CASE NO.:
Appeal (civil) 7133 of 2003

PETITIONER:
KRISHNA MOHAN KUL @ NANI CHARAN KUL AND ANR.

RESPONDENT:
PRATIMA MAITY AND ORS.

DATE OF JUDGMENT: 09/09/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 496

The Judgment of the Court was delivered by ARIJIT PASAYAT, J. : Leave granted.

By the impugned judgment, learned Single Judge of the Calcutta High Court held that the deed of settlement purported to have been executed by Dasu Charan Kul (hereinafter referred to as the 'executant') was a void and invalid document. The fight between relatives of the executant centers round a registered deed of settlement purported to have been executed on 11.7.1970 by the executant. A suit for declaration and permanent injunction was filed by Pratima Maity, daughter of Pane Charan Kul, son of Dasarathi Kul. The suit property originally belonged to Dasarathi Kul who died in the year 1972. His Son Phani Charan Kul died in the year 1979. Averments in the plaint were to the effect that on coming to know from the office of the Block Land Reforms Officer that defendant No. 1 - Krishna Mohan Kul (appellant No. 1 in the present appeal) had filed a registered deed of settlement dated 11.7.1970 it was necessary to get the deed declared to be void and invalid as the same was a forged document. There was no existence of the witnesses whose names appeared in the said deed which was created to grab the property of the plaintiffs. It was in this background alleged that the deed of settlement was created by Krishna Mohan Kul (defendant No. 1) with oblique motive. The contesting defendants took the stand by filing written statements that the deed was perfectly in order and no illegality was attached thereto. "

Before the trial Court several witnesses were examined to contend that the executant was more than 100 years of age at the time of alleged execution of the deed in question. He was paralytic and his mental and physical condition were not in order. He was practically bed ridden with paralysis and though his left thumb impression was stated to be affixed on the document, there was no witness who could substantiate that in fact he had put his thumb impression. That being the position, the deed was to be declared as void and invalid. The contesting defendants took a stand that it was not as if executant was not in a fit condition physically or mentally at the time of execution of the deed. The trial Court disbelieved the plea of plaintiffs and dismissed the suit.

Similar was the fate before the first Appellate Court. On being approached by the plantiffs the following questions were framed by the High Court in the Second Appeal :

"Whether the deed of settlement executed by the predecessor-in-interest of the parties is valid in law". In fact, such substantial question of law should also embrace the question as to whether the judgments of the courts below are perverse in appreciating the said deed of settlement."

High Court took the view that the approach of both the trial Court and the

first Appellate Court was erroneous. The following factual aspects were considered relevant. Plaintiffs produced certified copy of the deed, while defendants produced the original one. It was a deed of settlement where Dasu Charan Kul was described as the donor, and curiously the donor and two others namely Nani Charan Kul and his minor son Jagdish Kul. The L.T.I, was identified by one Hriday Krishna Das. The deed was typed by one N.R. Dutta and in the column meant for the names of witnesses, names of scribe Hriday Krishna Das along with two others namely Nantu Bihari Ray and P.K. Maity appeared. In the deed of settlement donor indicated his age to be 106 years. It was also indicated that he was becoming lackluster due to old age and various ailments and for other mental shocks. According to High Court, courts below wrongly placed the onus on the plaintiffs to prove the validity of the deed of settlement. It was observed that the first Appellate Court dealt with the matter in a very slip shod manner even coming to a conclusion that age of the executant was not proved. It was pointed out that the deed in question indicates that the executant was 106 years old at the time of execution. None of the witnesses of the deed in question was examined to prove the deed of settlement and not even the person who had identified the L.T.I, of the executant. The High Court came to hold that executant was an illiterate person, was not in proper physical and mental state and, therefore, the deed of settlement and trust dated 11.7.1970 was void and invalid. The defendatns were injuncted permanently from disturbing the possession of the plaintiffs in the suit property.

