

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.820 of 1976

(Against the judgment and decree dated 11.09.1976 passed by Subordinate Judge, Saharsa in Title Suit No.101 of 1967).

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Hariballabh Sharma & Ors.

.... .. Plaintiffs-Appellants

Versus

Deo Krishan Mandal & Ors.

.... .. Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Chandra Bhushan Das, Advocate

For the Respondent/s : Mr. Anish Chandra Sinha, Advocate

Mr. Naresh Kumar Mehta, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 30-10-2015

1. The plaintiffs have filed this First Appeal against the judgment and decree dated 11.09.1976 passed by the learned Subordinate Judge, Saharsa in Title Suit No.101 of 1967 whereby the learned court below dismissed the plaintiff-appellant's suit.

2. The plaintiffs-appellants filed the aforesaid Title Suit No.101 of 1967 for declaration of title and release of the disputed land from attachment which was attached under Section 146 in a proceeding under Section 145 Cr.P.C.. The subject matter of the suit are Plot Nos.1471 and 1477 under Khata No.177. The plaintiffs 1st party claimed 9 bighas 15 kathas 7 dhurs out of Plot No.1471 and 1477. He claimed 4 bighas 1 katha 15 dhurs out of Plot No.1471 and he claimed 5 bighas 13 kathas 12 dhurs out of Plot No.1477. The plaintiffs 2nd party claimed 4 bighas 1 katha 15 dhurs out of Plot

No.1471. The plaintiffs-appellants were the plaintiffs 1st party whereas plaintiff No.8, who is respondent No.36, was plaintiff 2nd party.

3. According to the plaintiff's case, Khata No.177 measuring 18 bighas 1 katha 4 dhurs was recorded as Kaimi Jot in the name of Budhu Khatwa and Hito Khatwa in equal share in cadastral survey. Kajan Khatwa was the son of Budhu Khatwa who died leaving behind his son, plaintiff No.1. The other co-sharer, Hito Khatwa died leaving behind a son, Bathu Khatwa who sold to the plaintiff 2nd party by registered sale deed dated 19.06.1953, 4 bighas 1 katha 15 dhurs of Plot No.1471 and 2 bighas 16 kathas 16 dhurs out of Plot No.1477 to plaintiffs 1st party by registered sale deed dated 26.03.1963. There were 5 plots in Khata No.177. Since the rent was not fixed in case, the defendants 2nd party and their ancestor, Jitendra Narain Singh was getting half share in the produce. Subsequently, the plaintiffs filed a petition under Section 40 of the Bihar Tenancy Act against the defendants 2nd party being Case No.117 of 1948-49 and the rent was commuted in cash. The plaintiffs then deposited cash rent in 1950, 1953 and 1957. The further case is that the defendants 2nd party wanted to purchase the lands but the plaintiffs did not agree, therefore, they executed collusive sale deed in favour of defendants 1st party. The sale deeds were farji and they were never acted upon.

They also got a collusive proceeding under Section 144 Cr.P.C. initiated which was converted to 145 Cr.P.C. proceeding and the lands were attached.

4. The further case of the plaintiffs is that the defendants 1st party filed Title Suit No.28 of 1953 in the Court of Munsif, Madhipura but subsequently, they withdrew the same. There was no compromise in 145 Cr.P.C. proceeding and even if there was any compromise, the plaintiff No.1 is not a signatory thereto, therefore, it is forged and fabricated and the order passed by the Magistrate is null, void and without jurisdiction.

5. The defendants 2nd party did not contest. The defendant Nos.1 to 27 filed separate contesting written statement and defendant Nos.28 to 31 filed another contesting written statement separately. Their case in short is that Khata No.177 was Raiyati land of Babu Jogendra Narain Singh and others but by mistake, it was recorded as Khorisdar in survey record of the year 1904. All the Kaimi Raiyats(Sikmidars) including Budhu Khatwa and Hito Khatwa surrendered the lands to Jogendra Narain Singh as the lands were Jungle and in spite of hard labour, there was no produce and further, they had houses far away from the lands. Babu Jogendra Narain Singh came in khas possession. The sale deeds executed by the heirs of the Sikmidars in favour of plaintiffs were never acted upon and they are



only farji documents. In fact, the defendants 1st party have purchased from the rightful owner and since their purchases, they are coming in possession of the suit properties. In 145 proceeding, the lands were attached but subsequently in the year 1962, a compromise was entered into and the proceeding was dropped. Regarding commutation proceeding, the defence is that prior to the said proceeding, these defendants had already purchased the lands and these defendants were not made party in the said proceeding, therefore, they are not bound by the same. The compromise entered into in 145 Cr.P.C. proceeding was acted upon and both the parties got possession according to the compromise. The defendant Nos.1 to 27 claimed 10 bighas 17 kathas 2 dhurs land from both the plots whereas defendant Nos.28 to 31 claimed 3 bighas 5 kathas out of Plot No.1471 and after compromise, they are claiming possession over the lands allotted to them in the compromise.

