

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.540 of 1982

(Against the judgment and decree dated 07.09.1982 passed by 3rd Additional Subordinate Judge, Ara, Bhojpur in Title Suit No.91 of 1970/40 of 1982).

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Rabindra Prasad Singh

.... .. Plaintiff-Appellant

Versus

Tejnarain Singh & Ors

.... .. Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha, Advocate
 Mr. Sanghmitra Ghosh, Advocate
 Mr. Krishna Murari, Advocate
For the Respondent/s : Mr. Girja Nandan Prasad, Advocate
 Mr. Braj Kishore Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 04-08-2015

1. The plaintiff has filed this First Appeal against the judgment and decree dated 07.09.1982 passed by the learned 3rd Additional Subordinate Judge, Ara, Bhojpur in Title Suit No.91 of 1970/40 of 1982 whereby the court below dismissed the plaintiff-appellant's suit for setting aside the sale deed executed by his father.

2. The plaintiff-appellant filed the aforesaid suit praying for setting aside the sale made by his father, the original defendant No.1-respondent No.13 herein in the appeal(He died during the pendency of the appeal and his name has been expunged). According to the plaintiff, his father sold Schedule C property hereinafter referred to as the "suit property" in favour of defendant



Nos.10 and 11 by registered sale deed dated 20.05.1968. According to the plaintiff, the properties described in Schedule A were allotted in the share of the plaintiff's father in partition between his co-sharer and Schedule B were allotted to defendant Nos.2 to 6. The mother died in the year 1955 and thereafter his father started "Awaragardi" and on the pressure, he executed a Bazidaba in favour of the plaintiff in 1960. Yadast Bazidaba was executed in favour of plaintiff on 17.04.1963, so, the plaintiff became the absolute owner of all the family property.

3. The further case of the plaintiff is that on the instigation of the enemies, the father, defendant No.1 executed the sale deed regarding Schedule C property in favour of defendant Nos.10 and 11. The Rehan deed and the sale deed are fraudulent, collusive, without legal necessity and without consideration. Even if any consideration was paid to the plaintiff's father, it was for immoral purposes. The further case is that his father was a drunkard and was involved with prostitution and for that purpose, he sold the property. The consideration is inadequate.

4. The defendant Nos.10 and 11 filed written statement and contested the suit. Their case is that the story of immoral character alleged by plaintiff is false. The plaintiff's father was very prudent man and not indicted to wine and women. The sale deed and Rehan deed are genuine, legal, valid and for consideration and for

legal necessity. In the written statement, they have described how and why the father of the plaintiff was in need of money and he was repeatedly keeping the lands in mortgage in favour of them for the purpose of maintenance of the family, purchasing bullock for cultivation and also for the purpose of education of the plaintiff.

5. 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 plaintiff a man of bad character?
- IV. Is the story of relinquishment by the plaintiff father as alleged by the plaintiff correct?
- V. Are the rehan deed and sale deeds executed by the plaintiff's father in favour of defendant No.10 and 11 fraudulent, collusive and without consideration?
- VI. Has the property in dispute been sold for low valuation?
- VII. To what relief or reliefs if any is the plaintiff entitled?

6. After trial, the learned court below recorded a finding that the plaintiff has failed to prove that the sale deeds and Rehan deeds executed by the plaintiff's father in favour of defendant Nos.10 and 11 were fraudulent, collusive and without consideration and without legal necessity. The court below also recorded finding that the plaintiff failed to prove that his father was indicted of immoral habit or character and accordingly, dismissed the plaintiff's

suit.

7. The learned counsel for the appellant submitted that the father was only a coparcener with the plaintiff and, therefore, he could not have sold Schedule C property without the consent of the plaintiff and moreover, any sale made by the coparcener of undivided share is a void sale. Further, the father could not have sold the property without there being any legal necessity particularly when he was of immoral character and for that purpose i.e. for satisfying his immoral purpose, he sold the property. In such circumstances, the sale deed was not legal and valid and the consideration amount shown in the sale deed is inadequate. The legal necessity mentioned in the sale deed cannot be termed as legal necessity. The learned counsel further submitted that during that period, the plaintiff was residing with his maternal uncle at Jamshedpur in connection with education and the maternal uncle was bearing the cost of education, therefore, the case of the defendant that the sale was made for the purpose of education of the plaintiff cannot be relied upon but the court below has wrongly recorded the finding and has dismissed the plaintiff's suit.

