

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.119 of 1990

=====

Smt. Sarita Devi W/o Pramod Kumar of Village- Lakhisarai, P.S. Lakhisarai,
District- Munger, at present Mohalla- Khandakpar, P.S. Biharsharif, District-
Nalanda.

Plaintiff.... Appellant

Versus

1. Sabita Devi W/o Arjun Sao, resident of Village- Bankipur Gorakhpur, P.S. Fatwa, District- Patna, at present Mohalla- Khandakpar Biharsharif, District- Nalanda.
2. Shri Gopal Sao S/o Late Jagarnath Sao of Mohalla- Khandakpar Town Biharsharif, District- Nalanda.
3. Shambhu Prasad S/o not known at present Mohalla- Khandakpar Town Biharsharif, District- Nalanda.
4. Krishna Prasad Singh S/O Late Ramkeshwar Prasad Singh, Village- Gaurav Nagar, P.S. Parwalpur, District- Nalanda, at present residing at Mohalla- Bichali Khandak, P.S. Biharsharif town, District- Nalanda

Defendants.... Respondents

=====

Appearance :

For the Appellant : None.

For Respondent Nos. 1 to 3 : None.

For Respondent No.4 : Mr. Pramod Kumar Gayadutta, Advocate.
Mr. Abhishek Kumar Mishra, Advocate
Mr. Ritesh Kumar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date: 14-05-2015

The instant appeal has been preferred against the judgment and decree dated 5th day of February, 1990 passed by Sri Ramanuj Narain, the then 3rd Subordinate Judge, Nalanda in Title Suit No. 08 of 1988/ 04 of 1988, whereby and whereunder the suit was dismissed on contest with cost.

2. The appellant-plaintiff has filed the aforesaid title suit challenging the sale deed dated 21.10.1986 executed by Jhalia Devi @ Jhalo Devi in favour of Sabita Devi as forged, showy, void and

without consideration and not binding upon the plaintiff and further for partition of the suit lands.

3. In short, the case of the plaintiff is that the suit property area two decimal was the property of Most. Jhalia Devi, the mother of the plaintiff and defendant no.1 Sabita Devi. Jhalia Devi died on 5th November, 1986 leaving behind the plaintiff, defendant no.1 and Gopal Sao, defendant no.2 (husband of Jhalia Devi) as legal heirs. After death of Jhalia Devi both the daughters and father Gopal Sao came in joint possession, but the defendant started claiming that defendant no.1 has purchased the suit property from Jhalia Devi through the registered sale deed dated 20.10.1986. The defendant no.1 applied for mutation of her claim which was objected by the plaintiff in Bihar Sharif Municipality but the objection was rejected and the name of defendant no.1 was mutated. Jhalia Devi was aged about 45-50 years in the year 1986 and as she was suffering from jaundice she was unable to understand the normal course of affairs and she has not put her L.T.I. on the sale deed rather by impersonating another lady in place of Jhalia Devi the sale deed was executed. Gopal Sao, the husband of Jhalia Devi has not been made identifier rather one Mahendra Kumar is the identifier. The sale deed was never read over and explained to Jhalia Devi. The husband of defendant no.1 took away Jhalia Devi in his house on the ground of treatment where she



died on 05.11.1986. The value of the property is also not correctly mentioned as the value of the house was not less than Rs. 1 lakh -1 ½ lakh and valuation has been given only Rs. 2,000/- in the sale deed. The defendant no.3 was the tenant of Jhalia Devi and he has gone in collusion with defendant no.1. There was no necessity to sale the suit house as Jhalia Devi had got sufficient income from rent to maintain herself and Gopal Sao was also earning by selling Choklets and fruits. Jhalia Devi being pardanashin lady was under influence of defendant no.1 and her husband and she used to rely upon defendant no.1. Further case of the plaintiff is that defendant no.1 earlier agreed to execute Ladavi, but later on she refused and became ready to commit riot and as such the suit has been filed. There being unity of title and possession amongst the plaintiff, defendant no.1 and defendant no.2 and as such the plaintiff has got 1/3rd share.

