

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8115 OF 2009

MAHENDRA YADAV

...APPELLANT(S)

Versus

OM PRAKASH AND ANOTHER

...RESPONDENT(S)

O R D E R

We have heard learned counsel for the parties.

The plaintiff has filed the instant suit against the defendant for the declaration of title and for permanent injunction restraining them from interfering with right, title, interest and peaceful possession of the plaintiff and from trying to dispossess them from the suit house. The injunction was also claimed from transferring the same in the name of the third party. It was averred that the defendant had agreed to sell the property by taking consideration of Rs.1.00 lakh in the year 1988 and a Yaddastnama was executed on 5.4.1996. According to the plaintiff, he became the owner of the suit land.

It was averred in the plaint that the plaintiff had been looking after defendant and providing food and other expenses. In June 1988, the defendant was in urgent need of Rs.1.00 lakh. The plaintiff was not ready to pay such a heavy amount to him. However, money was given on the assurance that it would be returned within five years and if for any reason, the money were not

returned then it would be treated as a sale, as per the agreement entered into in June 1988. The plaintiff waited for five years but the money was not paid. On the contrary, a registered Will was executed in favour of the plaintiff on 25.1.1995 so that the plaintiff would not demand the money again and in future, he would become the owner on the basis of the Will.

In the written statement, the defendant admitted the averments and a compromise petition was filed before the trial Court. It was agreed that the defendant would not claim the property in future. In support of the compromise, the parties were examined and thereafter, judgment and decree were passed in terms of the compromise. However, Respondent Nos.1 and 2, Om Prakash, the original defendant as well as Bandana Devi Sharma, questioned the same. They preferred an appeal against the said judgment and decree before the District Judge, Deoria. The appeal was allowed vide impugned order dated 2.2.2005 and the compromise deed was rejected holding that it appears to be a device adopted with a view to avoiding the payment of stamp duty whereas the disputed house could have been sold only by way of a sale deed only and not otherwise. The legality of the compromise had not been looked into by the trial Court. It was also alleged by the original defendant that the compromise deed was forged and fabricated. The Appellate Court had ignored the plea of fabrication and set aside the compromise deed and remanded the matter back to the trial Court on the ground that the compromise was illegal and could not have been recorded.

The High Court has affirmed the order passed by the District Judge, Deoria. Aggrieved by the impugned order, the plaintiff had come up in appeal.

We have heard learned counsel for the parties at length.

It appears that some of the property had been sold to Bandana Devi Sharma by the defendant Om Prakash vide sale deeds dated 15.9.1995 and 29.10.1997. The portion of the property was sold to Respondent No.2.

After hearing learned counsel for the parties, we are of the opinion that the compromise, which had been entered into, was in contravention to the provisions of Section 18 of the Indian Evidence Act, 1872 (in short, 'the Act'). Section 18 of the Act is extracted hereunder: -

**"18.Admission by party to proceeding or his agent.**

-Statements made by a party to the proceedings, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

**By suitor in representative character.-** Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by-

(1) **party interested in subject-matter.** - persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) **person from whom interest derived.** - Persons from whom the parties to the suit have derived

their interest in the subject matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements."

Reading of the aforesaid provisions makes it clear that the statements made by a party or by an agent are admission if they are made during the continuance of the interest of the person making the statement. Thus, after parting with the interest to the extent property was sold to respondent No.2. The defendant having parted with the interest could not have made admission-conferring title upon the plaintiff. It was clearly inadmissible in view of provisions of Section 18 of the Act.

In *Shafiullah Khan v Abdul Wahab* 1963 J.L.J. SN 14 it was observed by Madhya Pradesh High Court that it would be unjust that a person who has parted with his interest and property should be empowered to divest the right of another claiming under him by any statement which he may choose to make subsequently.

Even otherwise the effort was made by way of entering into the compromise to transfer the property in an illegal manner it could not be said to be lawful. The Will is ambulatory document it did not confer title. The order of remand to decide the case on merits is found to be appropriate.

However, we make it clear that we have not expressed any opinion on the merits of the case. The trial Court to decide the case on merits uninfluenced by the orders passed by the First Appellate Court, the High Court and by this Court.

The appeal is, accordingly, dismissed.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI,  
SEPTEMBER 12, 2017.

ITEM NO.107

COURT NO.10

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8115/2009

MAHENDRA YADAV

Appellant(s)

VERSUS

OM PRAKASH AND ANOTHER

Respondent(s)

Date : 12-09-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr. Rajiv Shankar Dwivedi, Adv.

Mr. Ajay Choudhary, AOR

Mr. S.K. Sarkar, Adv.

For Respondent(s)

Mr. Abhishek Singh, Adv.

Mr. Dhan Raj, Adv.

Mr. Rahul Baid, Adv.

For Mr. Saurabh Mishra, AOR

UPON hearing the counsel the Court made the following  
O R D E R

This appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(SUKHBIR PAUL KAUR)  
AR CUM PS(TAPAN KUMAR CHAKRABORTY)  
BRANCH OFFICER

(Signed order is placed on the file)