8. The learned counsel further submitted that Article 260 of the Hindu Law by Mullah provides that without the consent of coparcener, the coparcenary property cannot be sold and moreover, in



the present case, the plaintiff's father has sold 53 decimals more than his share and, therefore also, the sale deeds are liable to be set aside. The learned counsel further submitted that purchasing of bullocks for cultivation purpose cannot be termed as legal necessity. On these grounds, the learned counsel for the appellant submitted that the appeal be allowed and the plaintiff's suit be decreed.

9. On the other hand, the learned counsel appearing on behalf of the respondents submitted that there is no illegality in the impugned judgment and order. The plaintiff alleged that his father was of immoral character, therefore, it was for him to prove this allegation made by him in the plaint but he has not adduced any reliable evidence in support of his case. The learned court below, therefore, on the basis of the material brought on record has rightly held that the plaintiff failed to prove the case pleaded by him. The learned counsel on these grounds submitted that the First Appeal be dismissed.

10. On the basis of the aforesaid submissions of the learned counsel for the parties, the point arises for consideration in this First Appeal is as to "whether the plaintiff is entitled to the relief claimed by him" and "whether the impugned judgment and decree passed by the court below is sustainable in the eye of law?"

11. It is admitted fact that the sale deed was executed



and registered by the father of the plaintiff who was defendant No.1. It is also admitted fact that at the time of selling the property by defendant No.1 in favour of defendant Nos.10 and 11, the plaintiff was minor student. Since the plaintiff was minor, therefore, there was no question of taking consent from him arises. The challenge has been made by the plaintiff on two grounds. Firstly, that there was no partition between father and son and, therefore, the coparcener could not have sold the property to the purchasers-defendants. So far this ground raised by the plaintiff and the argument advanced by the learned counsel for the appellant is concerned, it may be mentioned here that since the plaintiff was minor, there was no question of taking any consent from him arises. In other words, on the date of execution and registration of the sale deed, the father, who was the only coparcener, was competent to sell the property. Moreover, father was the karta and manager of the property, therefore, he had the right to sell the property. It is for the plaintiff to show that in fact, the sale deed was for immoral purpose as has been asserted by him.

12. In support of his case, P.W.1, the plaintiff in his evidence has stated that his mother died in the year 1955 and then his father developed bad habits. He became addicted to wine and women. Such is the evidence of P.W.2 who is brother-in-law of defendant No.1 i.e. maternal uncle of plaintiff. P.W.5 has also stated that



defendant No.1 developed bad habits and addicted to wine and women. Except these bald statements, there is no reliable evidence produced by the plaintiff to show that in fact, the consideration amount which the defendant No.1 received on account of sale of the property was used for either wine or for immoral purposes. It is very easy to say that the father was addicted to wine or that he had developed bad habits. Merely because the son is saying against the father, it cannot be relied upon very lightly. No further evidence is adduced to show that in fact, the consideration was used for immoral purpose. In other words, there is no reliable evidence in fact to show that the defendant No.1 had sold the properties for the purpose of satisfying his personal need arose because of his bad habits.

13. P.W.1 in his evidence has stated that the father, defendant No.1 has executed a Bazidaba in his favour in the year 1960. That is the case pleaded in the plaint also. Here, it may be mentioned that by Bazidaba i.e. unregistered relinquishment, title will never pass. In other words, by admission, title will not pass as the requirement of law is that the title will pass only after registration of a document on payment of consideration. Therefore, only because Yadast Bazidaba was prepared, it cannot be said that the plaintiff became the absolute owner in presence of his father who was alive then.



