

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.127 of 1980

Against the judgment and decree dated 10.12.1979 passed by the learned 3rd Additional Subordinate Judge, Samastipur in Title Suit No.85 of 1976/121 of 1979.

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Shila Devi & Ors.

.... Plaintiffs-Appellants

Versus

Most.Bibi Kamrunnisa & Ors.

.... Defendants-Respondents

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Appearance :

For the Appellants : Mr. Arun Kumar Prasad, Advocate.

For the Respondents : Mr. Ashok Kumar Keshari, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 18-08-2015

The original plaintiff, Raj Kumar Sah had filed this first appeal (since deceased and substituted) against the judgment and decree dated 10.12.1979 passed by the learned 3rd Additional Subordinate Judge, Samastipur in Title Suit No.85 of 1976/121 of 1979 whereby the learned court below dismissed the plaintiff's suit for specific performance of contract.

2. The plaintiff-appellant had filed the aforesaid suit praying for decree for specific performance of contract alleging that he entered into contract with defendant 1st party, owner of the house for purchasing the same for Rs.10,000/-. The deed was to be executed and registered within 30.06.1976. An agreement was executed on 26.03.1975 and the plaintiff paid Rs.1,500/- as earnest money. The



remaining consideration amount of Rs.8,500/- was to be paid at the time of registration of the sale deed. It is stated that prior to this agreement the plaintiff was tenant of the defendant on monthly rent of Rs.15/-. The further case of the plaintiff is that when the plaintiff arranged the money he asked the defendant 1st party to execute the sale deed but she avoided. Thereafter legal notice was sent to her on 16.06.1976 by registered post which was refused by defendant. The plaintiff learnt that the defendant 1st party had already sold the house in favour of the defendant 2nd party. According to the plaintiff, the defendants had the knowledge about the agreement between the plaintiff and defendant no.1. On these grounds the plaintiff prayed for the aforesaid decree.

3. The defendant no.1 filed contesting written statement denying the case of the plaintiff. According to this defendant, the plaintiff was a tenant but this defendant never made any declaration to sell and she never entered into any agreement with the plaintiff to sell the suit property. There was no agreement nor the defendant executed the agreement on 26.03.1975 nor the plaintiff ever paid Rs.1,500/- the earnest money. The defendant never promised to execute and register sale deed. In fact the agreement alleged by the plaintiff is forged and fabricated and, therefore, the plaintiff is not entitled to any relief.

4. The further case is that she has sold the property to the

defendant 2nd party on 03.04.1976. This defendant had also sold one unit to the present plaintiff on 10.05.1976. At that time the defendant also sold one unit each to Narayan Prasad Gupta and Bhola Prasad Gupta. In all these sale deeds the father of this defendant identified her and after executing the sale deed in favour of defendant 2nd party told the plaintiff and his father to vacate the house and then suit was also filed, thereafter this forged mahadanama was created.

5. The defendant 2nd party, who are purchasers, also denied the case pleaded by the plaintiff and their defence is also on the same footing as that of defendant no.1.

6. On the basis of the aforesaid pleadings the learned court below framed the following issues:-

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got valid cause of action for the suit?
- (iii) Is the Mahadanama dated 26.03.1975 genuine and valid?
- (iv) Is the plaintiff entitled to a decree as prayed for?
- (v) To what other reliefs or relief if any is the plaintiff entitled?

7. The learned court below on the basis of the evidences recorded finding that the mahadanama alleged by the plaintiff is a forged document not executed by the defendant no.1. Accordingly, dismissed the plaintiffs' suit.

