

3 SCOB [2015] AD 11**APPELLATE DIVISION****PRESENT**

Ms. Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Muhammad Imman Ali

For the Appellant : Mr. M. M. Hoque,
 Advocate instructed by Mr. Md. Nawab
 Ali, Advocate-on-Record.

CIVIL APPEAL NO.34 of 2007
 (From the judgment and order
 dated 23.04.2005 passed by the
 High Court Division in Civil
 Revision No.4693 of 2003.)

For Respondent Nos.2-4,8, 10,16 and 18-
 20 : Mr. Sasthy Sarker,
 Advocate instructed by Mr. Taufique
 Hossain, Advocate-on-Record.

For Respondent Nos.1, 5-7, 9,11-15 and
 17 : Mr. Bivash Chandra
 Biswas, Advocate-on-Record.

Md. Abdus Sobhan Munshi

.....Appellant

=Versus=

Sreemati Komada Daishya and others

.....Respondents

Date of hearing : 15.04.2014
 and 23.04.2014.

Date of judgment : 24.04.2014

Hindu Law**Legal necessity for transferring land:**

It is true that in this kabala dated 02.03.1997 it has been mentioned that for performing the Shradhya ceremonies of her parents Komoda sold this land to the plaintiff. But this recital only in the document is not enough to prove that actually there was legal necessity for transferring this land by Komoda-who, admittedly, had life interest only in the land in question. Evidence is necessary to prove that actually there was legal necessity for transferring this land by Komoda. ... (Para 15)

J U D G M E N T**Nazmun Ara Sultana, J.:**

1. This Civil Appeal by leave, at the instance of the plaintiff, has arisen from the judgment and order dated 23.04.2005 passed by the High Court Division in Civil Revision No.4693 of 2003 discharging the rule and affirming the judgment and decree dated 05.07.2003 passed by the learned Additional District Judge, 2nd Court, Bogra in Partition Appeal No.95 of 2002 affirming the judgment and decree dated 31.03.2002 passed by the learned Senior Assistant Judge, Sherpur, Bogra in Partition Suit No.103 of 1997 dismissing the suit.

2. The present appellant, as plaintiff, instituted Title Suit No.103 of 1997 in the court of the learned Assistant Judge, Sherpur, Bogra for partition of ejmali property. His case, in short, is that the divisible land measuring an area of 4.48 acres of land of C.S. Khatian No.5 of mouza Bhadaikuri-as described in the schedule to the plicant originally belonged to Kokan Pramanik @ Khokan Pramanik-who died leaving behind widow Sreemati Sharashati Dashya and three daughters Bamoni, Komela and Komoda. Then Sreemati Sharashati Dashya died and her interest devolved upon her three daughters Bamoni, Komela and Komoda. Then Bamoni died leaving behind two sisters Komela and Komoda. Thereafter, Komela died

leaving behind Komoda, the defendant No.1. Komoda while owning and possessing this land sold 1.50 acres of land to the plaintiff by registered kabala dated 02.03.1997 for legal necessity. In that kabala Jogeswar (the defendant No.5)-son of the defendant No.1 became a witness. The plaintiff, after purchasing the said 1.50 acres of land, requested the defendants to effect partition but they refused and hence the suit.

3. The defendant Nos.2, 3, 4 and 8, 16, 18, 19 and 20, by filing a separate written statements, contested the suit. The defendant Nos.1 and 5 filed written statement admitting the case of the plaintiff.

4. The case of the defendant Nos.2,3,4 and 8 is that the C.S recorded tenant Kokan Pramanik @ Khokan Pramanik died leaving behind one son Gakul, three daughters Bamoni, Komela and Komoda and a widow Sreemati Sharashati Dashya. Subsequently Gakul died and his interest devolved upon Sreemati Sharashati who acquired life interest in the property left by Kokan Pramanik @ Khokan Pramanik and Gakul. Thereafter Sharashati relinquished her claim in favour of her three daughters' sons. The three daughters of Sharashati also relinquished their claim in favour of their sons. Komoda's two sons namely Dijebbar and Subash left for India after transferring their share to Jogeswar. The plaintiff had no right, title and possession in the suit land.

5. The case of the defendant No.16 is that C.S. recorded tenant-Kokan Pramanik @ Khokan Pramanik died leaving behind son-Gakul and three daughters Bamoni, Komela and Komoda. Thereafter Gakul died leaving behind Bamoni's son-Nikhil who sold .34 acre of land to the defendant No. 16 by kabala dated 17.03.1980.

