

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.707 of 1993

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Against the judgment and decree dated 31.07.1993 and 21.08.1993 respectively passed in Title Suit No. 15 of 1989 by Shri Markus Kindo, Subordinate Judge-I, Supaul.

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1. Md.Abdul Karim son of Late Md. Wasil
2. Bibi Hasina wife of Md. Abdul Karim
Both R/o Supaul Town, Ward No. 8, P.S.- Supaul, District- Supaul
.....Defendants/Appellants

Versus

Md. Abdul Rahman son of Md. Abdul Karim, R/o Supaul Town, Ward No. 8, P.S.- Supaul, District- Supaul
.....Plaintiff/Respondent

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
 Mr. Niranjan Kumar, Advocate
 Mr. Vipin Kumar Singh, Advocate
For the Respondent/s : Mr. Sayed Md. Najmul Bari, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
Date: 02-07-2015

The instant appeal is directed against the judgment and decree dated 31st July, 1993, decree signed and sealed on 21.08.1993 passed in Title Suit No. 15 of 1989 by learned Sub-Judge Ist, Supaul in the matter of Md. Abdul Rahman Plaintiff vs. Md. Abdul Karim and others defendants. The defendants are the appellants and the plaintiff is the respondent here.

2. The respondent/plaintiff has filed the suit for declaring sale deed No. 2631 dated 04.08.1986 executed in favour of defendant Ist Party as forged and illegal as well as for the cost of the suit.

3. Shortly stated, the case of the respondent/plaintiff is that the father of the plaintiff is defendant no. 1 who performed two marriages. From first wife Bibi Akhtarun Nissa the plaintiff and two daughters were born who have already been married and living with their husbands. The defendant no. 2 is the second wife and from her one son and three daughters were born. The mother of



the plaintiff acquired 7 Katthas of land in old Khata No. 607 new 517 Plot No. 3544 old and 2206 new in Mauja Supaul, Ward No. 7 and 2 Khattas 1 Dhur land in Khata No. 751, 539 and 566 new and Khesra No. 2952 and 2953 old and new Khesra No. 1407 situated at Mauja Supaul, Ward No. 9 as "Stri-Dhan" and she was in possession having title and interest thereon till her life time and after her death, the plaintiff acquired right title and possession over the same. On 10.08.1967 the plaintiff was born and the uncle of the plaintiff gifted him 10 Dhurs of land of Supaul Mauja situated at ward no. 8 on his Chhatari on 16.08.1967 through registered deed of gift No. 9645 dated 31.07.1968. The suit land was looked after by defendant no. 1. The plaintiff was got admitted in the school where date of birth has been registered as 04.01.1968 and accordingly, in the matriculation certificate the same date of birth has been entered. After the death of the mother of the plaintiff in the year 1970, the defendant no. 1 married with Hasina Khatoon and since then, the defendants were looking after him. Prior to year 1970, the family was joint, but on 19.09.1979, the defendant no. 1 separated from his elder brother Abdul Kadir and the landed properties were partitioned. The defendant no. 1 executed deed of gift bearing No. 8013 dated 12.08.1977 in favour of the plaintiff and defendant no. 2 in respect of 9 Khattas 12 Dhur and 10 Dhurkies of land and both the plaintiff and defendant no. 2 got the land half-half. At that time also the plaintiff was under the guardianship of the defendants. The defendant no. 1 got the plaintiff married in the state of his minority with Bibi Gulesa Khatoon in the year 1983 and Rukshadi took place on 10.02.1985 but the defendant was not pleased as their demand of dowry was not fulfilled and they were trying to get divorce by the plaintiff to his wife but the plaintiff was not willing and to marry with any other, resulting, the defendants remained displeased and conspired together and with that intention the defendant



no. 1 asked the plaintiff to transfer the land which he got from defendant no. 1 and also from his mother with assurance to get housing loan from Government, Housing Board Corporation and to construct house for him also. Further the defendant no. 1 has assured that thereafter, he would return the lands of his respective share. It was also stated that the defendant no. 2 is also ready to transfer the land of her share acquired through the deed of gift and during minority of the plaintiff, the defendant no. 1 got executed the sale deed on non-judicial stamp and got the signature of the plaintiff on 14.03.1985 without going through the contents of the sale deed and further without receiving any consideration amount. The said sale deed was put up before the Sub-Registrar, Supaul on 14.03.1985 for registration which was registered on 04.08.1986 vide sale deed no. 2631. The defendant no. 1 did not take any loan nor constructed any house. Thereafter, the defendant no. 1 started assaulting the plaintiff and got Gulesa Khatoon divorced forcibly on 19.04.1985 and further the plaintiff was got married at Nirmali Bazar and then, Gulesha Khatoon brought a case under the Registration Stamp Act against the plaintiff and defendant no. 1 before the Registrar-cum-Collector, Saharsa bearing no. 36/85-86 alleging that the valuation of Sale Deed No. 2631 of 1985-86 was very low and it was forged one and it was brought to cheat her and pray to cancel the said sale deed. However, later on the said case was disposed of on the basis of compromise. The Maintenance Case filed by Gulesa Khatoon was also compromised and in the compromise the defendant no. 1 executed a sale deed in respect of 2 Khattas 1 Dhur land which was acquired by the plaintiff from his mother in favour of Bibi Gulesa Khatoon without the knowledge of the plaintiff. The plaintiff declared the divorce of his wife illegal and by force and again he married with Gulesa Khatoon and started living together. The defendant no. 2 influenced the defendant no. 1 and conspired