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

- I. Is the suit as framed maintainable?
- II. Has the plaintiffs got any cause of action to bring this suit?
- III. Whether there was a surrender as alleged by the defendants?
- IV. Whether there was a valid legal and binding compromise as alleged by the defendants?
- V. Whether defendants No.28 to 31 were the sudhbhamadar for 3 bighas 5 kathas lands from Jogendra Narain Singh?

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- VI. Is the suit bad for defect of parties?
 - VII. Is the suit barred by limitation?
 - VIII. Is the suit barred by principle of estoppel, waiver and acquiescence?
 - IX. Have the plaintiffs got any subsisting title over the suit land?
 - X. Is the suit valued properly and the court fee paid was sufficient?
 - XI. Are the plaintiffs entitled to any relief?

7. After trial, the learned court below came to the conclusion that the recorded bataidars had given up possession and Jogendra Narain Singh came in possession and then sold the land to the members of the defendants 1st party who came in possession. The court below also found that there was a compromise as a result of which, 5 bighas and odd was allotted to plaintiff No.1 and over the rest land, the defendants 1st party came in possession which is still continuing. The plaintiffs failed to prove possession any time within 12 years before the date of attachment. Accordingly, the plaintiff's suit was dismissed.

8. The learned counsel for the appellants submitted that the learned court below has not appreciated the evidences properly. The case of the defendants that the Sikmidars surrendered their possession to Babu Jogendra Narain Singh but there is no evidence regarding surrender or abandonment but the court below wrongly decided the issues against the plaintiffs. According to the learned counsel,



although, the court below observed that there is no direct evidence of either surrender or abandonment but only on presumption and assumption, decided that after surrender, Babu Jogendra Narain Singh came in possession of the property and sold the same. The effect of filing of commutation case has wrongly been negated which clearly indicates that the plaintiffs were in possession of the property and the owner was getting half share in the produce. The plaintiffs then filed application under Section 40 of the B.T. Act in the year 1948-49 and they got the kind rent commuted to cash rent. This document was produced by the appellants to show their title and possession. The defendants never prayed for any relief with regard to the registered sale deeds which are in favour of the plaintiffs and according to law, there is presumption of genuineness of the sale deed but then the court below did not rely on these registered sale deeds coupled with the commutation proceeding. Had the court below given effective consideration to this commutation proceeding and the genuineness of the registered sale deed, the suit of the plaintiffs could not have been dismissed. The only defence of the defendants is that the bataidars surrendered their possession but there is no reliable evidence in support of the same. If there was no surrender or abandonment by Budhu Khatwa and Hito Khatwa, there was no question of coming into possession of Jogendra Narain Singh arises. Therefore, the



plaintiffs clearly asserted that a farji deed was created by the defendants which was never acted upon. Since the bataidars continued in possession and subsequently they acquired right of occupancy raiyat, Babu Jogendra Narain Singh had no title to transfer the property in favour of the contesting defendants. The learned court below discarded the evidences of the plaintiff's witnesses on flimsy and untenable grounds. So far the compromise in 145 Cr.P.C. proceeding is concerned, the learned counsel submitted that the plaintiffs never signed the same and in fact, it was a forged compromise application. The learned counsel further submitted that for declaration of title, the defendants filed title suit but subsequently they withdrew the same which indicates that they had no title in the property but the learned court below has also not given effect to this act of the defendants-respondents. On these grounds, the learned counsel submitted that the First Appeal be allowed and the impugned judgment and decree be set aside and further, the plaintiff's suit be decreed.

