1914

Reported in : (1914)16BOMLR796

Judge : Dunedin, ;Moulton, ;John Edge and ;Ameer Ali, JJ.

Appellant : Bijraj Nopani

Respondent : Sreemutty Pura Sundary Dassee

Disposition : Appeal allowed

Judgement :

Moulton, J.

1. This is an appeal in a suit brought by the respondent against the appellants for a declaration of her title to an equal undivided half part or share in a certain house and premises known as 8, Sobharam Bysack's Street, Calcutta, and for recovery of the premises from the appellants, in whose possession they were at the commencement of the suit, with an inquiry as to mesne profits. The facts of the case, so far as they are material, are not now in dispute and are as follows :-

2. The house and premises originally belonged to Premchand Bysack, who died on the 13th June 1886, leaving a will dated 25th October 1884. By his will the said testator devised and bequeathed the said house and premises 'to his daughter Katyani Dassee and her heirs absolutely,' subject to two charges of 20 rupees per month, payable to two of his daughters-in-law and their children as and for periods specified in the will. He appointed as executors Shambhoo Nath Byzack (the husband of his daughter Katyani Dassee), and two of her sons, Hemendra Nath Bysack and Ratanlal Bysack. On application for probate of this will, the execul tors found that a caveat had been entered by some of the relations of the deceased testator, who alleged that the will was a forgery. This led to a suit, where, after a prolonged inquiry, the Court on the 16th May 1887, pronounced the will to be genuine and granted probate of it, and directed that the costs of the executors should be paid out of the testator's estate.

3. It would appear that the executors had no funds in hand out of which they could meet the costs of this litigation, and they therefore mortgaged the property for a sum of Rs. 3,950 to Dwarka Nath Dutt, who had been their attorney in the probate suit, in order to secure the payment of his costs, which amounted to Rs. 3,400, the balance, Rs. 550, being treated as a loan to them. Katyani Dassee was made a party to the mortgage bond apparently to put on record her wish that no portion of the estate should be sold to defray these costs. The term of the mortgage was ten years.

4. Shambhoo Nath Bysack died in 1889, and Ratanlal Bysack died in 1891, leaving his brother Hemendra Nath Bysack sole surviving executor. In 1891 Katyani Dassee also died, leaving four sons and two unmarried daughters, of which the respondent was one.

5. In 1900 the heirs of Dwarka Nath Dutt, who had died in the meanwhile, instituted a suit against Hemendra Nath Bysack as sole surviving executor for sale of the property under their mortgage, and at the same time the two annuitants brought suits against him for arrears of their annuities. To meet, these demands it was determined to sell the property, and accordingly by a deed dated the 12th of December 1900 the property was sold to the appellant Bijraj Nopani, one of the appellants, and Dowlatram, since deceased. The other appellants are sued as the executors of his last will and testament, one of them being Bijraj Nopani himself. It is on the interpretation of this deed of conveyance that the question now in issue depends, and in order to make clear the contentions of the two parties it is necessary to explain its form and to state how the dispute has arisen before discussing the construction of the deed.

6. The deed is made between Hemendra Nath Bysack and his two surviving brothers of the first part, Baroda Sundary Dassee, one of the annuitants of the second part, and Bijraj and Dowlatram of the third part. It recites that the property originally belonged to Prem Chand Bysack, that he devised it to his daughter Katyani Dassee and her heirs absolutely, subject to a charge for annuities of Rs. 20 per month, to Baroda Sundary Dassee and Sonamoni Dassee respectively, and that he appointed Shambhoo Nath Bysack, Hemendra Nath Bysack, and Ratanlal Bysack executors of such will. It then recites the obtaining of probate of the will after suit. It then recites the death of Katyani Dassee on the 8th day of April 1891, leaving five sons and three daughters, and the death of two of the sons unmarried, and also death of Shambhoo Nath Bysack on 9th January 1899.

7. There next comes a recital that Hemendra Nath Bysack on the 4th day of September 1900 obtained an order whereby it was referred to the Registrar of the High Court to enquire whether there was any necessity for the sale of the said house and what provision should be made to secure the payment of the legacies mentioned in the said will out of the rents and profits of the house. It next recites that-

the said Hemendra Nath Bysack, the sole surviving executor of the said will, has since paid all the debts, liabilities, and legacies mentioned in the said will.

8. Then follows a recital that Sonamoni Dassee has filed a suit against the said Hemendra Nath Bysack for, amongst other things, a declaration of her rights under the said will, and that the vendors have taken upon themselves the responsibility of entering satisfaction in the said suit, as also of satisfying the claims of any of their sisters, and that therefore the petition will not be proceeded with. There next comes a recital that the vendors have agreed with the purchasers that Rs. 10,000 shall remain with the purchasers as security for the annuity to Sonamoni Dassee, and that the other annuitant has been paid off by a sum of Rs. 708 in full satisfaction of her claim against the property.

9. Here the recitals terminate and the indenture goes on to witness that the vendors have sold the property to the purchasers for Rs. 35,000, of which Rs. 10,000 are to be retained by them as security as aforesaid. The vendors giant, sell, and convey the

property to the purchasers in ordinary form, together with 'all the estate right, title interest, claim, and demand whatsoever of the vendors unto and upon the said messuage, land, hereditaments, and premises and every part thereof, and also all deeds, papers, and writings solely relating to the said premises or any part thereof now in the custody of the vendors or which they can procure without suit.