4. All the three defendants had filed joint written statement, stating therein, that due to expenses in the marriage of the plaintiff there was shortage of money and as such Jhalia Devi declared to sell the suit property and accordingly the defendant no.1 became ready to purchase the suit property and Jhalia Devi sold the suit property to defendant no.1 after executing a registered sale deed dated 21.10.1986 on receiving the consideration amount of Rs. 2,000/- and since then defendant no.1 came in exclusive possession over the suit



property. The defendant no.1 built up pucca room after demolishing khaprail room in front of the house area 10ft. 6 inches x 4ft. The defendant no. 1 let out one room of the suit house to defendant no.3 on monthly rental of Rs. 80/- on 01.04.1987 and since then the defendant no.3 is tenant of defendant no.1. According to defendants Jhalia Devi was not a pardanashin lady and she did not die on 05.11.1986 rather she died on 16.12.1986. The plaintiff knew that Jhalia Devi is going to sale the suit property but no objection was raised. Jhalia Devi was healthy both mentally and physically and she executed the sale deed with full understanding after putting her L.T.I. and Mahendra Kumar who is son of younger brother of Jhalia Devi became identifier. The other witnesses are also independent witnesses. The value of the suit property is Rs. 2000/- only. Suddenly, Jhalia Devi became ill in the month of December, 1986 and the husband of defendant no.1 brought her at Fatuha for her treatment, but just after three days she died. Jhalia Devi was running a shop of Chunni-Bhusi and she sold the suit house to meet the legal necessity. Further case of the defendant is that one Krishna Prasad had purchased the land just besides the suit house and in collusion with Krishna Prasad and Santosh Kumar the suit has been filed by the plaintiff and as such the suit is fit to be dismissed.

5. On the basis of the pleadings of both the parties the

following issues have been framed on recast:-

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiffs got any cause of action to sue?
- (iii) Is there any unity of title and possession amongst plaintiff, defendant no. 1 and 2 over the suit property?
- (iv) Is the sale deed dated 21.10.86 executed by Jhalia Devi @ Jhalo Devi in favour of Sabita Devi forged, fraudulent, shame and without consideration and executed by undue influence?
- (v) Was Jhalia Devi a pardanashin and of weak mentality lady?
- (vi) Had Jhalia Devi any necessity for selling the suit property?
- (vii) Is the plaintiffs entitled to a decree for partition and if so to what extent?
- (viii) To what other relief or reliefs if any plaintiff is entitled to?

6. Both the parties adduced oral and documentary evidences and after hearing the learned court below dismissed the suit. The learned court below has taken issue nos. 3, 4 and 5 together and have come to the conclusion that there is no unity of title and



possession amongst the plaintiff, defendant nos.1 and 2 over the suit property. Jhalia Devi was not a pardanashin and weak mentality lady and she has validly executed sale deed dated 21.10.1986 in favour of Sabita Devi and that the sale deed is not forged, fraudulent, sham and without consideration and is not under undue influence. Jhalia Devi sold the suit property to meet the legal necessity. Accordingly, other issues were also decided against the plaintiff and it has been held that the plaintiff has got no cause of action and the plaintiff is not entitled to any share.

7. During pendency of this appeal the sole appellant executed registered sale deed in favour of Basudeo Prasad with respect to her share in the suit property and that Basudeo Prasad executed sale deed in favour of Krishna Prasad Singh and that Krishna Prasad by order dated 03.08.2011 passed in this appeal was added as respondent no.4. During hearing the learned counsel for respondent no.4 only appeared and he has been heard.