6. The case of the defendant No.18, in short, is that Kokan Pramanik @ Khokan Pramanik died leaving behind wife-Sharashati Dashya, three daughters Bamoni, Komela and Komoda and one son-Gakul. Thereafter Gakul died and his share devolved upon Sharashati Dashya who having life interest relinquished her claim in favour of the sons of her three daughters.

7. The case of the defendant Nos.19 and 20 is that Kokan Pramanik @ Khokan Pramanik died leaving behind son-Gakul, three daughters Bamoni, Komela and Komoda and widow-Sharashati. Gakul died and Sharashati got life interest in the property. Thereafter Sharashati died leaving behind sons of her three daughters.

8. The trial court, on consideration of evidence adduced by both the parties, dismissed the suit on the ground that the plaintiff had failed to prove that Komoda, vendor of the plaintiff, sold the suit land for legal necessity.

9. Being aggrieved, the plaintiff preferred Partition Appeal No.95 of 2002 and the appellate court dismissed the appeal affirming the judgment of the trial court. The plaintiff then moved the High Court Division in revisional jurisdiction and obtained rule which, after hearing, was discharged by the impugned judgment and order.

10. Leave was granted to consider the submissions of the learned Advocate for the leave-petitioner which has been stated in the leave granting order as quoted below:

"The learned Advocate for the petitioner submits that the trial court without proper consideration of the evidence on record held that the plaintiff failed to prove that Komoda transferred the suit land for legal necessity but P.Ws.1 and 2 categorically stated that Komoda transferred her interest in the suit land for legal necessity and D.W.1 Jogeswar son of Komoda also stated that Komoda transferred the suit land in favour of the plaintiff for legal

necessity but the High Court Division and courts below did not consider the material evidence on record on the point and as a result there has been miscarriage of justice. He next submits that the appellate court most illegally held that Komoda had no right under Hindu law to transfer the suit land in favour of the plaintiff and as such the finding of the appellate court was affirmed by the High Court Division without any legal basis.”

11. Mr. M. M. Hoque, the learned Advocate appearing for the plaintiff-appellant has made submissions to the effect that in this suit it has been proved that the suit land originally belonged to Kokan Pramanik @ Khokan Pramanik and he died leaving behind widow Sreemati Sharashati Dashya and three daughters, namely, Bamoni, Komela and Komoda. The learned Advocate has argued also that if the defendants’ case is believed that Kokan Pramanik @ Khokan Pramanik had a son also, namely, Gakul, but admittedly this Gakul died at his infancy and as such his mother-Sreemati Sharashati Dashya acquired life interest in the property in question at the death of her son Gakul. The learned Advocate has contended that in any way it is admitted that Sreemati Sharashati Dashya acquired life interest in the land in question and she died leaving three daughters Bamoni, Komela and Komoda only. The learned Advocate has submitted also that the defendants’ further case that Sreemati Sharashati Dashya relinquished her interest in the land in question in favour of the sons of her three daughters is not acceptable at all; that this alleged surrender of the suit property by Sreemati Sharashati Dashya in favour of the sons of her three daughters was not permissible at all under any law and in the circumstances, at the death of Sreemati Sharashati Dashya, her three daughters acquired life interest in the suit property. The learned Advocate has argued that there is no denying of the fact that both Bamoni and Komela died leaving Komoda and in the circumstances Komoda alone acquired life interest in the entire property in question and she, for legal necessity, transferred 1.50 acres of land to the plaintiff by a registered deed in the year 1997 and thus the plaintiff acquired valid right, title and interest in this 1.50 acres of land. The learned Advocate has argued also that the plaintiff has adduced sufficient evidence to prove that Komoda transferred this land to the plaintiff for legal necessity and that the evidence of D.W.1 Jogeswar also has proved that Komoda transferred this land to the plaintiff for legal necessity. The learned Advocate has contended that in the circumstances all the courts committed great error and also injustice in disbelieving the plaintiff’s case that Komoda sold 1.50 acres of land to him for legal necessity. The learned Advocate has argued that this Division, on proper assessment of evidence on record, will find that Komoda sold 1.50 acres of land to the plaintiff for legal necessity and, therefore, will allow this appeal.