to transfer the entire lands of sale deed no. 2631 dated 04.08.1986 in the name of defendant no. 2 and thereafter, a petition was filed and the said sale deed was cancelled vide Deed No. 10962 dated 07.11.1987. The defendants being annoyed assaulted the plaintiff and his wife and ousted from the house after snatching the ornaments and then, the plaintiff and his wife came to his father-in-law's house and thereafter, they constructed house in Old Khesra No. 2079 and 2091 and started living there. The defendant no. 1 refused to return the land of sale deed No. 2631 dated 04.08.1986 and then the plaintiff obtained the certified copy of the same and then, he came to know that for the value of Rs. 1,00,000/- the consideration money was shown only Rs. 2000/- in that sale deed. The defendant did not get any title, any possession through the sale deed dated 14.03.1985. Jamabandi is also in the name of plaintiff and in the recent town survey operation also the Survey Officers have separately recorded the lands of the plaintiff and the defendant no. 2 and accordingly, final Khatian was prepared. The lands acquired from his mother, from the uncle are also in possession of the plaintiff and Jamabandi is in his name. Against the ill-treatment of the defendant Supaul P.S. Case No. 145 of 1987 under Section 107 Cr.P.C. was started which was ultimately dropped. When the defendant no.1 refused to return those lands covered under the aforesaid sale deed and finally refused, then, the suit has been filed.

4. The defendant no. 1 has filed written statement but it has neither been signed by defendant no. 1 nor by his learned counsel and they signed only on verification. The defendant no. 1 has pleaded that suit is not maintainable, the plaintiff has got no valid cause of action. The suit is barred by law of limitation, estoppel and acquiescence, non-joinder and mis-joinder of the parties. Bibi Gulesa Khatoon is the necessary party but she has not been made party in the suit.



According to the defendant, the mother of the plaintiff has not acquired those lands rather the defendant no. 1 has purchased those lands in the name of Akhtarun Nissa and further he acquired 2 Khattas 1 Dhur of land of Ward No. 9 through settlement which was the land of his share of his brother Abdul Kadir's Jamindari and Parwana was taken in the name of his wife. The date of birth of the plaintiff is 25.01.1960. It is denied that on the Chhatiari of the plaintiff, Abdul Kadir executed a deed of gift in respect of 10 Dhurs of land on 16.08.1967 and the plaintiff was admitted in the school where he managed to write the date of birth of the plaintiff as 04.01.1968. Akhtarun Nissa never died in the year 1970 but she died before. This defendant has denied that he was separated from his brother Abdul Kadir on 09.09.1970 and the partition had taken place between the brothers rather they were separated in mess and business in the year 1960 and only land of Basdih was in jointness which was orally partitioned on 02.02.1970. The plaintiff was married on 19.06.1982 not in the year 1983. It is false to say that on assurance that he would take house loan for construction of the house got the sale deed executed from the plaintiff on 14.03.1985. As a matter of fact the plaintiff on his own willingness executed the sale deed in the name of defendant no. 1 along with step mother after receiving the consideration amount of Rs. 2000/- and the defendant no. 1 acquired title and possession and further this defendant sold 6 Katthas and 13 Dhurs of land to Jagdeo Yadav and executed deed of gift in respect of 2 khattas an 1 Dhur of land on 20.05.1986 in favour of Gulesa Khatoon. The deed of cancellation executed by plaintiff is inoperative and objection petition dated 24.12.1986 is not binding upon the defendant. The plaintiff was never assaulted by defendant no. 1 nor he managed the plaintiff to divorce Gulesa Khatoon rather the plaintiff himself is a mischievous man and assaulted his wife which was objected by his father-in-law and brother-in-law



