

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURSDICITON
CIVIL APPEAL NO. 8153 OF 2017
[Arising out of SLP (C) No. 33280 of 2012]**

CHAMPA DEVI

... APPELLANT

VERSUS

SUDAMA DUBEY (DEAD) & ORS.

...RESPONDENTS

O R D E R

S.ABDUL NAZEER, J.

1. Leave granted.
2. This appeal by the plaintiff is directed against the judgment and decree dated 16.07.2012 in Second Appeal No. 454 of 1994, whereby the High Court of Judicature at Allahabad has set aside the judgment and decree in Civil Appeal No. 74/1991 dated 28.02.1994 passed by the Civil Judge, Jaunpur and restored the judgment and decree in Suit No. 208/1982 dated 10.05.1991 passed by the Munsif, Jaunpur.
3. Smt. Champa Devi, the appellant herein, is the daughter of Shree Ram and Sursatti. Shree Ram and Sursatti filed the Suit O.S No. 208/1982 against Smt. Prabhawati Devi, wife of Ram Lakhan Dubey for cancellation of the sale

deed dated 10.02.1982 executed by them in favour of Smt. Prabhawati Devi in respect of land bearing No.1127 admeasuring 1 acre 12.5 decimals situated at Gandhuauna Village, Pargna and Tehsil Madhiyahu, Jaunpur District. Ram Lakhan Dubey is the brother of Shree Ram. The plaintiffs died during the pendency of the suit. Therefore, their daughter Smt. Champa Devi had been brought on record as their legal heir.

4. It is the case of the plaintiffs that they are the owners and in possession of the land in question. They had been residing with their daughter Champa Devi and that Champa Devi had been rendering services to both of them. Moreover, since both Shree Ram and Sursatti had grown old, they had executed a registered Will on 26.04.1980 bequeathing the aforesaid property in favour of their daughter Champa Devi. Ram Lakhan Dubey had been fetching medicines for both of them and used to take them to the doctor for their treatment in the absence of their daughter Champa Devi. On 10.02.1982, he had brought both Shree Ram and Smt. Sursatti to Madhiyahu for the purpose of consulting the doctor. Shree Ram had been suffering from leprosy and his wife Sursatti had been suffering from fever. Ram Lakhan Dubey disclosed to Shree Ram and Sursatti that the Government had been disbursing grants and allowances to the tune of Rs. 100/- per month to the patients suffering from leprosy. He further represented to Shree Ram and Sursatti that their signatures are necessary for

getting the grant and obtained two to three signatures and further informed them that they must keep replying in the affirmative before the concerned officers for the purpose of grant.

5. It is further contended that when Shree Ram and Sursatti desired to harvest the standing crop on the disputed land, Ram Lakhan Dubey informed them that they had executed a sale deed in respect of the said land in favour of his wife. When Shree Ram and Sursatti made efforts to enquire into the said matter, they came to know that on 10.02.1982 a sale deed in respect of the said land had been executed by them in favour of Prabhawati. It is their case that in the garb of getting disbursed grant and allowance to the tune of Rs. 100/- per month, Ram Lakhan Dubey got executed the sale deed by precipitating cheating and deceit. That is why they have filed the aforesaid suit for cancellation of sale deed in question.

6. The defendant filed the written statement by contending that Shree Ram, Sursatti and Champa Devi have no right and authority to file the suit in question. Both Shree Ram and Sursatti have executed the sale deed in respect of the land in question in favour of the defendant. The defendant has denied that the sale deed was executed by exercising cheating and deceit being practiced on them. It is also contended that Champa Devi is not the daughter of Shree Ram and Sursatti nor is she the successor of the property. They have not executed

any Will in favour of Smt. Champa Devi. It is further contended that both Shree Ram and Sursatti had borrowed money from the defendant for purchasing medicine and for the purpose of proceeding to their desired pilgrimage. It was not possible for them to pay off the said funds. That is why, the plaintiffs have executed the sale deed in respect of the said land in their favour.

