



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9035 OF 2013
(@Special Leave Petition (C) No. 33563 of 2011)

Savitri Bai and another

... Appellants

Versus

Savitri Bai

... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. Civil Suit No. 22A/80 was dismissed by the learned Additional Civil Judge, Class-1, Mudwara Katni, *vide* judgment dated 21.12.1992. The same stood confirmed in appeal by the learned First Additional District Judge, Mudwara Katni, when Civil Appeal No. 1A/1993 filed by the plaintiff was dismissed on 14.03.1997. However, Second Appeal No. 395 of 1997 filed by the said plaintiff was allowed by the High Court of Madhya Pradesh at Jabalpur on 28.07.2011. Thereby, the High Court declared that the plaintiff was the owner of the suit house property under the registered Sale Deed dated 18.01.1979 and decreed its possession in

her favour. Further, the High Court declared the Will dated 23.03.1977 executed in favour of Meghraj, the second defendant, null and void. Aggrieved thereby, the defendants in the suit filed this appeal.

2. By order dated 28.11.2011, this Court directed both parties to maintain *status quo* prevailing as on that date. On 30.09.2013, the interim order was directed to continue till the final disposal of the appeal.

3. Parties shall hereinafter be referred to as arrayed in the suit.

4. Late Babulal Kahar had two wives. Savitri Bai, the first defendant, was born to him through his first wife. Suhadra Bai, the second wife, gave birth to four sons, viz., Madanlal, Ratanlal, Ramesh Kumar and Suresh Kumar; and two daughters, Asha Bai and Baby. Babulal died on 06.02.1978. Suhadra Bai and her progeny were initially arrayed as respondents in this appeal but their names were deleted thereafter. They were not made parties to the suit or the first appeal.

5. The case of Savitri Bai, the plaintiff, was that she purchased the suit property situated in Ishwaripura Ward, Katni, under registered Sale Deed dated 18.01.1979 from Suhadra Bai, the widow of Babulal; Madanlal, Ratanlal, Ramesh Kumar, Suresh Kumar, Asha Bai and Baby, the children of Babulal and Suhadra Bai; and Savitri Bai, the first defendant, being Babulal's daughter through his first wife. The plaintiff

claimed that she was delivered possession of the suit property after execution of the sale deed but the first defendant dispossessed her on 25.01.1979 and took forcible possession thereof. She further claimed that the first defendant failed to handover vacant possession despite receiving notices dated 25.07.1979 and 14.09.1979. She then filed the subject suit for possession of the suit property. After the first defendant filed her written statement, the plaintiff amended her suit prayer and also sought a declaration that the Will Deed dated 23.03.1977 executed by Babulal in favour of Meghraj, the son of the first defendant, shown as the second defendant in the suit, was illegal and fabricated.

6. In her written statement, the first defendant claimed that she neither sold the suit property to the plaintiff nor did she deliver possession thereof to her. According to her, she had been living at Damoh with her family but, after her husband passed away on 09.05.1976, her father brought her and her children to Katni and allowed her to live in the suit property. Thereafter, her father executed a Will, bequeathing the suit property to Meghraj, his grandson, i.e., the second defendant. She asserted that Suhadra Bai, Madanlal, Ratanlal, etc., had sold some of the properties that fell to their share in favour of their tenants and she was told that, as she too was the daughter of Babulal, her signature was also

necessary. She stated that, as she was not educated and had faith in them, she signed sale deeds again and again. She, however, asserted that she never received any consideration. After receiving the plaintiff's notices, she claimed that she clarified that she had not sold the suit property and was assured by the plaintiff's husband that he would take back the consideration from the others and leave her property.

7. The following issues, verbatim, were framed for trial: -

'1A Whether plaintiff after purchasing the disputed house from defendant and other owners on 10.01.1979 by registered sale deed, had got its possession?

1B Whether sellers were having right and title to sell?

2. Whether defendant took illegal possession over the disputed house on 25.01.1979?

3. Whether plaintiff is entitled to get vacant possession of the house and compensation @ Rs. 1/- per day

4.A Whether the suit is not properly valued?

4.B Whether sufficient court fee has not been paid?

5. Relief and costs

6. Whether late Babulal has executed will deed of the disputed house in the year 1977 in favor of Meghraj, son of defendant, if yes then effect?

7. Whether suit of plaintiff is time barred, if yes its effect?'

8. The plaintiff examined herself as PW1. She also examined PWs 2 & 3 in support of her case. The first defendant deposed as DW1 and DWs 2 to 4 were examined in relation to the Will dated 23.03.1977.

9. The Trial Court held in favour of the first defendant on issues 1A, 1B, 2, 3, 5 and 6 and dismissed the suit. It found that the plaintiff was not consistent in her stand as to the taking of possession of the suit property and there were contradictions between her pleadings and her deposition on oath. In her cross-examination, the plaintiff had stated that she was the tenant of Babulal in the suit property. The Trial Court observed that, if this was true, the question of the plaintiff being delivered possession after the sale deed did not arise. Other contradictions between her pleadings and oral evidence were also noted. Munnalal (PW2) stated that the plaintiff had purchased the suit property from Babulal himself, contrary to the stand of the plaintiff. Motilal (PW3), on the other hand, stated that the plaintiff purchased the suit property from the sons of Babulal. The first defendant stated that her father had executed Will dated 23.03.1977 in favour of her son. L.K. Sampariya, Advocate, the scribe of the Will, was examined as DW3, while Pyarelal and Babulal, the attestors of the Will, were examined as DWs 2 & 4. Upon consideration of this evidence, the Trial Court held that the Will was duly proved and, in consequence, the sale deed executed in favour of the plaintiff, in the absence of Meghraj, the legatee under the Will, was held invalid. The Trial Court accordingly dismissed the suit with costs.