8. On behalf of intervener respondent no. 4 it has been argued that the impugned judgment is otherwise bad and illegal. The evidences adduced on behalf of the plaintiff has not been appreciated correctly, whereas, the evidences adduced on behalf of the defendants had been relied upon by the learned court below wrongly. From Exts. 2 and 3 it is apparent that Jhalia Devi was suffering from jaundice and



the compounder of Dr. K.N. Mehta and Dr. Dinesh Prasad has proved those exhibits but inspite of that the learned court below has not appreciated the same correctly. Gopal Sao, the husband of Jhalia Devi has not been made identifier or witness over the sale deed and the explanation regarding his not becoming the identifier and witness is not reasonable as Gopal Sao used to sign and he being D.W. 2 has admitted that he knows to sign and on deposition he had signed. Mahendra Kumar who is the identifier has not been examined and as such adverse inference ought to have been drawn for his non examination. Step for mutation was taken after death of Most. Jhalia Devi. There was no delivery of possession. Jhalia Devi remained in the same house with her husband. There is nothing on the record that defendant no. 1 allowed Jhalia Devi with her husband to live in the suit house. There is no evidence at all that Jhalia Devi had ever spoken to any one about the sale of the suit property to respondent no.1. In the sale deed although necessity was mentioned for business and for her food but it is being stated that the debt was incurred at the time of marriage of plaintiff and accordingly evidence has been led which is against the contents of the sale deed in question. There is no evidence that business of Jhalia Devi was not going on and she was starving. In the written statement in para-10 and in the evidence third case has been made out to justify genuineness of the sale deed. Jhalia



Devi and her husband were possessed with money and both were doing business which is evident from D.W.2 paragraph nos. 20 and 21, D.W.3 paragraph nos. 6 and 22. Thumb impression has been disputed by the plaintiff but the same was not got tallied by the admitted thumb impression of Jhalia Devi by bringing admission register from the school. It is well settled principle of law that where there are so many issues one of which was proved by one party and other by another party, the burden of proof loses its importance. Section 92 of the Evidence Act bars any sort of oral evidence to vary or contradict the document. Accordingly, it has been submitted that the plaintiff has succeeded in proving her case that the sale deed was not executed by Jhalia Devi and it is forged, fabricated, showy and void document as Jhalia Devi was pardanashin lady.

9. The points for consideration in this appeal is as follows:-

- (1) Whether Jhalia Devi was pardanashin lady and she was suffering from ailment of jaundice and was unable to understand at the time of execution of sale, i.e. on 21.10.1986?
- (2) Whether Jhalia Devi has got necessity for selling the suit property and whether the

sale deed dated 21.10.1986 executed by Jhalia Devi @ Jhalo Devi in favour of Sabita Devi is forged, fraudulent, sham and without consideration and executed under undue influence?

(3) Whether the plaintiff is entitled for decree of partition and if so to what extent?

10. Point No. 1:- According to the plaintiff Jhalia Devi was pardanashin lady and P.Ws. 4 and 5 have also deposed that Jhalia Devi was pardanashin lady, whereas, the defendants have stated that Jhalia Devi was not a pardanashin lady and she used to run a shop of Chunni-Bhusi and for that she used to purchase those items from other dealers. The evidence of P.W.2 para-14 and P.W.4 para-13 are important in this regard besides the evidence of D.Ws. P.W.2 in para-14 has stated specifically that Jhalia Devi was not a pardanashin lady and P.W. 4 in para-13 has stated that Jhalia Devi used to run a shop. D.W. 2 is the husband of Jhalia Devi. He has also stated that Jhalia Devi used to sale Chunni-Bhusi and she used to purchase the same from the mill of Ram Khelawan and Binod and some time from Mohalla- Bhairapar and Khaddarpar. D.W. 3 has also stated that her mother used to run the shop of Chunni-Bhusi. Similarly, D.W.4 has



also deposed in his evidence that Jhalia Devi was running a shop of Chunni-Bhusi and she used to bring Chunni-Bhusi herself. D.W. 5 is the father of Jhalia Devi. He has stated that Jhalia Devi was not a pardanashin lady. D.W.6 and D.W.8 have also stated that Jhalia Devi used to sale Chunni-Bhusi. D.W. 10 is the son-in-law of Jhalia Devi and he has also stated that she used to sale Chunni-Bhusi. D.W. 11 has also deposed that she used to sale Chunni-Bhusi. P.W. 7 has admitted that at the time of her brother's marriage Jhalia Devi had gone to see girl and she had admitted further that her mother and grand mother used to sale Chunni-Bhusi. She has also stated that her mother had gone to search boy at the time of her marriage. All these things have been considered by the learned Sub. Judge and on the basis of these evidences the learned Sub. Judge has rightly held that Jhalia Devi was not a pardanashin lady and of weak mentality. The husband and father of Jhalia Devi have supported the case of defendant no.1 who are important witnesses. It is the case of the plaintiff that just before execution of the sale deed Jhalia Devi was suffering from jaundice and was not capable of understanding normal affairs. P.W. 7 has stated in her evidence that all the affairs of Jhalia Devi was managed by Arjun Prasad, husband of defendant no.1 and her mother was relying upon him. Her mother acted at the dictate of Arjun Prasad and her mother was suffering from jaundice. P.Ws. 3, 4,