9. On the other hand, the learned counsel, Mr. Anish Chandra Sinha appearing on behalf of the contesting defendants-respondents submitted that the sale deeds of the plaintiffs are of the year 1953 and 1963 and they have purchased the land from the heirs of bataidars. According to the learned counsel, the bataidars cannot



transfer title particularly when they themselves have no title in the property. They were only bataidars and according to the pleading, they were giving half produce to Babu Jogendra Narain Singh. Because the suit land were jungle at that time there was no sufficient produce even because of hard labour by the bataidars i.e. Sikmidars. They surrendered their possession in favour of the owner, Babu Jogendra Narain Singh sold the suit land to the defendants 1st party by registered sale deed in the year 1939. This sale deed was never challenged either by Budhu Khatwa or Hito Khatwa or by their sons. The plaintiffs also never challenged the sale deeds, therefore, there cannot be any presumption that the sale deed executed by Jogendra Narain Singh in favour of defendants 1st party is null, void and/or not acted upon. According to Section 31 of the Specific Relief Act, the plaintiffs or plaintiff's vendors or their ancestors could have sought for a declaration with respect to the registered sale deeds within the period prescribed under the Limitation Act, 1908. Since the sale deed was never challenged within the limitation period, it became final and now unless the sale deed is set aside, the plaintiff's title cannot be declared on presumption and assumption that there was no surrender or abandonment. This question could have been examined in the case if the sale deed executed by the vendors of the defendants is under challenge. In the present suit which is for declaration of title and



recovery of possession, the genuineness or otherwise or the validity or otherwise of the registered sale deed of the year 1939 in favour of defendants 1st party cannot be examined. Regarding surrender, the defendants have examined many witnesses and admittedly, there is no documentary evidence in support of the surrender produced either by the plaintiffs or by the defendants, therefore, the court below on the basis of appreciation of evidence coupled with the registered sale deed of the year 1939 rightly concluded that there was surrender and then the property was sold to the defendants. Further, in commutation proceeding, these defendants were never made party and, therefore, the court below has rightly held that the order under the commutation proceeding will not be binding on the defendants. On these grounds, the learned counsel submitted that the First Appeal be dismissed with cost.

10. In view of the above rival contentions of the learned counsel for the parties, the point arises for consideration is as to “whether the plaintiffs-appellants are entitled to the relief for declaration of title over the suit property” and “whether the impugned judgment and decree are sustainable in the eye of law?”

11. According to the plaintiffs, they have purchased the properties from the heirs of Budhu Khatwa and Hito Khatwa who were the bataidars. On the contrary, according to the defendants 1st



party, they purchased the property from Babu Jogendra Narain Singh who was the owner of the property. It is not disputed that the said Budhu Khatwa and Hito Khatwa were the bataidars and they were giving half produce to the owner Babu Jogendra Narain Singh. The question is whether the bataidars had the right to transfer the title of the property. The property had already been purchased by the contesting defendants in the year 1939 from Jogendra Narain Singh. The dispute is whether the bataidars surrendered their possession or not. The parties had adduced evidences in support of their respective cases. The plaintiffs examined P.W.1 to 4, P.W.6 and P.W.8 who have stated that plaintiffs are coming in possession of the property after purchase. P.W.9 is the plaintiff No.1 himself. All these witnesses have only stated that the plaintiffs are in possession of the property. It is admitted fact that the proceeding under Section 145 was initiated prior to 1950 and the lands were attached. The plaintiffs claimed title and possession on the basis of the sale deeds of the year 1953 and 1963. The witnesses had stated in their evidences that the lands are still parti. Now, the question is if the witness's testimony is accepted that the lands are still parti which are under attachment and the same have not been released from attachment, how the purchasers came in possession. There is no explanation at all.

12. On the contrary, many witnesses have been



examined i.e. 19 witnesses on behalf of defendant Nos.1 to 27. The defendant No.28 has also examined two witnesses. D.W.12 is defendant No.1 himself and the other witnesses D.W.2 to 9 have deposed to the effect that there was compromise in 145 Cr.P.C. proceeding and the parties are coming in possession of their share according to the compromise in the said proceeding. The witnesses have also stated that the properties were sold by Jogendra Narain Singh in favour of the defendants 1st party after coming into possession of the properties when the properties were left by the bataidars. D.W.6 stated that his land is by the side of the disputed land. D.W.7 is of same village and is also a boundary raiyat of the disputed land. D.W.8 and 9 claimed to be bataidars of the defendants 1st party who stated that they are cultivating the lands on behalf of contesting defendants. The defendants have also produced copy of the order of the compromise in 145 Cr.P.C. proceeding, Exhibit H/2. From perusal of this order, it appears that the lands detailed in the compromise application have already been released, therefore, the case of the plaintiffs that the lands are still under attachment is wrong.

13. The plaintiffs-appellants have challenged this compromise arrived at in 145 Cr.P.C. proceeding between the parties. So far this challenge by the plaintiffs is concerned, it may be mentioned here that in 145 Cr.P.C. proceeding, the only point to be



decided is with regard to the actual physical possession and it has got no meaning regarding the title of the parties. Therefore, even if there is compromise between them in 145 Cr.P.C. proceeding, it will neither create title in favour of a person who has got no title. At best, it can be said that on the basis of the compromise, a party came in possession of the property. On the basis of this compromise, title cannot be claimed.