7. On the basis of the pleadings of the parties, the trial Court framed the following issues:

1. Whether the sale-deed, dated 10.02.1992, on the grounds and reasons mentioned, in the contents of the plaint is accordingly liable, to be cancelled? If so, its effects?
2. Whether the present suit is not within the territorial jurisdiction of this Court?
3. Whether the suit remains barred, by the provisions of section 49 of the Consolidation of Holdings Act?
4. Whether the suit, as such, is maintainable?
5. Whether the suit has been under-valued and Court-fee paid thereon, is insufficient?
6. Whether the plaintiff is accordingly entitled, to proceed ahead, with this suit? and
7. To what relief, if any, is the plaintiff entitled?

8. The parties led evidence in support of the respective contentions. On appreciation of the materials on record, the Trial Court has dismissed the suit.

9. The plaintiff challenged the judgment and decree of the Trial Court before the Civil Judge, Jaunpur. The Civil Judge, on re-appreciation of the materials on record, set aside the judgment and decree of the Trial Court and decreed the suit. The defendants challenged the said decree before the High Court of Judicature at Allahabad in Second Appeal No. 454/1994.

10. The High Court allowed the appeal thereby holding that plaintiffs did not question the signatures of Shree Ram and Sursatti on the sale deed. Suffering from ailments including leprosy is no ground to hold that executant did not willingly sign the sale deed unless the finding is recorded that the illness was of such a nature due to which executant could not understand the consequences of his action. It was also observed that the consideration amount of Rs.19,900/- had not been paid, there was no occasion for the executant of the sale deed to admit its receipt in the sale deed. The mere fact that it was paid long before, cannot be a ground to invalidate and cancel the sale deed.

11. Learned counsel for the appellant/plaintiff submits that Champa Devi had taken care of her parents, original plaintiffs in the suit during their old age. Therefore, they executed a Will dated 26th April, 1980 bequeathing the entire property in her favour. There was no reason for the original plaintiffs to sell the

property in favour of the defendant. No consideration had been paid to the defendants. In fact, Ram Lakhan Dubey, who was examined as DW1 had stated that he had paid a sum of Rs.19,900/- to the defendants which was remitted about twenty years back. The deposition of this witness was recorded on 23rd April, 1991. Therefore, the alleged amount is said to have been paid to the plaintiffs in the year 1972 while the sale deed was executed in the year 1982. DW1 has even denied recognizing his niece Champa Devi who has been substituted in place of plaintiffs after their death. The alleged loan availed by the plaintiffs does not find a place in the sale deed. It is argued that Shree Ram had been suffering from the decease of leprosy and Sursatti used to remain sick pursuant to which, defendant had been looking after them in the absence of the Champa Devi by arranging medicines thereby drawing advantage of the faith and relations. Ram Lakhan Dubey accordingly, got their signatures on the sale deed, in the garb of getting grants disbursed to patients suffering from the disease of leprosy. It is argued that the first Appellate Court has rightly decreed the suit on appreciation of the evidence on record and the High Court was not justified in reversing the said judgment and decree.

12. On the other hand, learned counsel for the respondents has sought to justify the impugned judgment and decree of the High Court.

13. The execution of the sale deed dated 10.02.1982 has been admitted. The plaintiffs had averred that when they had gone to their land to cut the crop, Ram Lakhan Dubey disclosed the fact that the property has been sold to him. Within two months, they filed the suit for cancellation of the sale deed. On 13.04.1982, Shree Ram passed away, pursuant to which, Champa Devi has been substituted as their sole and exclusive heir and legal representative. Shree Ram as well as Sursatti had bequeathed the property by virtue of registered Will dated 26th April, 1980. Champa Devi during the course of her deposition had stated that her father had been suffering from disease of leprosy and used to often remain sick pursuant to which, her uncle had been looking after him in her absence by arranging medicines for him. Though her father had been a literate person, later on his mind had somewhat become imbalanced. Whenever her father had been facing shortage of funds, she had been providing money to him for his expenses. The age of Shree Ram at the time of his demise would have been about 70 years. However, according to PW-4 the age of Shree Ram at the time of his demise would have been 70-75 years.