5 and 6 have also deposed that Jhalia Devi was acting as per dictate of Arjun Prasad and she was suffering from jaundice. P.W. 6 has further stated that Jhalia Devi lost her senses due to jaundice. P.W. 7 has also stated that some time her mother lost her senses due to jaundice.

11. On behalf of plaintiff Ext. 2 is prescription of Dr. K.N. Mehta dated 14.10.1986 of Jhalia Devi, Ext. 3 is report on the examination of stool of Jhalia Devi. These prescriptions have been proved by P.W.8 Chandramauli Choudhary who has stated that he is the assistant of Dr. K.N. Mehta. During cross-examination in para-3 this witness had admitted that he has got degree of D.H.M.S. and he has got no degree of Allopathic. He has got no license of compoundary. In para-5 he has admitted that he has not received any summon and he has come to depose as per instruction of Pramod, husband of the plaintiff and he has got friendship with Pramod. Further, the doctors who have given Exts. 2 and 3 have not been examined and as such no reliance can be placed upon Exts. 2 and 3. On the other hand, D.W. 2 the husband of Jhalia Devi has stated that Jhalia Devi went in the Registry office on the date of execution of the sale deed and she sold the same to Sabita Devi. In para-8 he has further stated that he and his wife went to purchase stamp and at the dictate of Jhalia Devi contents of the sale deed was scribed and thereafter she put her L.T.I. as the contents were read over to her by



scribe. The witnesses and identifier acted as per advice of Jhalia Devi and as he was illiterate and as such he did not become identifier and witness. This witness has stated that Jhalia Devi went before the Registrar and admitted the execution and further her identification was done by Mahendra Prasad. D.W. 3 has also stated that on the date of execution her mother was well and after receiving the consideration amount of Rs. 2,000/- she put her L.T.I. and on her dictation Mahendra Prasad become identifier and other witnesses become witness and before the Registrar also she admitted the execution. D.W.4 had got the house adjacent to the suit house. He has stated that Jhalia Devi sold the suit house in 1986 for consideration amount of Rs.2,000/- and she has proclaimed to sale the house. D.W. 5 is the father of Jhalia Devi, he has stated in para-3 that to refund the amount which she has taken as loan Jhalia Devi sold her house during his knowledge. He has stated that at the time of execution of sale deed Jhalia Devi was not ill. D.W.6 has got house adjacent to the suit house. He has also stated that Jhalia Devi sold her house to Sabita Devi as there was some loan. D.W.7 is the witness to the sale deed. He has stated that the deed writer scribed the deed at the instruction of Jhalia Devi and after scribing the deed he read over the contents to her. He has also stated that Jhalia Devi received Rs. 2,000/- from Sabita Devi and at the instruction of Jhalia Devi he signed as witness