14. So far the submission of the learned counsel for the appellant that undivided share could not have been sold by father is concerned, it may be stated that Section 30 of Hindu Succession Act, 1956 provides that any Hindu may dispose of by Will or other testamentary disposition any property which is capable of being so disposed of by him in accordance with the provisions of the Indian Succession Act or any other law for the time being in force and applicable to Hindus. The explanation provided therein is clear that the interest of a male Hindu in a Mitakshara coparcenary property shall notwithstanding anything contained in the Act or in any other law for the time being in force be deemed to be property capable of being disposed of by him or by her within the meaning of this Section. Therefore, I do not find any force in the submission of the learned counsel for the appellant that undivided share could not have been sold by the father. In the present case, further, it is evident that the plaintiff is not saying that the father also sold his share i.e. while selling the property, the father has not protected the interest of the son i.e. the plaintiff. It is not his case that father sold more than his share, therefore, the sale deed is liable to be set aside. His simple case is that father developed bad habit and addicted to wine and women. Now, therefore, the argument of the learned counsel for the appellant that the father has sold 53 decimals more than his share is concerned, is



neither here nor there. The plaintiff who has been examined as P.W.1 in his evidence at paragraph 23 of his cross-examination has clearly admitted that his father had 5 bighas land which he got in the partition from the co-sharer. Now, the Schedule C property measures only 1 acre and odd, therefore, in any view of the matter, it cannot be said that father of the defendant No.1 sold more than his share or that the father has sold the share of the minor.

15. So far the case of the plaintiff that the sale deed or Rehan deed produced by the defendant are all fraudulent, without consideration is concerned, it may be mentioned here that the sale deed executed by defendant No.1 in favour of defendant Nos.10 and 11 is registered sale deed.

16. Hon'ble Supreme Court in **(2009) 5 Supreme Court Cases 713(Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo)** has held that a registered sale deed if proved will be presumed to be genuine unless the contrary is proved. In the present case, only bald statements have been made. According to the plaintiff it is fraudulent, collusive and without consideration. Except this, no reliable evidence has been produced to show that the sale deed is fraudulent. What is the fraud and how his sale deed became fraudulent is not pleaded. The main case for fraudulent act is father was addicted to wine and women. As I have stated that there is



no reliable evidence on this question regarding addiction to wine and women, therefore, the question of fraudulent execution of sale deed cannot be relied upon. Moreover, the contents of the sale deed and Rehan deed show that the plaintiff's father was in need of money for cultivation purpose i.e. for purchasing bullocks and for education purpose and, therefore, these statements are made in the registered sale deed. In such circumstances, the oral evidence contrary to the statements cannot be relied upon rather it can be said that the evidences are inadmissible. The vendor or the vendee i.e the parties to sale deeds are not challenging the contents nor passing of the consideration amount, therefore, the plaintiff who is the son of the vendor cannot challenge the passing of consideration who is third party to the transaction.

17. The learned counsel for the appellant submitted that at that time, the plaintiff was residing with his maternal uncle, P.W.5 and maternal uncle was bearing the cost and that the plaintiff was getting scholarship and was also doing tuition is concerned, it is not relevant here for the decision because he might be earning there or getting the scholarship but it cannot be said that his father was not providing anything to him or that his father sold the property for immoral purpose.

18. From perusal of the evidences and the pleading, it

appears that the plaintiff has only pleaded ornamentally all these things discussed above only for the purpose of getting the sale deed set aside but mere statement is not sufficient enough to prove the fact. The learned court below, therefore, has rightly held that no relevant evidence has been adduced. I do not find any reason to interfere with the finding of the court below.

19. In view of my above discussion, I therefore, find that the plaintiff failed to prove the case of addiction of his father to wine and women and that the sale deed is fraudulent. The finding of the court below on this point is hereby confirmed.

20. The learned counsel for the appellant next submitted that the sale consideration is inadequate. In my opinion, on the ground of inadequacy of the sale consideration, the registered sale deed cannot be set aside.

21. In view of my above discussion, I find that the plaintiff is not entitled to any relief claimed in the suit and, therefore, the findings of the court below are hereby confirmed.

22. In the result, 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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