8. The learned counsel Mr. Arun Kumr Prasad for the



appellants submitted that the court below has misread the evidences of the witnesses and wrongly discarded the testimony of the witnesses. The plaintiff produced the agreement and in support of the execution of the agreement i.e. mahadanama by the defendant no.1 overwhelming evidences were produced but the learned court below did not place reliance on them. Even to prove the handwriting of the defendant no.1 on the agreement, the plaintiff examined handwriting expert, who opined that it is the signature of defendant no.1 but then also the court below wrongly discarded his evidence and report on flimsy grounds. At the same time the learned court below has wrongly relied upon the evidence of expert examined by the plaintiff which resulted in dismissal of the plaintiff's suit. According to the learned counsel, the witnesses examined by the plaintiff have stated that the defendant no.1 agreed to sell the suit house in favour of the plaintiff for Rs.10,000/- and agreement was executed by defendant no.1. However, the court below by approaching the case in wrong angle did not rely on the evidences. The learned counsel further submitted that even the notice was sent by the plaintiff to the defendant no.1 asking her to receive the balance consideration amount and to execute registered sale deed. The plaintiff has produced the notice, which clearly indicate that in fact there was agreement. The defendant no.1 intentionally refused to receive the notice which again proves the fact

that she was knowing the contents of the notice and that inference can be drawn that she knowing that she agreed to sell the property was being asked to execute the same so she refused to receive the notice. On these grounds the learned counsel submitted that the first appeal be allowed after setting aside the impugned judgment and decree and the plaintiffs-appellant's suit be decreed with cost.

9. On the other hand, the learned counsel Mr. Keshari for the respondents submitted that both the parties adduced their oral evidences respectively. The witnesses examined by the plaintiff supported the pleading of the plaintiff whereas the witnesses examined by the defendants supported the pleading of the defendant no.1. Therefore the evidences about execution of agreement or denial thereof are oath against oath. The learned court below, therefore, has rightly discarded the evidences of the plaintiff considering the same to be not reliable particularly when the expert of the defendant no.1 compared the disputed signature on the agreement and gave opinion that the admitted signature does not tally with the disputed signature. The learned court below found that the expert of the defendant no.1 is reliable and has got more experience than the expert examined by the plaintiff. Therefore, the court below has rightly relied on the opinion of the expert examined by the defendant no.1. When the court below relied on the expert of defendant no.1, there was no question of

relying on the oral evidences.

10. The learned counsel further submitted that when there was no contract between the plaintiff and defendant no.1 and no agreement was executed, there is no question of knowledge of the agreement by the subsequent purchaser arises. On these grounds, the learned counsel submitted that the first appeal be dismissed with cost.

11. In view of the above pleadings of the parties the only point arises for consideration in this appeal is as to whether the mahadanama dated 26.03.1975 is genuine, valid and executed by the defendant no.1 as claimed by the plaintiff or it is a forged document as claimed by the defendant?

12. In support of their respective cases both the parties have examined witnesses and have produced documentary evidences. Ext.1 series are the notices alleged to have been sent by the plaintiff to the defendant no.1 asking her to execute the sale deed. Ext.2 series are writings on envelope and A/D. Ext. 18 is the postal receipt and Ext.10 is endorsement of refusal. P.W.12 has proved the endorsement of refusal. So far these evidences are concerned, those are not material for deciding the point formulated herein above. It does not reflect any light about the genuineness or otherwise of the agreement.

13. The plaintiff has also produced Ext.3, the security deposit in the Bihar State Electricity Board of the year 1967. Ext.4



series are electric bills and Ext.9 series are the receipts showing payment of electric bills. These materials only show that the plaintiff was residing in the suit premises for long and that is the case of the plaintiff also. The plaintiff is not claiming title rather he claimed that he is a tenant since long. Now, therefore, whether there was agreement between the parties or whether the defendant no.1 agreed to sell or not cannot be decided on these exhibits.

14. Further the plaintiff has produced Ext.12 series which are the notices of 1959 and 1960 issued by Samastipur Municipality. Ext.13 series are permission of municipality to construct house. Ext.14 series are the municipal receipts. Likewise Ext.15 series are municipal demand notice. Ext.16 series are water tax notice and holding tax notice. All these documents are not relevant at all for deciding the point involved in this first appeal. These documents only show that the plaintiff was residing in the suit premises for long and even he was paying the municipal taxes, water taxes and the electric bills and has also obtained electric connection in his name. All these evidences even if taken to be true, there cannot be any presumption on the basis of these evidences that because the plaintiff was residing since long and paying the bills, tax etc., the defendant no.1 had entered into agreement to sell the house.