Learned counsel for the appellants submitted that the High Court should not have interfered with the concurrent findings recorded by the trial Court and the first Appellate Court while dealing with an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short the 'CPC'). It was submitted that there is no material to conclude that the executant was not in a fit physical and mental state at the time of execution of the deed. That being so, the High Court should not have interfered with the conclusions arrived at by the trial Court and the first Appellate Court.

In response, learned counsel for the respondents (plaintiffs 1, 2 and 3) submitted that the High Court has rightly interfered with the lower Court's orders as the conclusions were totally on misreading of the provisions of law. The High Court rightly noticed that onus was wrongly placed on the plaintiffs to prove validity or otherwise of the deed of settlement.

We shall first deal with the question relating to jurisdiction of the High Court to interfere with the concurrent findings of fact. Reference was made by learned counsel for the appellants to Chandra Bhan v. Pamma Bai and Anr., [2002] 9 SCC 565,SakhahariParwatrao Karahale and Anr. v. Bhimashankar Parwatrao Karahale, [2002] 9 SCC 608. So far as the first decision is concerned, in view of the factual findings recorded by the lower Court and the first Appellate Court it was held that interference with the concurrent findings of fact are not justified. The question related to possession and two Courts primarily considering factual position had decided the question of possession. In that background, this Court observed that jurisdiction under section 100 CPC should not have been exercised. So far as the second decision is concerned, the position was almost similar and it was held that findings contrary to concurrent findings of lower Courts and having no basis either in pleadings, issues framed or in questions actually adjudicated upon by any of the lower Courts cannot be sustained. That decision also does not help the appellants in any manner as the factual scenario is totally different in the present case.

Though as rightly contended by learned counsel for the appellants the scope for interference with concurrent findings of fact while exercising jurisdiction under Section 100 CPC is very limited, where the trial Court and/or the first Appellate Court misdirected themselves in appreciating the question of law and placed the onus on the wrong party certainly there is a scope for interference under Section 100 CPC after formulating a substantial question of Jaw.

As was noted in Yadarao Dajiba Shrawane (dead) by Lrs. v. Nanilal Harakchand Shah (dead) and Ors., [2002] 6 SCC 404 if the judgments of the trial Court and the first Appellate Court are based on mis-interpretation of the documentary evidence or consideration of inadmissible evidence or ignoring material evidence or on a finding of fact has ignored admissions or concession made by witnesses or parties, the High Court can interfere in appeal.

In Neelakantan and Ors. v. Mallika Begum, [2002] 2 SCC 440 it was held that findings of fact recorded must be set aside where the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity which materially prejudices the case of one of the parties.

As has been pointed out by the High Court, the first Appellate Court totally ignored the relevant materials and recorded a completely erroneous finding that there was no material regarding age of the executant when the document in question itself indicated the age. The Court was dealing with a case where an old, ailing illiterate person was stated to be the executant and no witness was examined to prove the execution of the deed or putting of the thumb impression. It has been rightly noticed by the High Court that the courts below have wrongly placed onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenge by the plaintiffs to validity of the deed. The onus to prove the validity of the deed of settlement was on defendant No. 1. When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with zealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who inpeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active, confidential, or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary

instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest. In judging of the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/beneficiary under a document to prove due execution of the document in accordance with law, even de hors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly started in Ashburner’s Principles of Equity, 2nd Ed., p. 229, thus :

"When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the Court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor’s will."

The corollary to that principle is contained in Clause (3) of Section 16 of the Indian Contract Act, 1872 (in short ’Contract Act’).

At this juncture, a classic proposition of law by this Court in Mst. Kharbuja Kuer v. Jang Bahadur Rai and Ors., AIR (1963) SC 1203 needs to noted :

’It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not".

The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardahnashin lady in Mst. Kharduja Kuer v. Jang Bahadur Rai and Ors., AIR (1963) SC 1203 are logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons.

Above being the position, the High Court was justified in holding that the judgments of the trial Court and the first Appellate Court were perverse and indefensible. We find no scope for interference with the impugned judgment of the High Court. The appeal is dismissed. There shall be no order as to costs.