and Mahendra Prasad became identifier. He further states that stamp was purchased by him and he has proved his signature as Exts. B and C and he has proved the sale deed as Ext. A. In para-4 she has stated that at the time of execution of sale deed Jhalia Devi was in full sense. D.W. 8 has got adjacent house to the suit house. He is the brother of Gopal Sao, husband of Jhalia Devi. He has stated that Jhalia Devi sold the suit house after taking consideration money of Rs. 2,000/-. D.W. 9 is the deed writer of the sale deed, Ext. 8. He has stated that at the instruction of Jhalia Devi he scribed the deed and consideration amount was also paid to Jhalia Devi in his presence. D.W. 10 is the husband of defendant no.1. He has stated that Jhalia Devi sold the suit house to Sabita Devi to repay the loan for Rs. 2,000/-. D.W. 11 has come to say that Jhalia Devi has taken Rs. 1500/- from him at the time of marriage of the plaintiff. D.W. 13 is also a witness of the sale deed dated 21.10.1986. He has stated that Jhalia Devi sold the suit house to her elder daughter and the scribe has read over the contents of the sale deed to Jhalia Devi and then Jhalia Devi put her thumb impression after receiving the consideration amount. During cross-examination in para-9 he has stated that from before he was identifying the wife of Gopal Sah. D.W. 14 has also stated that Jhalia Devi proclaimed to sale the suit house then she went to the house of Arjun Prasad, husband of defendant no.1 and stated that Jhalia Devi wants to sale the suit house

and the wife of Arjun Prasad purchased the same.

12. Thus, from careful consideration of the evidences available on the record it is manifest that Jhalia Devi was not suffering from jaundice before or at the time of execution of sale deed and she was capable of understanding everything. The plaintiff has failed to prove that Jhalia Devi was suffering from jaundice before execution of the sale deed. The two prescriptions Exts. 2 and 3 are not reliable and the learned Sub. Judge has rightly held in this regard. Accordingly, point no.1 is hereby decided in favour of respondent no.1 and against the appellant and respondent no.4.

13. Point No.2- In the sale deed exhibited it is mentioned that to meet the cost of fooding, living and to do business she is in need of money but in the pleading and evidence it has come that some loan has occurred due to the expenses meet in the marriage of plaintiff and to repay the loan the suit house was sold. The husbands of Jhalia Devi as has been discussed above, the father of Jhalia Devi as has been discussed above have stated that Jhalia Devi was in need of money and for meeting legal necessity she proclaimed to sale the suit house and then defendant no.1 purchased the same after paying the consideration amount of Rs. 2,000/-. On the ground that there is some variance from the contents of the sale deed and the pleadings and evidences adduced on behalf of the defendants no inference can be

drawn that Jhalia Devi was not in legal necessity to sale the suit house. The learned Sub. Judge has rightly held in this regard and this Court does not want to repeat the same.

14. Further contention of the learned counsel for respondent no.4 that the husband of Jhalia Devi was not identifier or witness goes to prove that the sale deed was forged, fabricated showy and void document. In my considered opinion, such argument is not convincing. The learned Sub. Judge has rightly discussed the pleadings and the evidences available on the record and has come to the conclusion as discussed in paragraphs 11 to 22 that Jhalia Devi was in legal necessity of selling the suit premises and the deed of sale dated 21.10.1986 has been executed by Jhalia Devi in favour of Sabita Devi validly and it is not a forged, fabricated, sham and without consideration and has not been executed under undue influence. The plaintiff in the pleading has admitted the execution of sale deed. The defendants have been able to prove that Sabita Devi paid the consideration amount to Jhalia Devi and at the instruction of Jhalia Devi the sale deed was presented and after formal checking Jhalia Devi admitted execution and payment of consideration amount before the Registrar. This Court does not want to repeat the evidences as discussed by the learned Sub. Judge. Accordingly, point no.2 is decided in favour of respondent no.1 and against the appellant and

respondent no.4.

15. Point No.3:- It is an admitted fact that the suit property was self acquired property of Jhalia Devi. During her life time the plaintiff, defendant no.1 and defendant no.2 were not entitled for any share as the heirs of Jhalia Devi and as during her life time Jhalia Devi sold the suit property to defendant no.1 and as such the plaintiff has got no right, title and interest over the suit property and accordingly respondent no. 4 has also not acquired any right, title and interest and the learned court below has rightly held that the plaintiff is not entitled to get a decree for partition over the suit property. The argument advanced by the learned counsel for respondent no.4 appears not convincing and is devoid of merit.

16. In the result, finding no merit in this appeal, the same is hereby dismissed but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

Abhay/-

U		T	
---	--	---	--