12. Mr. Sasthy Sarker and Mr. Taufique Hossain the learned Advocates for contesting respondents have made submissions supporting the impugned judgment and order. They have advanced arguments mainly to the effect that the defendant No.1 Komoda did not get any right, title, interest or possession in the suit land, that the sons of all the three daughters of Sreemati Sharashati Dashya and Kokan Pramanik @ Khokan Parmanik got the suit land long before from Sreemati Sharashati Dashya and since then they had been possessing the suit land and that the khatians also were prepared in their names and they have also transferred the major portion of the suit land to the contesting defendants. The learned Advocates have argued also that the plaintiff could not prove at all that Komoda sold 1.50 acres of land to the plaintiff for legal necessity; that though it has been alleged from the side of the plaintiff that Komoda sold this land to the plaintiff for performing Shradhya of her parents but this very story is not believable at all; that from the own statement of the plaintiff himself it has been proved that Komoda’s father died long 50/60 years before and Komoda’s mother Sreemati Sharashati Dashya died long 5/6 years before and that in the circumstances

it is not believable that Komoda sold this land to the plaintiff to perform Shradhya of her parents-who died long ago.

13. We have considered the submissions of the learned Advocates of both the sides and gone through the impugned judgment and order of the High Court Division, those of the appellate court below and the trial court and also the evidence on record.

14. From the above stated facts of the case and the submissions advanced from both the sides it is evident that in this suit moot question to be answered is whether Komoda had any legal necessity to sell 1.50 acres of land to the plaintiff by the kabala dated 02.03.1997.

15. It is true that in this kabala dated 02.03.1997 it has been mentioned that for performing the Shradhya ceremonies of her parents Komoda sold this land to the plaintiff. But this recital only in the document is not enough to prove that actually there was legal necessity for transferring this land by Komoda-who, admittedly, had life interest only in the land in question. Evidence is necessary to prove that actually there was legal necessity for transferring this land by Komoda (**vide Promode Kumar Roy Vs. Benodini Halder 21 DLR 673**).

16. However, it appears that in this suit there is no cogent evidence at all to prove that Komoda actually sold this land to the plaintiff for legal necessity i.e. for performing Shradhya of her parents. In this suit the plaintiff has examined 2 witnesses only including himself. The P.W.1 is the plaintiff himself and P.W.2 is the cousin of the plaintiff-who and the plaintiff together were accused in a criminal case. This P.W.2 is aged only 30 years. So, these 2 witnesses are highly interested witnesses. Without corroboration from other disinterested witnesses the evidence of this P.W.1 and P.W.2 cannot be relied on at all. It appears that the D.W.1 Jogeswar-the son of Komoda also has deposed in this suit supporting the case of the plaintiff that Komoda sold this land to the plaintiff for performing the Shradhya of her parents. But this D.W.2 also is a highly interested witness. He is the son of Komoda and became a witness in the kabala of the plaintiff. So, this D.W.1 also cannot be relied on at all. On the other hand all the other four D.Ws. deposed before the court denying this case of the plaintiff that Komoda sold this land to the plaintiff for performing Shradhya of her parents. It appears that the trial court, on proper examination and assessment of all these evidence, rightly found that it had not been proved at all that Komoda sold the suit land to the plaintiff for performing Shradhya of her parents and that she actually performed Shradhya of her parents. We find no reason to differ with these findings and decision of the trial court. It is also not believable that Komoda sold this land to perform Shradhya of her father-who admittedly died long 50/60 years before and of her mother-who also died long 5/6 years before depriving the reversioners. So we are unable to accept this story itself that Komoda sold this land to the plaintiff for performing the Shradhya of her parents.

17. The observation of the appellate court to the effect that Sreemati Sharashati Dashya surrendered the land in question to the next reversioners and as such Komoda had no right under Hindu law to transfer this land is not correct. We have already found that this defence case that Sreemati Sharashati Dashya surrendered the land left by Kokan Pramanik @ Khokan Pramanik to the next reversioners is not acceptable at all. However, this finding of the appellate court below does not affect the decision that Komoda-the defendant No.1 had no legal necessity to transfer the suit land to the plaintiff.

18. However, from the above discussion it is evident, that the trial court dismissed the suit of the plaintiff rightly and both the appellate court below and the High Court Division affirmed this judgment of the trail court rightly.

19. So, this appeal fails.

20. Hence, it is ordered that this appeal be dismissed on contest against the contesting respondents and ex-parte against the rest without any order as to cost.