

PIYADASA
v.
BINDUVA ALIAS GUNASEKERA

COURT OF APPEAL
ANANDACOOMARASWAMY, J. AND
GUNASEKERA, J.
C.A. APPEAL NO. 126/85 (F)
D.C. KURUNEGALA NO. 1452/L
29 NOVEMBER 1991

Deed - Execution of deed - Fraud.

Held:

A document formally and duly executed need not be proved even if the signature of the executant was obtained by fraud or deception, but where the document was fraudulently or illegally executed, the due execution must be proved because the alleged execution is in fact no execution at all.

Case referred to:

1. *W. Branchy Appu v. Poidohamy* (1902) 2 Br. Rep. 221, 222.

APPEAL from judgment of the District Judge of Kurunegala.

J. Joseph for plaintiff-appellant.

Lakshman Perera for defendant-respondent.

Cur adv vult.

17th January, 1992.

ANANDACOOMARASWAMY, J.

This is an appeal from the judgment of the Learned District Judge of Kurunegala dated 13.01.1985, dismissing the Plaintiff-Appellant's (hereinafter referred to as Appellant) action with costs.

The Appellant instituted this action seeking a declaration of title to half share of the land described in the schedule to the plaint and for ejection of the Defendant-Respondent (hereinafter referred to as Respondent) and for damages.

It is the Appellant's position that one Wattuwa was the owner of an undivided half share of the said land and had gifted the said half

share to the Respondent by deed No. 6883 of 20.09.1976 (D1) and that on 02.12.1983 by deed No. 3321 (P2) the said Wattuwa revoked deed (D1) and by deed No. 3328 (P1) of 02.12.1983 gifted the said half share to the Appellant and that the Respondent continued in forcible possession.

The Respondent has in his answer stated that P1 and P2 were not the acts and deeds of said Wattuwa in that the said Wattuwa was not in a fit condition to understand the nature and contents of the said documents, and in the alternative there was undue influence perpetrated on the said Wattuwa by the Appellant. The Respondent has also taken up the position that he was a tenant cultivator of the field under Wattuwa and therefore could not be evicted.

The crux of the matter is whether deeds P1 and P2 were duly executed.

The Learned District Judge by a careful consideration of the evidence had come to the conclusion that deeds P1 and P2 were not duly executed and that Wattuwa was not in a fit condition to execute the said deeds. We see no reason to interfere with his findings and his judgment.

The Learned Counsel for the Appellant contended that when fraud is alleged, the execution of the document need not be proved. In support of this submission he relied on the decision in the case of *W. Branchy Appu v. J. Poidohamy*⁽¹⁾ where the former Supreme Court (Lawrie, A.C.J., with Moncreiff, J. agreeing) held "The execution of a document impeached as having been obtained by fraud need not be proved.

"But when it is alleged that a person signed a blank sheet of paper, which was subsequently filled up in the form of a deed and impeached as fraudulent by such person, the execution of such document ought to be proved, not by calling the notary who attested it, but by calling at least one of the witnesses thereto".

This decision supports the view that a document formally and duly executed need not be proved even if the signature of the executant was obtained by fraud or deception, but where the document was

fraudulently or illegally executed, the due execution must be proved, because the alleged execution is in fact no execution at all. This view finds support in the very same judgment of Lawrie, A.C.J., in the aforesaid case:

In the instant case the Learned District Judge concluded that deeds "P1" and "P2" were not duly executed and that Wattuwa did not know the nature and contents of the said documents, when he is alleged to have executed the said deeds.

For the foregoing reasons we dismiss the appeal with costs.

GUNASEKERA, J. – *I agree.*

Appeal dismissed.
