

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.240 of 1978

**Against the Judgment and Decree dated 31.01.1978 passed by 2nd
Addl. Subordinate Judge, Ara in Title Suit No.13 of 1975 / 28 of
1977.**

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Kewal Kishun Singh & Ors

.....Defendants Ist set-Appellants

Versus

Satya Narayan and Ors.

.....Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Nagendra Rai, Advocate
 Mr. Naveen Nikunja, Advocate

For the Respondent/s : None

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Dated : 22nd day of April, 2015

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL J U D G M E N T

1. The defendants have filed this First Appeal against the Judgment and Decree dated 31st January, 1978 passed by learned 2nd Addl. Subordinate Judge, Ara in Title Suit No.13 of 1975 / 28 of 1977 whereby the learned Court below decreed the plaintiff's suit for declaration of title and directed the appellant to receive the balance consideration amount of Rs.3300/- and to hand over the original sale deed to the plaintiff respondent.

2. The plaintiff respondent filed the aforesaid suit praying for declaration that the suit property is the purchased land of the plaintiff and the plaintiffs acquired right, title and interest in the suit property on the basis of the registered sale deeds.

3. The plaintiff prayed for the aforesaid relief alleging that the defendants appellants have given the suit property in Rehan to the plaintiffs after taking Rs.13,200/- . Possession was also handed over to the plaintiffs. When the defendants appellants were in need of money, they approached the plaintiffs for selling the suit property for Rs.17,000/- and the parties agreed that Rs.13,200/-, the Rehan money is to be adjusted with the other Rs.500/- loan and the balance of Rs.33,00/- was to be paid by the plaintiff in cash to the defendant appellant at the time of exchange of equivalents. According to this agreement, three sale deeds were executed and registered with respect to the suit property. The first sale deed was for Rs.10,000/- in which Rs.77,00/- was adjusted and Rs.2300/- was to be paid in cash at the time of handing over the exchange receipts and the second and third sale deeds were for Rs.3500/- cash wherein Rs.3000/- was to be adjusted in each sale deed and the remaining Rs.500/- in each sale deed was to be paid in cash at the time of exchange of this equivalents. According to the plaintiff, the plaintiff tendered the money on several occasions and asked the defendant to hand over the

receipts but the defendant appellant avoided and ultimately appellants refused to hand over the receipt. Hence, the suit was filed.

4. The appellant filed contesting written statement alleging that the appellants were in dire need of money, therefore, they agreed to sell and the intention of the parties was that the title with respect to the suit property will pass only on payment of full consideration amount. Since the appellants were in dire need of money, they after registration of the sale deed demanded several time to the plaintiff to pay the balance consideration amount of Rs.3300/- but the plaintiff did not pay the same, therefore, the appellants repudiated the contract between the parties and then the part of the suit property was transferred by them to the defendant No.5 because of the fact that they were in dire need of money. Since the plaintiff did not pay the balance consideration amount, no title passed on to him, in such circumstances, the plaintiff's suit is liable to be dismissed.

5. On the basis of the aforesaid pleadings, the learned trial Court framed the following issues :

- (i) Have the plaintiffs got any valid cause of action to the suit?
- (ii) Is the suit as framed maintainable?
- (iii) Is the suit barred by limitation?
- (iv) Is the defendant No.5 bonafide purchaser of suit property for value without notice of the alleged transaction?
- (v) Are the alleged sale deed of the plaintiffs is valid legal and for consideration and are they binding on the defendant

No.5?

- (vi) Was there any valid tender of cash money by the plaintiff as alleged?
- (vii) Are the plaintiffs entitled for the decree as claimed ?
- (viii) Are the plaintiffs entitled for decree of permanent injunction as prayed for?
- (ix) To what other relief or reliefs, if any, are the plaintiffs entitled?

6. After trial, the learned trial Court came to the conclusion that the intention of the parties was that the title will pass only on the registration of the sale deed and, therefore, decreed the plaintiff's suit directing the defendant to receive the balance consideration amount of Rs.3300/- and to hand over the receipt / sale deed to the plaintiff respondent.

