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SONA BALA BORA AND ORS.
v.
JYOTIRINDRA BHATACHARJEE

APRIL 11, 2005

B

[RUMA PAL AND C.K. THAKKER, JJ.]

Contract Act, 1872 :

C

ss. 11 and 12—Contract with consent of a person of unsound mind—Unsoundness of mind—Establishing of—Held, capacity of a person to execute a conveyance has not to be established only by medical evidence—Unsoundness of mind may be established by proving such conduct as was not only not in keeping with the character of the person concerned but such that it could not be explained on any reasonable basis—In the instant case, the actions of the head of the family surreptitiously selling the residential house and depriving his entire family as also initiating criminal proceedings against his wife and children without cause are irrational ones and outcome of mental disorder—Trial court and single Judge of High Court rightly dismissed the suit of the vendee.

E

Appeal—Assessment of evidence—Held, is inevitably subjective—If the assessment of lower courts is such that it cannot be reasonably sustained, the decision should be set aside on appeal, otherwise appellate court should be slow to interfere with a concurrent factual inference.

F

Specific performance of contract—Parties entering into a compromise in a criminal case—Husband agreeing to gift one of the bungalows to the wife—Later, a third person claiming to have purchased the property—Suit by wife for declaration that sale was void and husband did not have absolute right to transfer the property—Held, since the agreement was never challenged either by the husband or the vendee, husband was bound by the agreement.

G

Maxim—Insanus est qui abjecta ratione omnia cum impetus et furore facit—Applicability of.

‘B’, the husband of appellant No. 1 and father of the other appellants, owned three bungalows, one of which was in occupation of the appellants.

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In terms of a compromise arrived at between 'B' and appellant No. 1 in a criminal case, 'B' was *inter alia*, to make a gift of the said bungalow to the first appellant. However, later the respondent filed a suit against the appellant and 'B' for a declaration that he was absolute and exclusive owner of the suit property; and for possession thereof, claiming that he purchased all the three bungalows from 'B' for Rs. 69,000. The appellants also filed a suit against the vendee and 'B' for a declaration that 'B' did not have the absolute right to transfer the property to the respondent; that the sale was void and be set aside; that they were not aware of the transaction; and that 'B' was bound by the terms of the compromise in the criminal case. The trial court dismissed the suit of the vendee holding that 'B' was mentally imbalanced, and that the sale and mutation of the property were without the knowledge of the appellants. Appellant No. 1 was directed to repay Rs. 69,000 to the vendee. The latter's appeal was dismissed by single Judge of the High Court holding that 'B' not being the sole owner of the property, could not sell the same; and that 'B' was mentally imbalanced when the sale deed was executed. However, the Division Bench allowed the vendee's appeal. Aggrieved, the wife and children of 'B' filed the present appeal.

Allowing the appeal, the Court

HELD : 1.1. A contract of sale, like any other contract, would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872. Under Section 12 of the Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person of unsound mind is thus not necessarily a lunatic. It is sufficient if the person is incapable of judging the consequences of his acts. [462-C-D]

Black's Law Dictionary (sixth Edition) p. 795, referred to.

1.2. In a civil matter the issues have to be decided on a balance of probabilities. The question of the capacity of 'B' to execute the conveyance did not have to be established only by medical evidence. The unsoundness of the mind may be established by proving such conduct as was not only not in keeping with the character of the person concerned but such that it could not be explained on any reasonable basis. The appellants' evidence to the effect that whenever 'B' suffered from a fit of depression, he would become violent and angry, seek to sell the property and dispossess his

A entire family had not been rebutted by the respondent by cross-examination. It is said, *insanus est qui, abjecta ratione, omnia cum impetu et furore facit* - he is insane who, reason being thrown away, does everything with violence and rage. Neither the action of surreptitiously selling the residential house and depriving his entire family nor the initiation of criminal proceedings against his wife and children without cause is in accord with natural and normal affection. [462-E-G; 463-A]

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D 1.3. The Division Bench of the High Court wrongly proceeded on the basis that there was no pleading of the mental imbalance of 'B' in the appellant's plaint or written statement. In fact, in both the written statement and the plaint, the appellants had pleaded that after B's retirement from service in 1968, he became "abnormal and detached from his family" and showed signs of insanity and was quarrelsome and violent. It was the admitted case that 'B' was known to be insane which was why the respondent thought it necessary to have him medically examined before he purchased the property. However, the respondent did not produce the doctor who certified that 'B' was mentally normal nor did he prove the certificate. [461-E-F; 462-A-B]