15. So far oral evidences are concerned, P.W.3 claimed

that in his presence the talk of sale took place and agreement was executed. P.W.11 is the plaintiff himself. P.W.6 also claimed that in his presence the talk was finalized and agreement was executed. Likewise, P.W.7 has also stated the same thing. P.W.8 has said that in his presence the defendant no.1 put her L.T.I. and amount of Rs.1,500/- was paid by the plaintiff. P.W.9 also stated in the same line as that of P.Ws.3, 6 and 7. P.W.8 claimed to be the scribe of the agreement and said that at the instance of Kamrunnisa, he had scribed the same and Kamrunnisa put her signature on the mahadanama after receiving Rs.1,500/-

16. P.W.17 is the handwriting expert examined by the plaintiff. This witness has stated that the disputed signature has been put by the same man. The report is proved by him, which has been marked as Ext.17. So far this evidence of the expert is concerned, it may be stated that he admitted in his cross-examination that he started his practice as expert in June, 1978 and that he does not know Urdu script and this was his first report on Urdu script. He also admits his unawareness of the style of Urdu handwriting. These are all the evidences produced by the plaintiff.

17. On the contrary, D.W.2 has stated that the plaintiff and his father have fruit shop in the disputed house and they are tenant. D.W.4 is a witness, who claimed that defendant no.1 sold the property

to defendant 2nd party in his presence. D.Ws.5 and 6 are on the same point. According to these witnesses, the defendant no.1 had six units and she wanted to sell the six units of house at Rs.12,000/- each and in the presence of these witnesses the same price was fixed and defendant 2nd party had purchased the suit house. D.W.1 is the son of defendant no.1. D.W.8 is defendant no.2. These witnesses have fully supported the case pleaded by the defendant no.1.

18. Admittedly Ext.5, the show-called agreement is an unregistered document. The most important evidence is that of D.W.12, the handwriting expert examined by the defendant. The name of this D.W.12 is Syed Iqbal Taiyab Hassan. According to this witness, he is practising as handwriting and finger print expert for last 18 years. P.W.17, the plaintiff's expert, is Sri Kant Choudhary. In view of the admission of P.W.17 that he does not know Urdu script and that it is his first report in Urdu script matter whereas the expert of defendant D.W.12 has got 18 years experience, who knows Urdu very well, therefore he is more competent witness than that of P.W.17. In such a situation the Court has got no option but to rely on the evidence of the expert whose report is clear, unambiguous and the expert who has got more experience and more competent and must discard the report/evidence of the expert who himself admits that it is his first report in Urdu and that he does not know the style of Urdu

writing nor he understands Urdu. The learned court below, therefore, giving reason accepted the report of the expert of defendant no.1. I do not find any reason to discard the evidence of D.W.12 and to accept the evidence of P.W.17. In other words, I do not find any reason to interfere with the finding of the trial court on this point of acceptance of the report.

19. Now, in view of the above discussion it becomes clear that the defendant no.1 clearly denied the execution of mahadanama. The defendant no.1 also clearly asserted that the mahadanama is forged one and she never executed the same. In such circumstances it is for the plaintiff to prove the document to be genuine and valid document executed by defendant no.1. Since the signature itself was in dispute, on the basis of oral evidence the signature could not have been proved to be valid and genuine signature. The experts were, therefore, examined by both the parties. We have discussed the report and evidences of both the experts above. The other evidences produced by the plaintiff are not relevant at all for the decision of this point formulated in this first appeal. The witnesses examined have merely stated that in their presence defendant no.1 put signature after receiving earnest money of Rs.1,500/-. The oral evidences produced by the plaintiff is contradicted by the evidence of the expert, D.W.12. In my opinion, therefore, the evidence of this D.W.12 is to prevail and

the court below, therefore, has rightly accepted the evidence of this witness. I do not find any reason to interfere with the same. Accordingly, the finding of the court below is hereby confirmed.

20. In the result, I do not find any merit in this first appeal and accordingly, this first appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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