and then, he divorced his wife in writing and then, Gulesa Khatoon filed a case No. 36/ 85-86 falsely which was compromised and thereafter, this defendant obtained the sale deed executed by the plaintiff from the office of Sub-Registrar. In maintenance Case filed by Gulesa Khatoon also compromise was done and defendant no. 1 executed a deed of gift in her favour in respect of 2 Khattas and 1 Dhur of land within the knowledge of the plaintiff. In some portion of Basdih land of defendant, the plaintiff has constructed Phush house and due to false allegation made by plaintiff regarding his assault, the defendant no. 1 was arrested by the Police and kept in Police Hazat. This defendant has never cheated the plaintiff nor got the sale deed executed fraudulently. The sale deed is not illegal and forged, nominal and under valuation but the same is legal with reasonable consideration. The plaintiff has no right, title and possession. This defendant has got right, title and possession on the basis of the said sale deed and there is house and garden etc. Jamabandi is standing in the name of plaintiff and defendant no. 2 but now the names of plaintiff and defendant no. 2 have been cancelled and correction slip has been made in the name of defendant no. 1. Holding Number in Supaul Municipality is also in the name of defendant no. 1. On the false allegation proceeding under Section 107 Cr.P.C. was started but was dropped and the report of the S.D.O., Supaul is not binding upon defendant no. 1. The plaintiff was not minor and the valuation was not worth Rs. 1,00,000/-. At the time of execution of the sale deed the plaintiff was major and he was working in the office of sub-Registrar as deed writer and has scribed many sale deeds in the year 1983-84. After attaining majority the plaintiff and defendant no. 2 have sold the land to the defendant no. 1 after receiving the consideration amount and since thereafter, the defendant no. 1 is in possession as rightful owner thereon but due to enmity the plaintiff has brought this false case. The plaintiff and his wife

Gulesa Khatoon sold 2 Khattas and 1 Dhur of land which she received on gift by this defendant to Akhtar Alam on 03.07.1987 and the recital of the sale deed is binding upon the plaintiff. Accordingly, it has been prayed that the suit of the plaintiff be dismissed.

5. On the basis of the pleadings of the parties, 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) Whether the suit is barred by Limitation ?
- (iv) Whether the suit is bad for non-joinder of the necessary parties ?
- (v) Whether the sale deed No. 2631 dated 14.03.1985 executed by the plaintiff and defendant second party in favour of the defendant first party is invalid, illegal, under valued, without consideration amount and not genuine ?
- (vi) Whether the plaintiff is entitled to the relief as claimed by him ?
- (vii) To what other relief or reliefs, the plaintiff is entitled ?

6. The learned sub-judge took-up the issues no. (v) and (vi) at first and decided the same in favour of plaintiff holding that sale deed bearing no. 2631, dated 14.03.1985, executed by the plaintiff and defendant no. 2 in favour of defendant no. 1 is invalid, illegal and under valued, without consideration and not genuine and the plaintiff is entitled to the relief claimed. Issues No. (iii) and (iv) were not pressed and issues no. (i) (ii) and (vii) have also been decided in favour of the plaintiff and accordingly, the suit has been decreed on contest with cost.

7. The defendants being aggrieved and dissatisfied with the judgment and decree have filed this appeal challenging the sustainability of the impugned order on the ground that the plaintiff was not minor at the time of execution of sale deed on 14.03.1985 rather he was major as he was born on



25.01.1960 not on 10.08.1967. No fraud was committed by defendant no. 1 rather the plaintiff executed the sale deed out of his own will after receiving the proper consideration amount. The learned court below has wrongly relied upon the two affidavits-Ext. 1 and 1A, though the deponents of those affidavits have not been examined. The date of birth mentioned in the matriculation certificate is not a conclusive proof of the age and it has not been corroborated by any other evidence. The trial court failed to appreciate the evidences brought on record by the defendants. In school register the date of birth is mentioned as 04.01.1968 and not 10.08.1967. Matriculation certificate does not corroborate the aforesaid affidavits. The plaintiff was working as deed writer with defendant no. 1 at Supaul Nirmali Registry Office and was scribing several documents with his father. Learned trial court wrongly estimated the valuation of the sale deed on the basis of sale deeds of 1988, 1989 and 1991 whereas the sale deed in question was executed on 14.03.1985. It is apparent that within few years the township of Supaul developed and the value of the land increased to several times. Learned trial court wrongly held that no consideration money was given to the plaintiff though there is no such denial by the plaintiff. Learned trial court wrongly disbelieved the version of DWs on the ground that he is the intested witness. Further Ext. 4 has wrongly been relied upon as the same is not admissible, because the doctor has not been examined. Learned court below wrongly held that the said transaction was sham transaction. Learned trial court committed error in holding that 7 Khattas of land situated in Ward No. 7 of Supaul Town is acquired property of Akhtarun Nissa, the mother of plaintiff, after discarding the evidence of defendant no. 1 that he has purchased the aforesaid land with his own income in the name of his wife. No evidence has been brought on the record by the plaintiff to show that Akhatrun Nissa had any source of income. The suit was also

bad by non-joinder and mis-joinder of necessary parties. The wife of the plaintiff was a necessary party but she was not impleaded and, as such, the judgment and decree being perverse is fit to be set aside.