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G 2.1. The assessment of evidence is inevitably subjective. If the assessment of the lower courts is such that it cannot be reasonably sustained, the decision can and should be set aside on appeal. But where this is not so, the appellate court should be slow to interfere with a concurrent factual inference. The single Judge had opined that a "normal" man would not initiate criminal proceedings against his family, particularly when there was no evidence of any ill-feeling or discord between the two. He was also of the view that it was not normal for a man to leave his house and withdraw from his near and dear ones for no discernible reason. If, in these circumstances, a court comes to the conclusion that the irrational conduct was indicative of a mental imbalance and that the degree of irrationality was such that without proof to the contrary it would mean that 'B' was incapable of rational and controlled thought, the conclusion cannot be faulted. The Division Bench erred in reversing the decision of the lower courts on this issue. [463-D-G; 464-C]

H *Alapati Kasi Viswanatham v. Sivarama Krishnayya*, CA No. 232/1961 decided by Supreme Court on 11.1.63; *Asha Devi v. Dukhi Sao*, AIR (1974) SC 2048; [1974] 2 SCC 492 and *Sunitibala Debi v. Dhara Sundari Debi*, AIR (1919) PC 24, referred to.

2.2. The appellate court wrongly rejected the evidence given by the appellants that the first appellant had made substantial contributions towards the erection of the three bungalows without rejecting the lower courts, finding that this statement was not challenged in cross-examination by the respondent. Perhaps that is why in the compromise petition, 'B' agreed to gift one bungalow, erect a boundary wall and pay Rs. 10,000 to the first appellant. [464-D-E]

Smt. Amiya Bala Dutta v. Mukul Abhikari and Ors., (1998) 2 GLJ 527, cited.

3. In any event and assuming that 'B' was *compos mentis*, what the Division Bench overlooked was that the appellants sought enforcement of the compromise, which has never been challenged either by 'B' or the respondent. The appellants, thus, sought specific performance of the agreement whereby 'B' had bound himself to transfer one of the bungalows to the first appellant. [464-E-F]

4. The judgment and decree passed by the Division Bench of the High Court are set aside and the decision of the trial court as affirmed by the single Judge of the High Court is restored. The respondent's suit is accordingly dismissed. However the amount of Rs. 69,000s must be paid by the appellants to the respondent with simple interest at the rate of 6% per annum. [465-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2519-2520 of 2005.

From the Judgment and Order dated 5.4.2004 of the Gauhati High Court at Assam in L.P.A. No. 1 (SH) and L.P.A. No. 2 (SH) of 1994.

Rajiv Dutta, Biswanath Aggarwal and Rajiv Mehta with him for the Appellants.

Dr .Devi Prasad Pal. Ms. Susmita Lal, Ashesh Lal, K.K. Tiwary and Ms. Malbika Sarkar for the Respondent.

The Judgment of the Court was delivered by

RUMA PAL, J. Leave granted.

A The first appellant is the widow of Bhogirath Bora. The appellants 2-4 are their children. They reside in a bungalow which is situated in an area of .176 acres of land at Shillong. There are two other bungalows on the same plot which are tenanted. The respondent claims to have purchased the three bungalows and the land from Bhogirath in 1977 for a consideration of Rs. 69,000.

B In 1978, the respondent filed a title suit against, *inter alia* the appellants and Bhogirath, (who was named as a proforma defendant) claiming a declaration that he was the absolute and exclusive owner of the land and buildings, for a decree for vacant possession by evicting the appellants and the tenants therefrom, for mesne profits, interest thereon and costs.

C The appellants also filed a suit against the respondent and Bhogirath claiming a declaration that Bhogirath did not have the absolute right to transfer the property to the respondent, that the sale made to the respondent was void and should be set aside, for a declaration that Bhogirath was bound by the terms of a compromise petition dated 10th June, 1977 filed in Ct. case no. 3/1977 and that the appellants had a preferential right and a right of preemption to purchase the other two houses on the land.