10. In appeal, the learned First Additional District Judge, Mudwara Katni, upheld the findings of the Trial Court. The learned Judge affirmed that the participation of the first defendant in the execution of the sale deed was of no avail as the suit property belonged to Meghraj, by virtue of the Will dated 23.03.1977, and he was not a party to the said sale deed. Holding so, the learned Judge dismissed the appeal.

11. However, in the plaintiff's second appeal, the High Court reversed the findings of both the Courts and held in her favour. The High Court disbelieved the Will dated 23.03.1977 on the ground that the first defendant would not have affixed her signature in the sale deed at the mere asking of her step-mother and her sons if it was true. The High Court was of the opinion that the Will would have been produced earlier and its mention only in the first defendant's written statement, filed on 14.11.1980, rendered it suspicious. The High Court, however, did not deal with the evidence adduced by the scribe and the attestors of the Will, whereby the Courts below had held it duly proved. It is on this basis that the High Court concluded that the plaintiff was the rightful owner of the suit property under the Sale Deed dated 18.01.1979.

12. It is an admitted fact that the plaintiff also purchased other properties that had originally belonged to late Babulal from his family

members, i.e., Suhadra Bai and her children. It is stated that several sale deeds were executed in favour of the plaintiff. The first defendant explained her participation in the execution of all these sale deeds. In her written statement, she stated that Suhadra Bai, Madanlal and Ratanlal, who were both majors at that time, wanted to sell some parts of their property in favour of their tenants and she was told that, as she too was the daughter of late Babulal, her signatures would be necessary and, not being educated, she reposed full faith in them and affixed her signatures in several sale deeds. This aspect was not denied by the plaintiff.

13. In the Will executed by late Babulal in favour of Meghraj, the second defendant, it was recorded that Babulal brought the first defendant and her children to Katni after her husband, Shankar Lal, died in May, 1976, and that he had arranged for their residence in his house situated in Ishwaripura Ward. It was further recorded by Babulal that he bequeathed the said house property to his grandson, Meghraj, so that after his passing all his heirs could live peacefully. The Will details, at great length, the property bequeathed to Meghraj. It reads as follows:

'Hence, I am voluntarily bequeathing the sitting room, in municipal corporation house No. 922 and 922/1 wherein presently Savitri Bai is living and wherein Jawahar is living and the land which is lying vacant in front thereof, to Meghraj. After my death apart from Meghraj nobody else would have right and claim over this

property. The rooms given by me are constructed in left hand of kamani erected on entrance gate of bara. Accordingly, today on 23.03.1977 at Katni I have made signature on this will deed after reading and understanding before witnesses.'

14. The High Court glossed over this Will, entertaining a doubt as to its genuineness, only on the ground that it was not produced earlier and as the first defendant had affixed her signature in the Sale Deed dated 18.01.1979. The knowledge imputed by the High Court to the first defendant in relation to the said sale deed was not warranted as it was her specific case that she had affixed her signature in not only this sale deed but all the other sale deeds executed by her step-mother and the others, being under the impression that the same was required as she was also the daughter of late Babulal. Therefore, no conscious knowledge could be attributed to her only in relation to the Sale Deed dated 18.01.1979 and her not speaking of or producing the Will at that time could not be held against her, as she was under the impression that she was participating in the sale of her family's share in the properties, by way of abundant caution. In effect, the question of her raising the issue of the Will did not even arise.

15. Further, the High Court failed to appreciate the independent evidence adduced to prove the said Will. The scribe of the Will was an

Advocate. Deposing as PW3, he asserted that he had written the same upon the instructions of late Babulal. He stated that it was read over to late Babulal and thereafter, the witnesses and late Babulal affixed their signatures therein. The depositions of the attestors of the Will also remained unshaken and clearly evidenced that the same was signed by late Babulal in their presence and they, in turn, affixed their own signatures in his presence. Once such evidence was adduced in terms of Section 68 of the Evidence Act, 1872, and the mandatory requirements prescribed under Section 63 of the Indian Succession Act, 1925, were duly satisfied, the Will stood proved in the eye of law (See *H.Venkatachala Iyengar vs. B.N.Thimmajamma*¹) and the same ought not to have been brushed aside lightly. As the Will was duly proved to be genuine, the participation of the first defendant in the execution of the Sale Deed dated 18.01.1979 thereafter paled into insignificance. The owner of the property under the Will was Meghraj, the second defendant, and he was neither a party to the said sale deed nor did his mother affix her signature therein in the capacity of being his guardian.

16. In consequence, title to the property belonging to Meghraj did not pass under the said sale deed even though his mother was a signatory thereto in her own individual capacity. The verdicts of the Trial

¹ AIR 1959 SC 443

Court and the First Appellate Court holding so were, therefore, perfectly valid and justified and the High Court erred in overturning the same by applying its own notions and reversing their findings of fact and law.

17. The civil appeal is accordingly allowed, setting aside the judgment dated 28.07.2011 of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No. 395 of 1997 and restoring the judgments of the learned Additional Civil Judge, Class-1, Mudwara Katni, and the learned First Additional District Judge, Mudwara Katni, in Civil Suit No. 22A/80 and Civil Appeal No. 1A/1993 respectively.

Parties shall bear their own costs of this appeal.

.....,J
(SANJAY KAROL)

.....,J
(SANJAY KUMAR)

February 29, 2024;
New Delhi.