14. It is settled principles of law that if a party has got no title to a property then by mere compromise i.e. admission, the title will not be vested on him. The requirement of the T.P. Act is that title will be transferred only after execution of a registered document for consideration if the value of the property is more than Rs.100. Now, therefore, here the compromise arrived at between the parties in the proceeding under Section 145 Cr.P.C. is not a decisive factor for decision on the question of title. The question is whether the plaintiff has the title on the basis of the purchases made by them or whether the defendants 1st parties are the title holder on the basis of the purchases made by them. So far this question is concerned, it is admitted fact that defendants 1st party and defendants 2nd party have purchased the land from Babu Jogendra Narain Singh in the year 1939 i.e. dated 07.11.1939, Exhibit D and 08.11.1939, Exhibit C-1. It is submitted that Babu Jogendra Narain Singh is the raiyat. It is not the



case of the defendants that even after selling the property by Jogendra Narain Singh, the purchaser did not come in possession and the bataidars continued in possession of the property. Here, in the present case, the plaintiffs have not claimed any relief with regard to the sale deed in favour of the defendants 1st party. There is no dispute that Jogendra Narain Singh had no title to transfer the property.

15. The Hon'ble Supreme Court in the case of **Prem Singh and others v. Birbal and others, (2006) 5 Supreme Court Cases 353** has held that "there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

16. In the present case, as stated above, the validity of the registered sale deed of the year 1939 is not under challenge. Likewise, the title of Babu Jogendra Narain Singh is also not under challenge. Therefore, a title holder has transferred the title to the defendants by registered sale deed in the year 1939.

17. The Hon'ble Supreme Court in the case of **Md. Noorul Hoda v. Bibi Raifunnisa and others, (1996) 7 Supreme Court Cases 767** has held that "when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle



in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.” In the present case, unless this registered sale deed which is prima facie valid, legal and genuine executed by the owner raiyat for consideration is set aside, there cannot be declaration of title of the plaintiffs because they have purchased the property in the year 1953 or 1963 that too from the bataidars.

18. The learned counsel for the appellants submitted that proceeding under Section 40 of the Bihar Tenancy Act was filed by the plaintiffs and the kind rent was commuted to cash rent in the year 1948-49 which clearly indicates that after purchase, the defendants 1st party never came in possession and in fact, the present plaintiff's vendors were in possession of the property. So far this submission is concerned, admittedly, the defendants 1st party were not made party in commutation proceeding, therefore, any order passed therein will not be binding on the defendants 1st party. Further, on the basis of this commutation order, no finding can be recorded that the defendants 1st party never came in possession and that their title which they acquired by the sale deed of the year 1939 divested in favour of the present plaintiffs or their vendors. However, as I have stated above, this order will not be binding on the defendants 1st party.



19. The Hon'ble Supreme Court in the case of **Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo, (2009) 5 Supreme Court Cases 713** has held that the registered sale deed is presumed to be valid unless the contrary is proved. The onus is on the person who challenges the same to show that it is either not acted upon or a sham transaction. Here, as stated above, the sale deed of the year 1939 is not at all under challenge. No relief has been claimed by the plaintiffs. It is settled principles of law that a registered sale deed is presumed to have been validly executed with all its legal consequences and the document cannot be said to be void ab initio as there cannot be presumptive invalidity attached to such a transaction. The document remains valid on principle that apparent state of affairs is real state of affairs until facts invalidating the same are established. As stated above, in the present case, the plaintiffs have not produced any such evidence so as to invalidate the sale deed executed by Babu Jogendra Narain Singh in favour of the defendants 1st party.

20. In view of the above discussion of the evidences, I find that the plaintiffs failed to prove that even after sale in favour of defendants 1st party in the year 1939, the bataidars continued in possession and they never surrendered the properties. On the contrary, the defendants 1st party have been able to prove that in fact, the properties were surrendered and Babu Jogendra Narain Singh came in

possession. The properties were already released from the attachment under Section 145 Cr.P.C. The plaintiffs also failed to prove their title and possession on the basis of the sale deeds purchased by them from the heirs of Budhu Khatwa and Hito Khatwa as they failed to prove the title and possession of their vendors.

21. In view of my above finding, the finding recorded by the court below is hereby confirmed and it is held that the plaintiffs are not entitled for any declaration with respect to their title.

22. In the result, I find no 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 costs.

(Mungeshwar Sahoo, J)

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