D It is an admitted position that in 1977, Bhogirath had filed a complaint (Case No. 3/1977) against some of the appellants before the Magistrate under Section 107 of the Code of Criminal Procedure. The complaint case was compromised on 10th June 1977 by filing of terms of settlement before the Magistrate. In terms of the compromise Bhogirath was *inter alia* to make a gift of the bungalow and land in which the appellants were residing, to the first appellant. The deed of gift was required to be executed and registered at the same time when Bhogirath sold the other two houses to purchasers. Bhogirath also agreed to build a cement brick wall at his expense as a boundary separating the other two houses with the house to be gifted to the first appellant. He also agreed to build and construct a sanitary latrine for the house which was given as a gift to his wife. Additionally, Bhogirath was to open a Savings Bank Account of Rs. 10,000 in his wife's name out of the sale proceeds of the other two houses. In consideration for the aforesaid the appellants agreed not to put any hindrance in the sale of the other two houses by Bhogirath to a purchaser of his own choice. They also agreed to give vacant possession of the two houses to be sold to Bhogirath on or before 20th June, 1977 after obtaining the same from the tenants occupying the two houses.

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In breach of this agreement, Bhogirath sold the entire property together with all three houses standing thereon to the respondent *inter alia* without executing a gift deed to the first appellant. In fact according to the appellants they were not aware of the transaction nor were they given any notice of the mutation which was then effected in respect of the property at the instance of the respondent.

In both the suits, Bhogirath filed a written statement supporting the respondent and denying the claim of the appellants. Both the suits were clubbed together and heard. Two separate sets of issues were framed. After evidence was led by both sides, counsel agreed that the suits could be decided only on one issue namely whether on the evidence the respondent was entitled to get the suit property.

The District Judge delivered a common judgment in both the suits on 12th July, 1985. He held that:

- (1) Bhogirath was mentally imbalanced from 1971.
- (2) The sale and mutation of the property was without the knowledge of the appellants.
- (3) Although the respondent had had Bhogirath's mental capacity tested by a Doctor, the Doctor was not called.
- (4) The mutation of the suit property had been allowed in favour of the respondent without possession.
- (5) The respondent had deposed that he was willing to give up his claim to the property on a refund of the money.

In these circumstances and as the appellants would have to suffer serious hardship in case they were evicted since they did not have any other house for their living whereas the respondent had his own house at Umpling, the respondent's suit was dismissed and the amount of Rs. 69,000 was directed to be repaid by the appellant No. 1 to the respondent within six months. In default the respondent was entitled to execute the decree for 69,000.

The respondent preferred an appeal to a single Judge of the High Court. While the appeal was pending, Bhogirath died on 18th August, 1988. The appeal was dismissed on 3rd March, 1994. The First Appellate Court framed the following issues :-

A “(1) Whether late Bhogirath Bora-Respondent No. 6 was the sole owner of the suit property and had saleable right, title over the property.

“ (2) Whether the time of execution of the registered sale deed the respondent No.6 was not mentally sound and whether execution of the sale deed conferred right, title and interest to the appellant.

B “(3) Whether the appellant obtained possession of the property”.

On the first issue, the learned Single Judge came to the conclusion that the land was settled on Bhogirath for the welfare of his family and that the houses standing on the land were constructed out of substantial monetary contributions of the first appellant. In the circumstances, it was held that Bhogirath was not the sole owner of the property and he could not transfer the entire land to the respondent.

On the second issue, the appellants’ case that Bhogirath was mentally unbalanced when the impugned sale deed was executed was believed. This conclusion was based on the fact that the respondent had failed to show that Bhogirath was mentally sound to execute the sale deed. On the other hand, the first appellant had deposed that rent from the two houses were being collected by her since 1971 when Bhogirath had developed fits of insanity during which he threatened to sell the residential house, that he had become disinterested and detached from the family, that his conduct was not normal, that he instituted a case against his wife and children, that he was violent and quarrelsome, that he remained away from the house for long periods that he secretly transferred the entire property by way of sale rendering the members of his family homeless and finally that he had tried to forcibly dispossess his family. The learned Single Judge however was conscious of the fact that these factors may not necessarily show that a person was mentally unstable but he was of the opinion that viewed as a whole Bhogirath was not mentally sound and as such the sale deed executed by him did not confer any right, title or interest on the respondent.

The third issue was also decided against the respondent by holding that Bhogirath was never in a position to deliver the entire property to him.

