

**Court No. - 34**

**Case :-** SECOND APPEAL No. - 656 of 1977

**Appellant :-** Smt.Chandra Mati

**Respondent :-** Smt.Jagdei

**Counsel for Appellant :-** Shashi Nandan,D P Chauhan,D.P. Chaturvedi,K.K. Srivastava,K.K.Tiwari,P.P. Chaturvedi

**Counsel for Respondent :-** L. Bihari

**Hon'ble Sudhir Agarwal,J.**

1. Heard Sri K.K. Tiwari, learned counsel for the appellant and learned Standing counsel for the State-respondent.

2. This is defendant's appeal filed under Section 100 C.P.C. arising from the judgement and decree dated 18.1.1977 passed by Sri Suresh Chandra Srivastava, Additional District and Sessions Judge-IV, Gorakhpur in Civil Appeal No.36 of 1975 (arising out of Original Suit No.342 of 1969).

3. This appeal was admitted on 13.4.1977 without specifying on what substantial question of law the appeal is admitted.

4. In my view following three substantial questions needs adjudication in this appeal:-

*(i). Whether lower appellate court has rightly allowed appeal of plaintiff without recording a finding that the sale deed was executed by the plaintiff without understanding the contents thereof ?*

*(ii). Whether lower appellate court could have allowed appeal ignoring pleadings as contained in paragraphs 6 and 7 of the plaint and whether court below could have differed from Trial Court on the question of burden of proof when both the parties ignored provisions of Section 101, 102 of Evidence Act, 1982 ?*

*(iii). Whether lower appellate court could set aside judgement and decree of Trial Court without going into findings about fraudulent nature of sale deed in question ?*

5. The brief facts giving rise to this appeal are that Original Suit No.342 of 1969 was filed by Smt. Jagdi for cancellation of sale deed dated 28.12.1966 in respect to land detailed at the bottom of the plaint. She pleaded that she is an illiterate widow and bhumidhari in possession of disputed land. Defendant, who has no otherwise concern with land has started interference in possession of plaintiff land. When enquired, she found that a sale deed in respect to disputed land was prepared through an Imposter claiming that same was executed by plaintiff in favour of defendant though no such sale deed was ever executed and said sale deed is forged and void.

6. Suit was contested by defendant ascertaining that sale deed was genuine and actually executed by plaintiff, voluntarily, since she wanted to live with her daughter and therefore, disposed of land in question and left village. Advance sale consideration of Rs.700/- was paid and remaining sale consideration of Rs.800/- was paid before Register at the time of execution of sale deed.

7. Trial Court formulated following three issues:-

*"1. Whether the sale deed dated 28.12.66 is liable to be cancelled for the reasons given in para 6 of the plaintiff.*

*2. Whether the suit is barred by estoppel and acquiescence.*

*3. To what relief if any is the plaintiff entitled"*

8. Earlier suit was dismissed by trial court, but on appeal it was remanded. Again it was decided vide decree dated 25.1.1975 passed by Sri S.B. Vaish, Second Additional Munsif, Gorakhpur. It answered issues 1 and 2 against plaintiff and consequently dismissed suit.

9. Plaintiff-respondent then preferred Civil Appeal No.36 of 1975. Lower Appellate Court formulated following points for determination:-

*“1). Whether the sale deed in question was duly executed by the plaintiff or was a forged one.*

*2). Whether the plaintiff is in possession of the plots in dispute.”*

10. It answered point 1 in favour of plaintiff and relying on expert opinion, it has held that thumb impressions on the sale deed are not that of plaintiff. It also relied on the fact that plaintiff was an illiterate lady, and had bhumidhari right. Defendant failed to prove that sale deed was executed bonafide by plaintiff. Defendant did not examine alleged scribe of deed i.e. Sri Aftab Husain. Another attesting witness Sri Faltu Prasad was also not examined and only Sri Ram Jas was examined who was husband of defendant's sister, therefore, an interested witness. Further, neither said witness could tell the name of scribe of deed nor person who presented deed for registration. In fact he admitted that he did not enter Sub Registrar's office at all. Lower Appellate Court thus answered question 1 in favour of plaintiff. With regard to issue 2. Lower Appellate Court held that property in question was in possession of defendant, therefore, while allowing appeal sale deed was declared void and consequently, relief for grant of possession of disputed land

was also granted. Consequently appeal has been allowed & suit stands decreed. Hence this second appeal by defendant.

11. Learned counsel for appellant could not dispute that plaintiff-respondent was an illiterate lady. If that be so, neither before this Court nor before court below it was shown that sale deed written by scribe was duly explained to plaintiff. The factum that she was an illiterate lady is not in dispute, when sale deed is challenged on the ground of fraud or misrepresentation by an illiterate woman, lady the onus lies upon defendant-appellant to prove that there was no fault for the reason that initial burden stands discharged by plaintiff when the lower Appellate Court accepted evidence of expert witnesses holding that thumb impression on the document did not belong to plaintiff and thereafter, onus shifted upon defendant to prove that document was executed by plaintiff. I may note at this stage that findings of Lower Appellate Court accepting expert witness supporting case of plaintiff has not been assailed before this Court. In the case of **Bellachi (Dead) by LR Vs. Pakeeran** reported in **2009 (12) SCC 95** the Court observed that “In a given case it is possible to hold that when an illiterate, pardanashin woman executes a deed of sale, the burden would be on the vendee to prove that it was the deed of sale was a genuine document”. In this view of the matter I answer all three questions, formulated above in favour of the plaintiff-respondent and against appellant.

13. The appeal lacks merit and is dismissed.

**Order Date :- 20.9.2017**

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