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(2013) 4 ADJ 322 : (2013) 3 CivillJ 499 : **(2013) 31 LCD 782**
ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

CHANDAR BHAN SINGH — Appellant

Vs.

DEPUTY DIRECTOR OF CONSOLIDATION AND OTHERS — Respondent
(Before : Narayan Shukla, J)

Review Petition No. 120 of 2012 In re: Writ Petition No. 744 (Consolidation) of 2011

Decided on : 15-03-2013

- Evidence Act, 1872 - Section 65, Section 68, Section 68, Section 69, Section 70, Section 71
- Transfer of Property Act, 1882 - Section 59

A. Indian Evidence Act, 1872 — Section 68 — Proof of Document — Registered Sale Deed — Attesting Witness — When a document, not being a will, is registered, it is not necessary to call an attesting witness to prove its execution unless the execution is specifically denied by the person who purportedly executed it. (Para 6, 7)

B. Transfer of Property Act, 1882 — Section 59 — Mortgage — Attestation — Documents required to be attested by law, such as mortgages under Section 59 TPA, are subject to the proof requirements of Sections 68-71 of the Evidence Act. (Para 6)

C. Evidence — Registered Document — Presumption of Validity — Burden of Proof — A registered document is presumed to be validly executed, and the burden of proof to rebut this presumption lies on the person who challenges its validity. It is not the duty of the person in whose favor the document is registered to prove it. (Para 5, 8)

D. Jurisdiction — Consolidation Court — Civil Court — Cancellation of Sale Deed — A Consolidation Court has jurisdiction to examine the validity of a sale deed and ignore it if not sufficiently proven. However, suits or actions for the cancellation of void documents generally lie in the Civil Court. A tenure holder with prima facie title can approach the Civil Court for cancellation of a void document. (Para 2, 3, 4)

E. U.P. Consolidation of Holdings Act, 1954 — Power of Consolidation Authorities — Where a document's legal effect can only be removed by setting it aside or cancelling it, and Consolidation Authorities lack the power to cancel such a deed, the deed remains binding on them until cancelled by a competent court. (Para 4)

Counsel for Appearing Parties

R.N. Gupta, for the Appellant; Shubhra Kumar, for the Respondent

Cases Referred

- [Dr. Ajodhya Prasad Vs. Gangotri Prasad](#), (1981) AWC 469
- [Smt. Bismillah Vs. Janeshwar Prasad and Others](#), AIR 1990 SC 540 : (1989) JT 407 Supp : (1989) 2 SCALE 1304 : (1990) 1 SCC 207
- [Gorakh Nath Dube Vs. Hari Narain Singh and Others](#), AIR 1973 SC 2451 : (1973) 2 SCC 535 : (1974) 1 SCR 339
- [Prem Singh and Others Vs. Birbal and Others](#), AIR 2006 SC 3608 : (2006) 5 JT 311 : (2006) 143 PLR 647 : (2006) 5 SCALE 191 : (2006) 5 SCC 353 : (2006) 1 SCR 692 Supp : (2006) AIRSCW 3595 : (2006) 4 Supreme 69
- [Ishwar Dass Jain \(Dead\) Thr. Lrs. Vs. Sohan Lal \(Dead\) By Lrs.](#), AIR 2000 SC 426 : (2000) 1 CTC 359 : (1999) 9 JT 305 : (2000) 125 PLR 56 : (1999) 7 SCALE 277 : (2000) 1 SCC 434 : (1999) 5 SCR 24 Supp : (2000) 1 UJ 666 : (1999) AIRSCW 4573 : (1999) 10 Supreme 27

Final Result : Dismissed

JUDGMENT

Narayan Shukla, J.—Heard Shri R.N. Gupta, learned counsel for the review petitioner as well as Shri Shubhra Kumar, learned counsel for the respondent. Through the instant review petition, the review petitioner has sought the review of the order dated 29.2.2012, passed in W.P. No. 744 (Consolidation) of 2011 mainly on the ground that Section 68 of the Indian Evidence Act, 1872 is not attracted in the instant case, as the sale-deed executed by Keshav Ram in favour of grand-son, namely, Chandra Bhan Singh is not disputed rather only consideration is disputed.