7. The learned counsel, Mr. Nagendra Rai, appearing on behalf of the appellant has submitted that in this case the only interpretation is to be made with respect to the sale deeds on the basis of which the plaintiff is claiming title and, therefore, oral evidence is not necessary to be gone into. The Court below also interpreted the recitals made in the sale deeds and referring the different decisions of this Court right from 1949 Patna, 1950 Patna 1964 Patna held that the intention of the parties was that title will pass on the registration of the sale deed. According to the learned counsel, without referring to the ratio decidendi decided in those decisions, the Court below wrongly



interpreted the issues and wrongly held that title passed only on the registration of the sale deeds. The learned counsel further submitted that all these decisions referred by the Court below in the impugned Judgment have already been taken into notice in Division Bench of this Court in the case of **Baldeo Singh & Ors. Vs. Dwarika Singh 1978 Patna 97** and has held that title will pass only after payment of full consideration amount. The learned counsel further submitted that the fact of the case in the case of **Baldeo Singh (Supra)** is in similar footing as in the present case.

8. The learned counsel further submitted that the sale deed was executed on 29.3.1974 and since the appellants were in need of money, the plaintiff was approached to pay the balance consideration amount but when he did not pay, the contract was repudiated by the appellant by executing cancellation deed on 15.05.1974 and they sold part of the property to the defendant No.5 on 6.6.1974. The learned counsel further submitted that it is not expected that the vendor, i.e., the appellant would have waited for indefinite period as they were in dire need of the money, they agreed to sell 3 acres 11 decimal of lands for Rs.17,000/- only and from the facts of the case, it would be evident that the property was repeatedly kept in mortgage with the plaintiff which speaks about the needs of money of the appellant. On these grounds, the learned counsel submitted that the impugned

Judgment and decree are liable to be set aside and the plaintiff respondent's suit be dismissed.

9. As stated above, nobody appeared on behalf of the respondent although notice has already been validly served on the learned counsels whose name are printed in the daily cause list.

10. In view of the submission of the learned counsel for the appellant, the only point arises for determination in this First Appeal is as to whether by execution and registration of the three registered sale deed, title passed on to the plaintiffs respondents although admitted fact is that the balance consideration amount of Rs.3300/- is still to be paid and the original sale deed and the registration receipt was never handed over by the appellants to the plaintiffs.

11. It is the specific case of the plaintiff that earlier the suit property was mortgaged by the appellants in favour of the plaintiff. The plaintiff himself has produced mortgaged deeds which have been marked as ext.'1'series. From perusal of these mortgage deeds, it appears that the property in suit have been mortgaged by the appellant in favour of the plaintiff repeatedly right from the year 1965, 1968, 1969 etc. The further case of the plaintiff as pleaded in the plaint is that the defendants were in need of the money, therefore, agreed to sell mortgaged property, i.e., the suit property in favour of the plaintiff



for Rs.17,000/-. The earlier mortgage money and the other loan amount to the extent of Rs.13200+500=13700/- was to be adjusted towards the consideration amount and the balance amount was to be paid in cash at the time of exchange of equivalents. Pursuant to this agreement, three sale deeds was executed and registered. So far this case is concerned, the defendants' pleading is that the plaintiff never paid the balance consideration amount of Rs.3300/- because the defendant were in urgent need of money, the defendants repudiated the agreement and a cancellation deed was executed and thereafter part of the suit property was sold. Now, therefore, it is admitted fact that the balance consideration amount of Rs.3300/- was never paid by the plaintiff till the contract was repudiated on 15.05.1974. The sale deeds are dated 29.03.1974. Therefore, now, it becomes admitted fact that during this period, i.e., 29.3.1974, the balance consideration amount of Rs.3300/- was never paid by the plaintiff to the defendant. The plaintiff has issued legal notice for the first time on 24.6.1974, i.e., after repudiation of the sale deed and after sale in favour of the defendant No.5.

12. D.W.9 who is appellant No.4 in his evidence stated that because the appellants were in dire need of money, they repeatedly demanded the balance consideration amount of Rs.3300/- but the plaintiff did not pay. According to the learned counsel for the

appellant, in view of this statements, the appellants had no option but to sell the property in favour of third person because of compelling circumstances.