The respondent’s further appeal before the Division Bench of the High Court, however met with success.

H The Appellate Court, relying upon the decision of the same High Court

in *Smt. Amiya Bala Dutta v. Mukul Adhikari and Ors.*, (1998) 2 GLJ 527 held that since the patta had been issued to Bhogirath, he acquired the right of ownership and had a permanent saleable and transferable right in the houses including their occupancy. The Court was also of the view that mere substantial contribution in the construction of the house not being supported by any reliable evidence, oral or documentary, did not confer any right upon the appellants over the suit property. Further the compromise decree itself proceeded on the basis that Bhogirath was the rightful owner of the property and he had a saleable right over it. As far as Bhogirath's alleged insanity was concerned, it was held that the burden to establish that was on the appellants, an onus which they had failed to discharge. The learned Judges were of the view that the mere institution of a criminal case by Bhogirath against his wife and children, selling the house to a stranger and the other instances given by the appellants did not indicate that Bhogirath was not a normal person. Emphasis was placed on the fact that there were no pleadings either in the written statement or in the plaint filed by the appellants as regards the mental position of Bhogirath at the time of execution of the sale deed. It was noted that Bhogirath was never medically examined to support the contention of the appellants that he was of unsound mind. Finally it was held that the plea of the right of preemption was unsustainable since the law of preemption was not applicable in the *State of Meghalaya*. Accordingly, the respondent's appeals were allowed, the decision of the single Judge was set aside and the suit filed by the respondent was decreed for the entire relief sought.

We are unable to sustain the reasoning of the High Court.

Firstly- the Division Bench wrongly proceeded on the basis that there was no pleading of the mental imbalance of Bhogirath in the appellant's plaint or written statement. In fact in both the written statement and plaint the appellants had pleaded that after Bhogirath's retirement from service in 1968, Bhogirath became "abnormal and detached from his family" and showed signs of insanity and was quarrelsome and violent. It was pleaded that although Bhogirath's mental condition improved, it had deteriorated again in 1977 and that during his fits of insanity, Bhogirath always threatened to sell the property.

It is true that the respondent asserted in evidence that at the time he purchased the land, Bhogirath was a normal man and did not suffer from any mental defect. At the same time in cross-examination he said that :-

"I got examined Sri Bora by doctor to determine whether he had any mental insanity. He was examined in the mental hospital only for half

A an hour and obtained certificate of his normalcy. I got him examined because I came to know from some people that Sri Bora was suffering from mental insanity. Being satisfied I purchased the property”.

B Therefore, it was the admitted case that Bhogirath was at least reputed to be insane which was why the respondent thought it necessary to have him medically examined before he purchased the property. It is in this background that the First Appellate Court had examined the facts and had held that respondent should have produced the doctor who certified that Bhogirath was mentally normal.

C It cannot be disputed that a contract of sale like any other contract would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872. Under Section 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person of unsound mind is thus not necessarily a lunatic. It is sufficient if the person is incapable of judging the consequences of his acts. Black's Law Dictionary says :-

E “As a ground for voiding or annulling a contract or conveyance, insanity does not mean a total deprivation of reason, but an inability, from defect of perception, memory, and judgment, to do the act in question or to understand its nature and consequences¹.”

F It must be remembered that in a civil matter the issues have to be decided on a balance of probabilities. The question of the capacity of Bhogirath to execute the conveyance did not have to be established only by medical evidence. The unsoundness of the mind may be established by proving such conduct as was not only not in keeping with the concerned person's character but such that it could not be explained on any reasonable basis.

G The appellants' evidence to the effect that whenever Bhogirath suffered from a fit of depression, he would become violent and angry, seek to sell the property and dispossess his entire family had not been rebutted by the respondent by cross-examination. It is said insanus est qui, abjecta ratione, omnia cum impetu et furore facit he is insane who, reason being thrown away, does everything with violence and rage. Neither the action of

H 1. *Black's Law Dictionary*, (Sixth Edition) Page 795.

surreptitiously selling the residential house and depriving his entire family nor the initiation of criminal proceedings against his wife and children without cause is in accord with natural and normal affection. This should have been seen by the Division Bench as an irrational action or the outcome of mental disorder. Had it been alleged and proved either that the relationship between Bhogirath and every member of his family was strained or that he required money necessitating an immediate sale of his and his family's only residence, his action would perhaps have been in keeping with sanity. In the absence of any such reason, the act of dispossessing his family from property and putting his family on the streets must be seen as intrinsically that of an unsound mind. Interestingly the respondent, a stranger to the family, said in evidence that if he could not get the possession of the land he was willing to take back the money that he had paid and that he did not desire the appellants "to go to the street after vacating the house". The reaction of the respondent when compared with the conduct of Bhogirath would highlight the extent of the irrationality and abnormality of Bhogirath's conduct. The general reputation of Bhogirath as suffering from mental disorder was acknowledged by the respondent himself and the Appellate Court erred in not giving appropriate weight to this admission of the respondent.