10. Then follows a covenant in the following words :-

The vendors do for themselves and himself, their and his heirs and representatives do, and each of them doth hereby covenant with the purchasers, their heirs, representatives, and assigns in manner following, that is to say, that the vendors at the time of sealing and delivery of these presents are lawfully, rightfully, and absolutely possessed of and in the said messuage, land, and hereditaments hereinbefore granted and conveyed as an estate equivalent to fee simple in possession, free from encumbrances, and that the vendors now have in themselves full power and absolute right, title, and authority by these presents to grant and convey the said messuage laud, hereditaments, and premises unto, and to the use and behalf of the purchasers, their heirs, representatives, and assigns from time to time.

11. Finally there is a covenant to indemnify the purchasers against any loss at the suit of the annuitant, Sonamoni Dassee, or the three sisters (of whom the respondent is one), which may be incurred by them by or by reason of the defect, if any, in the title of the vendors to the property.

12. The appellants paid the purchase money and took possession of the property under the conveyance, and remained in possession until the 22nd June 1897, when the respondent brought the present suit, claiming that she was entitled to one-half share in the said house, because as she and her sister Kanak Manguri Dassee were unmarried daughters they were entitled to share equally her property, inasmuch as it was stridhan. She claimed that she was not bound by the said sale.

13. The respondent's claim to a moiety of her mother's stridhan is admitted to be good in law, so that the only question in the suit is whether the conveyance was valid. It is plain that at the date of this conveyance the property was still in the hands of the sole surviving executor, Hemendra Nath Bysack, and therefore he was competent as executor to sell it to the appellants, who were bonafide purchasers for value. But the respondent contends that although Hemendra Nath Bysack was in a position validly to convey it to the appellants as such executor, and did purport to convey it, he did not effectively do so, because the deed shows that he intended only to convey as a beneficial owner of the property, being under the impression that he and his two brothers, the co-vendors, were beneficially entitled to it as heirs to their mother, and being ignorant or forgetful of the right of the sisters to inherit in preference to them. It is on this ground alone that the High Court decided in favour of the respondent, reversing the decision of the Judge of the Court below, who had held that Hemendra Nath Bysack had by the deed conveyed all the right and title he possessed in every capacity, including that of sole surviving executor of the will of Prem Chand Bysack.

14. Their Lordships are of opinion that the judgment of the Judge of First Instance was right and ought to have been affirmed by the Court of Appeal. In the first place the deed itself gives abundant evidence that the position of Hemendra Nath Bysack as sole surviving executor was viewed as material by the parties to the conveyance, inasmuch as there are careful recitals as to the original appointment of executors and

as to the death of his co-executors. His position as sole surviving executor could have no bearing on the conveyance if it were not that it affected, or might affect, his title to convey. But even in the absence of such direct evidence that the conveyance was by him in his capacity as executor as well as beneficial owner (if and to the exent that he was such owner), the deed makes it clear that all the vendors convey all the title and right that they possessed in the property, and that, would undoubtedly include the right and title which one of them possessed as executor. That this would be the ordinary rule is admitted by the Judges of the Court of appeal, who base their judgment on what they consider to be indications in the deed and in the conduct of the parties that the intention was that only the beneficial interest possessed by the vendors should be conveyed. Their Lordships are of opinion that this would be to contradict the deed itself; and moreover they are of opinion that the matters referred to would not support the conclusion drawn thereform by the Judges of the High Court even if it was permissible to permit such considerations to affect the interpretation of the deed.

15. If the deed be considered from the point of view of the appellants who were the purchasers and who were not otherwise concerned with the property or its history, the transaction as well as the deed which carries it out, become perfectly clear and intelligible. The property was by the will charged with two annuities, and in order that the executor might procure the funds necessary to pay the costs of the past litigation the property was under mortgage. This mortgage was being called in and the sale was to enable the mortgage money to be raised. The purchasers naturally desired a clear title free from entanglements. They therefore required that the mortgage should be paid off and the annuitants settled with or security given against their claims. For both these purposes it was necessary that Hemendra Nath Bysack as executor should be a party to the deed, because the original mortgage was effected by him for the purpose of securing the costs for which he was of course liable, and on his discharging the indebtedness as to costs he would become entitled to claim for the same as against the estate including the house in question. Moreover, it is abundantly clear from the executor's accounts and from all the facts appearing in the record that the house still formed part of the undivided estate and that therefore he would be liable to pay the annuitants the amount of their annuities from time to time, as he had been doing for years past. The purchasers would not be likely to trouble themselves as to the question of whether or not the property would ultimately go to the sons or daughters, but would take care that all the persons in whom title could in any wise exist should join in the conveyance, and that they should be guaranteed against claims from those who did not do so. This is what the deed shows to have been done, and it would be entirely contrary to settled principles of law as well as most unjust to bona fide purchasers if the Courts were to allow its plain legal interpretation to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. The deed states plainly that whatever right or title the vendors possess is to go to support the conveyance, and it is a settled rule that the meaning of a deed is to be decided by the language used interpreted in its natural sense. From this wholesome rule their Lordships see no reason for departing in the present case.

16. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed and that the judgment of the Court of appeal should be set aside, with costs, and the judgment of the Judge of first instance restored. The respondents will pay the costs of this appeal.