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SMT. BHATORI

v.

SMT. RAM PIARI

JULY 30, 1996

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Documents :

Power of attorney—Fraudulent use of—Respondent-2 had general

C *power of attorney to engage a counsel to conduct litigation on behalf of the appellant, as also to mortgage, alienate or transfer possession of her agricultural lands—Later appellant asked respondent-2 to return the power of attorney but he did not return it—Respondent 2 filed a suit for declaration of title impleading appellant as a defendant, and engaged lawyers for himself as also for the appellant—Suit was dismissed for default—Thereafter respondent 2 executed sale deeds in respect of self same lands in favour of his wife—Appellant besides initiating criminal proceedings filed suit for declaration—Suit dismissed by all courts below—Held, respondent-2 having had power of attorney in his favour from appellant played fraud upon her and got lands transferred in the name of his wife—Having been defrauded appellant is, entitled to lay the suit for declaration of title and other reliefs—Fraud unravels the contract and it is void—Suit decreed with exemplary costs.*

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Sale deeds—Executed by power of attorney holder alienating the lands in the name of his wife defrauding the land owner—Held, fraud unravels the contract and it is void.

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Mithilesh Kumar & Anr. v. Prem Behari Khare, [1989] 2 SCC 95 and R. Rajagopala Reddy v. Padmini Chandrashekharan, [1995] 2 SCC 630, cited.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 676 of 1995.

From the Judgment and Order dated 22.7.86 of the Punjab & Haryana High Court in R.S.A. No. 1282 of 1986.

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R.P. Gupta for the Appellant.

The following Order of the Court was delivered :

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Heard counsel for the appellant.

Pursuant to notice issued on November 22, 1988, Mr. Uma Dutta had appeared for the respondent. Subsequently, he reported on January 6, 1995 that he was instructed not to appear in the matter. He sought for and was granted permission to withdraw from the case. Thereafter, none appeared for the respondent. Initially, the case was adjourned since consequent upon reference doubting correctness of *Mithilesh Kumar & Anr. v. Prem Behari Khare*, [1989] 2 SCC 95 decision by a three-Judge Bench was awaited. The controversy is no longer *res judicata*. In view of the judgment of three-Judge Bench in *R. Rajagopala Reddy v. Padmini Chandrashekharan*, [1995] 2 SCC 630, wherein it was held that the Benami Transaction Prohibition Act is prospective in operation, the question in this case is : where the sale of the appellant's land to the wife of the second respondent, Ram Mehrar, holder of power of attorney of the appellant is valid in law ?

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It is seen that Ram Mehrar had general power of attorney not only to engage a counsel and conduct litigation on behalf of the appellant, but can also mortgage, alienate or transfer possession of the agricultural land do anyone whosoever after obtaining the exemption from the appropriate authorities. It is seen that notification under Section 4(1) of the Land Acquisition Act acquiring the land was published in January 1979. Notice, thereafter, was given to the appellant on March 28, 1979. When the appellant demanded from the second respondent in August 1979 the return of her Power of Attorney, he did not return it. On the other hand, he promise that he would not act detrimental to her interest. The second respondent appears to have filed a suit on August 23, 1979 in which he impleaded the appellant as party-defendant. It is the case of the appellant that the second respondent engaged two advocates, one Mr. Mitter Sain on behalf of himself and other Ram Kishan for the appellant. The counsel appearing for her informed her that the suit was not for the purpose of obtaining compensation from the Land Acquisition authorities, but for declaration of his title to her lands. When the appellant questioned him, he did not properly respond to her enquiry. Thereafter, she contested the suit. It was adjourned for appearance of the respondent to October 11, 1979, on which dated he did not appear. As a consequence the suit was dismissed for default. Subsequently he seems to have created alienation by

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- A executing sale-deeds dated October 11, 1979 and October 22, 1979 in respect of the self-same land in favour of Ram Piari, his wife for a consideration of Rs. 10,000. The appellant had filed criminal case against him under Sections 420, 406 & 407 I.P.C., with which we are not concerned. Similarly, she had filed civil suit for declaration. The suit came to be dismissed on March 27, 1985. On appeal, it was confirmed on December 21, 1985. The second appeal was also dismissed on July 22, 1986. Thus this appeal by special leave.

Narration of the facts clearly indicates that the respondent No. 2, Patwari, having had Power of Attorney in this favour the appellant obviously had played fraud upon the appellant and got her lands transferred in the name of his wife.

- C had played fraud upon the appellant and got her lands transferred in the name of his wife. The fraud played had produced damage to the appellant depriving her of the valuable property denuding right, title and interest to claim compensation in respect of her lands acquired by the Government. Having been defrauded, she is entitled to lay the suit for declaration of title and other reliefs in the suit. It would, therefore, be a clear case of fraud played by the respondent upon the appellant. The fraud unravels the contract and it is void. The courts below have committed grave error by not appreciating the fraud played by the respondent in proper perspective.

The appeal is accordingly allowed. The judgments and decrees of the courts below are set aside. In the circumstances, the suit is decreed with exemplary costs throughout quantified at Rs. 10,000 at each of the stages including in this Court.

R.P.

Appeal allowed.