The assessment of evidence is inevitably subjective because "we see the evidence with nobody's eyes but our own". If the assessment of the lower Courts is such that it cannot be reasonably sustained, the decision can and should be set aside on appeal. But where this is not so, the Appellate Court should be slow to interfere with a concurrent factual inference merely because the eyes of the Appellate Court are different².

The learned single Judge had opined that a "normal" man would not initiate criminal proceedings against his family, particularly when there was no evidence of any ill-feeling or discord between the two. He was also of the view that it was not normal for a man to leave his house and withdraw from his near and dear ones for no discernible reason. If in these circumstances, a Court comes to the conclusion that the irrational conduct was indicative of a mental imbalance and that the degree of irrationality was such that without proof to the contrary it would mean that Bhogirath was incapable of rational and controlled thought, the conclusion cannot be faulted.

2. See *Alapati Kasi Viswanatham v. Sivarama Krishnayya*; Unreported judgment in C.A. No. 232/1961 dated 11.1.63 referred to in *Asha Devi v. Dukhi Sao*, AIR (1974) SC 2048, 2051 : [1974] 2 SCC 492, 495 and *Sunitibala Devi v. Dhara Sundari Debi*; AIR (1919) PC 24, 26.

A No doubt the burden to prove or establish at least on a balance of probability that Bhogirath's action in executing the sale deed in favour of the respondent was the outcome of an unsound mind was on the appellants. But un rebutted evidence of an unnatural and inexplicable animosity to his wife and children as well as of an unnatural and inexplicable fixation on selling of all his properties probabilses that the sale was effected by when Bhogirath was incapable of rational behaviour. This was sufficient to discharge the appellants' burden. The onus then shifted to the respondent to adduce evidence either to show that the ostensibly irrational conduct of Bhogirath had a rational explanation or that the conveyance was executed by Bhogirath in a lucid interval. The respondent had, if his statement is to be accepted, a certificate of a Doctor who had medically examined Bhogirath just before the conveyance was executed. The respondent did not seek to call the Doctor or prove the certificate.

We would therefore hold that the Division Bench erred in reversing the decision of the lower Courts on this issue.

D Secondly, the Appellate Court wrongly rejected the evidence given by the appellants that the first appellant had made substantial contributions towards the erection of the three bungalows without rejecting the lower Courts finding that this statement was not challenged in cross-examination by the respondent. Perhaps that was why in the compromise petition, Bhogirath agreed to gift one bungalow, erect a boundary wall and pay Rs. 10,000 to the first appellant.

F In any event and assuming Bhogirath was *compos mentis*, what the Division Bench overlooked was that the appellants sought enforcement of the compromise which has never been challenged either by Bhogirath or the respondent. In other words they sought specific performance of the agreement whereby Bhogirath had bound himself to transfer one of the bungalows to the first appellant. This being so the Appellate Court should have at least applied its mind to this aspect of the matter.

G Finally, the respondent had prayed for mesne profits, interest and costs in addition to a declaration of title and possession. Because the lower Courts had dismissed the respondent's suit with regard to the primary prayers of declaration and recovery of possession, they did not consider these consequential prayers. The Division Bench granted the relief without considering whether the respondent had laid any factual basis in that regard and without assigning any reason in support of their conclusion.

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For all these reasons the appeals are allowed and the decision of the trial Court as affirmed by the Single Judge of the High Court is restored. The respondent's suit is accordingly dismissed. However the amount of Rs. 69,000 must be paid by the appellants to the respondent with interest at 6% per annum simple interest from 1st September, 1985 (being approximately 6 weeks from the date of the judgment of the Trial Court) until payment is made. No costs. A

R.P.

Appeal allowed.