13. In the decision relied upon by the learned counsel in the case of *Baldeo Singh (Supra)*, the Division Bench has held that **‘every party to an agreement is accepted to observe the terms of the agreement in any sales in spirit and even in the instant case the plaintiff having agreed to pay the consideration money at the time of the execution and registration of the document should have paid the same.’** In the present case also, it was agreed that the balance consideration amount was to be paid at the time of exchange of equivalent. It is admitted fact that this receipt which is commonly known as *ta khubzul badlain* is given to the vendor at the time of presentation of the sale deed itself. There is no explanation as to why the plaintiff did not pay the balance consideration amount for last two months or till the contract was repudiated by the appellant. In the said decision, it has also been held that the vendor cannot be expected to wait indefinitely to enable the vendee to perform his part and he is at liberty in such a situation to sell the property to another person and in fact where the tender or payment of the consideration money is made by the vendee before the vendor repudiated the contract, the vendor will acquire valid title over the property covered in question. In the

present case as stated above before repudiation, the balance consideration amount was never paid. From the conduct of the parties and circumstances that subsequently on 6.6.1974, appellants were compelled to sell part of the suit property to satisfy their need of money.

14. From perusal of the Judgment of the Court below, it appears that the Court below sewed away with the recital in the sale deed wherein it has been mentioned that after registration of sale deed, the plaintiff will be at liberty to mutate his name and the possession of the property was handed over to the plaintiff and, therefore, according to the Court below, title passed on the registration of the sale deeds.

15. So far this decision of the trial Court is concerned, it may be mentioned here that admittedly the registration receipt was not handed over to the plaintiff. Admittedly, the balance consideration amount of Rs.3300/- was not paid by the plaintiffs nor it was tendered to the defendants prior to its repudiation by the defendants.

16. The Hon'ble Supreme Court in the case of **Janak Dulari Devi vs. Kapildeo Rai 2011 (6) SCC 555** has held that 'as per practice of *ta khubzul badlain* prevalent in Bihar (that is, title to the property passing to the purchaser only when there is exchange of equivalents), where a sale deed recites that the entire sale



consideration has been paid and possession has been delivered, but the registration receipt is retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed, the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the registration receipt is obtained by the purchaser in exchange. In such cases, on the sale deed being executed and registered, the registration receipt (which is issued by the Sub-Registrar) authorizing the holder thereof to receive the registered sale deed on completion of the registration formalities, is received and retained by the vendor and is not given to the purchaser. The vendor who holds the registration receipt will either receive the registered document and keep the original sale deed in his custody or may keep the registration receipt without exchanging it for the registered document from the Sub-Registrar, till payment of consideration is made. When the purchaser pays the price (that is, the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession. If the payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration receipt/registered document, as the case may be, which is in his



custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale. The effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is, *ta khubzul badlain*.

17. It appears that in the case before the Supreme Court in the sale deed itself, it was recited if the consideration amount was paid but the registration receipt was not handed over to the purchasers, the vendor retained the registration receipt, in such circumstances, the Supreme Court has held that the title will not pass till the full consideration amounts agreed between the parties is paid and the registration receipt is handed over in favour of the purchasers. It appears that the present case is in better footing than the said case. Admittedly, in this case, there is balance consideration amount of Rs.3300/-, registration receipt is not handed over to the plaintiff. The plaintiff is also praying for recovery of possession in the suit and moreover according to the case of the parties the possession of the

plaintiff is in the capacity of mortgagee.

18. In view of the above facts and circumstances of the case and the settled law laid down by this Court as well as by the Supreme Court, I find that only because of registration of three sale deeds, title did not pass to the plaintiff. The plaintiff also failed to prove that he performed his part of the contract prior to the repudiation of the contract by the appellants. Therefore, the finding of the Court below on this point is hereby reversed.

19. In the result, this Appeal is allowed. The impugned Judgment and Decree are set aside. The plaintiff's suit for declaration of title is hereby dismissed. In the facts and circumstances, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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