14. Ram Lakhan Dubey, the husband of defendant, had appeared for and on behalf of the defendant, as DW-1 who had since been examined on oath, pursuant to which he had stated that plaintiff is not a daughter of Shree Ram and Sursatti and that both of them were issueless. They had no heirs

whatsoever. In his cross-examination he has deposed that Sursatti had been prone to suffering from fever and at the relevant point of time of the said sale deed, Shree Ram too had been suffering from fever. It is further stated that he had advanced an amount to the tune of Rs.19,900/- approximately twenty years previously to Shree Ram. The witness has denied identifying and recognizing Champa Devi, the plaintiff. It is clear that Shree Ram and Sursatti had filed the suit for cancellation of the sale deed within a period of two months from the date of its execution. Shree Ram and Sursatti, the vendors, passed away within a span of approximately ten days from the date of filing of the suit for cancellation of the sale deed. It is also necessary to state here that the property had already been bequeathed by Shree Ram and Sursatti on 26th April, 1980 itself in favour of Champa Devi.

15. The sale deed has been executed for a sale consideration of Rs. 20,000/- in respect of land admeasuring one acre and 12.5 decimals. According to the defendant an amount of Rs.19,900/- had been paid previously while an amount of Rs.100/- was paid before the Sub-Registrar. There is no evidence of DW-2 and DW-3, as to when the said amount was paid to Shree Ram pursuant to which the sole evidence of Ram Lakhan Dubey, who was examined as DW-1 is available. According to him an amount of Rs.19,900/- was remitted about 20 years previously. In other words, the said amount according to DW-1 was paid

in the year 1972 while the sale deed was executed in the year 1982, i.e. after a period of 11 years from the time when such amount had been paid and that an amount of Rs.100/- was paid in the registry office. The onus to prove and establish that an amount of Rs.19,900/- had been duly paid to Shree Ram and Sursatti rests squarely on the shoulder of the defendant. The defendant has not been examined in the case and according to her husband, the said amount was paid in the year 1972. According to him, in the year 1959 he had paid a sum of Rs.1200/- to Shree Ram. DW-1 has, in fact, denied recognizing his niece Champa Devi. The loan availed by the plaintiffs does not find any place in the sale deed. The First Appellate Court observed that DW-1 had been speaking lies in the court. Therefore, his version of having paid an amount to the tune of Rs.19,900/- in the year 1972 to both Shree Ram and Sursatti for which he does not have any document and account in his possession, cannot be accepted. It is also clear from the evidence on record that Shree Ram had been ill and that the husband of the defendant had taken both Shree Ram and his wife Sursatti from their house on the pretext of getting administered treatment and medicines to them, as well as to get disbursed allowances in the form of grants. The First Appellate Court recorded a finding of fact that Ram Lakhan Dubey had got the signatures both on the sale deed in the garb of getting grants disbursed to patients suffering from disease of leprosy, which, in our view, is just and proper.

Therefore, the High Court was not justified in reversing the well considered judgment of the First Appellate Court.

16. The appeal is accordingly allowed. The judgment and order passed by the High Court of Judicature at Allahabad dated 16th July, 2012 in Second Appeal No. 454 of 1994 is hereby set aside and the judgment and decree dated 28th February, 1994 passed in Civil Appeal No.74 of 1991 by First Appellate Court is restored.

17. Having regard to the facts and circumstances of the case, we direct the parties to bear their respective costs.

.....J.
(ARUN MISHRA)

.....J.
(S. ABDUL NAZEER)

New Delhi
March 27, 2017.

ITEM NO.34

COURT NO.12

SECTION XI

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

Petition(s) for Special Leave to Appeal (C) No(s).33280/2012
(Arising out of impugned final judgment and order dated 16/07/2012
in SA No. 454/1994 passed by the High Court Of Judicature at
Allahabad)

CHAMPA DEVI

Petitioner(s)

VERSUS

SUDAMA DUBEY (DEAD) & ORS.
(with appln. (s) for exemption from filing O.T.)

Respondent(s)

Date : 27/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. S.R. Singh, Sr. Adv.
Mr. Ujjawal Pandey, Adv.
Ms. Sweta Yadav, Adv.
Mohd. Mustaba, Adv.
Mr. Dwarka Sawale, Adv.
Mr. Yash Pal Dhingra, Adv.

For Respondent(s) Mr. J.P. Tripathi, Adv.
Mr. Girdhal Upadhyay, Adv.
Mr. Hri Shankar Saran, Adv.
Ms. Asha Upadhyay, Adv.
Mr. R. D. Upadhyay, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(B.Parvathi)
Court Master

(Tapan Kr. Chakraborty)
Court Master

(Signed order is placed on the file)