2. By oral argument, learned counsel for the Review-petitioner, Shri R.N. Gupta submitted that the Consolidation Court has jurisdiction to examine the validity of the sale-deed and if it is not proved before it, the Consolidation Court has jurisdiction to ignore it. In support of his submission, he cited a decision of Full Bench of this Court rendered in the case of Ram Padarath v. Second Additional District Judge, Sultanpur, in which Full Court considered the jurisdiction of the Consolidation Court. The Full Court expressed its opinion on the point which is extracted below;

We are of the view that the case of Indra Dev v. Ram Piyari, 1982 (8) ALR 517 (H.C.L.B). has been correctly decided and the said decision requires no consideration, while the Division Bench case Dr, [Dr. Ajodhya Prasad Vs. Gangotri Prasad,](#), is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue Court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the Civil Court and a party cannot be deprived of his right getting this relief permissible under law except of Consolidation (Shri Narayan Shukla, J.) 323 when a declaration of right or status and a tenure holder is necessarily needed in which event relief for cancellation will be surplus age and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue Court in respect of seeking relief for cancellation of a void document which made him to approach the Court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue Court.

3. The Supreme Court has also considered the aforesaid judgment in one another case i.e., [Smt. Bismillah Vs. Janeshwar Prasad and Others,](#), Thus, this Court as well as Supreme Court has upheld the decision of this Court rendered in the case of Indra Dev v. Ram Piyari, 1982 (8) ALR 517, in which it has been held that suit regarding cancellation of void instrument and documents are cognisable by the Civil Court.

4. In the aforesaid case Hon'ble Supreme Court considered one another case i.e., [Gorakh Nath Dube Vs. Hari Narain Singh and Others,](#), in which dealing with the provisions of U.P. Consolidation of the Holdings Act 1954 Hon'ble Supreme Court observed as under

...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.

5. In the case of [Prem Singh and Others Vs. Birbal and Others,](#), Hon'ble Supreme Court held as under;

There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

6. In the case of [Ishwar Dass Jain \(Dead\) Thr. Lrs. Vs. Sohan Lal \(Dead\) By Lrs.,](#), one of the questions for consideration was whether on the facts of the case mortgage was proved by the plaintiff by production of certified copy of the deed? Hon'ble the Supreme Court answered in the following manner;

We shall first deal with the proof of the certified copy of the deed of mortgage. So far as the mortgage deed is concerned, the plaintiff filed a certified copy and called upon the defendant to file the original. The defendant refused to do so. The plaintiff, therefore, proceeded to file the certified copy as secondary evidence under sub-clause (a) of Section 65 of the Evidence Act. This was certainly permissible. The mortgage is a document required to be attested by two attestors u/s 59 of the Transfer of Property Act and in this case it is attested by two attestors. The mode of proof of documents required to be attested is contained in Sections 68 to 71 of Evidence Act. u/s 68, if the execution of a document required to be attested is to be proved, it will be necessary to call an attesting witness, if alive and subject to the process of Court and is capable of giving evidence. But in case the document is registered - then except in the case of Will- it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. This is clear from Section 68 of the Evidence Act. It reads as follows;

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of execution of any document, not being a will, which has been registered in accordance with the provision of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

In the present case, though it was stated in the written statement that there was no relationship between the parties as mortgagor and mortgagee, the defendant admitted in his additional pleas in the same written statement that mortgage deed was executed but he contended that it was executed to circumvent the rent control legislation. In fact, in his evidence as D.W. 2 the defendant admitted the execution of the mortgage. It must, therefore, be taken that there was no specific denial of execution. Hence it was not necessary for the plaintiff to call the attestor into the witness box, this not being a Will. The plaintiff could, therefore, not be faulted for not examining any of the attestors. Hence the mortgage stood proved by the certified copy. The Courts below were writing in accepting that the deed was proved.

7. Upon perusal of the facts of the case, I find that the sale-deed in question was for examination before the Consolidation Court, as observed that the same is not proved, therefore, has ignored it, whereas Section 68 of the Indian Evidence Act provides that it

shall not be necessary to call any attesting witness in proof of examination of any document, not being Will which has been registered in accordance with the provisions of the Indian Registration Act unless its execution by the person by whom it purports to have been executed is specifically denied. It is not the case of the petitioner that the executant of the sale-deed denied the said sale-deed at any point of time.

8. Upon perusal of the judgment of the Court below, I find that the Court below has observed that it was the duty of the petitioner to prove the sale-deed executed in his favour which could not be proved. However, in the light of the Judgment of Hon'ble Supreme Court, discussed as above, I am of the view that the document once registered is a proved document and it is the duty of the person to disprove it, who questions the document. Therefore, it was not the duty of the petitioner in whose favour the document was registered to prove it rather it was the duty of the respondent/review petitioner who denied the same to disprove it. Therefore, I am further of the view that the Court below has misdirected himself in dealing with the case and passed the order impugned in the writ petition.

9. Upon perusal of the judgment which has been put under review, I find that the writ petition has been decided on the aforesaid premises in which I do not find error. Therefore, the order, passed by me on 29.2.2012 need not be reviewed. In the result, the review petition stands dismissed.