8. On the other hand, on behalf of plaintiff respondent by filing rejoinder it has been stated that the appeal filed is not maintainable. Learned court below has rightly delivered the judgment and decree. The defendant no. 1 got admitted the plaintiff in the school and on his assertion, the date of birth of plaintiff in the school register was entered and, as such, even on the basis of the date birth mentioned in the school register, the plaintiff was minor at the time of execution of the sale deed in question and, as such, the learned court below has rightly held that the sale deed in question is illegal. The plaintiff, in support of his case, has filed Ext. 1 and 1A, Ext. 4 Medical Certificate, Ext. 12 Certificate of Matriculation examination issued by the Bihar School Examination Board. Further vide Ext. 2 also which is an information of Ration Card duly signed by the appellant before the Officer preparing Ration Card and in serial no. 5 the name of Abdul Rahman is there and the appellant has mentioned his age as 20 years on 12.12.1989 and from Ext. 2 also the plaintiff was aged about 16 years only in the year 1985. The plaintiff has adduced cogent and reliable evidence whereas no cogent evidence was led by the defendants. Scribing a sale deed in the year 1984 cannot be a conclusive proof that the plaintiff was major. The defendant no. 1 has admitted that the plaintiff was working with him, so getting a sale deed scribed by the plaintiff cannot be a proof that he was major. Exts. 2 and 12 are within the knowledge of the appellant and at his instance the age has been mentioned therein and, as such, those are binding upon the defendant appellant. The sister of the appellant has sworn an affidavit and further the elder sister of the respondent has also sworn affidavit regarding the age of the plaintiff respondent.



From Ext. 18 it is proved that the sale deed no. 2631 dated 14.03.1985 was under valued as 18 Khattas and 4 Dhurs of land was mentioned in the sale deed for only consideration amount of Rs. 2,000/- whereas the defendant appellant executed an agreement to sale for 10 dhurs of land for Rs. 10,000/- vide Ext. 18. From Ext. 2 which is of 12.12.1989, it also reveals that the plaintiff/respondent was living with his father defendant no. 1/appellant, so the payment of consideration amount in the year 1985 by the defendant no. 1 does not arise. The aforesaid deed was got executed by giving false assurance. The mother of the plaintiff has acquired the land from her Stri-Dhan, so it is false to say that the defendant/appellant has purchased the land in the name of his wife. The plaintiff had given evidence against DW 4, so to take revenge, DW 4 gave false evidence against the plaintiff and, as such, learned court below rightly discarded his evidence. There is no question of non-joinder of necessary parties, as under Mohamddan Law, the wife has no share in husband's property till life of her husband as such Gulesa Khatoon was not the necessary party to the suit. Therefore, the judgment and decree passed by the learned Sub-judge does not require any interference and is fit to confirmed and the appeal is fit to be dismissed.

9. On the basis of rival contentions of the parties the point for consideration is in this appeal are as follows:-

(i) Whether the plaintiff was minor at the time of execution of the sale deed in question ?

(ii) Whether the fraud was committed by the appellant no. 1 by giving false assurance to the plaintiff respondent at the time of execution of the sale deed ?

(iii) Whether the consideration amount as shown in the sale deed was proper and adequate ?



10. Point No. (i) :- It is not in dispute that in the school register the date of birth of the plaintiff is mentioned as 04.01.1968 and, admittedly, the defendant no. 1 got admitted him in the school. Ext. 12 which is the certificate granted by Bihar School Examination Board, the date of birth of the plaintiff respondent is mentioned as 4th January, 1968. Ext. 11 is the certified copy of voter list of the year 1990 wherein the age of the plaintiff respondent is mentioned as 22 years. Ext. 12 is the information slip of Ration Card and in this exhibit the age of Abdul Rahman is mentioned as 20 years. In Ext. 4 which is medical certificate issued by Dr. Shivendra Das, the age of the plaintiff has been assessed on 05.08.1990 as 22 or 24 years on the basis of X-ray plate No. R-7 of 05.08.1990. It is true that the doctor who has issued the certificate has not been examined and, as such, this Exhibit is not admissible in evidence. Similarly, Ext. 1 and 1A which are affidavits are also not admissible as the deponents have not been examined but Exts. 2 and 12 conclusively goes to prove that on 14.03.1985, the plaintiff respondent was minor. Besides the oral evidences, the learned court below has also considered documentary evidences brought on the record properly in this regard and this court confirms the findings of the learned court below on this point. The plaintiff has examined altogether 11 witnesses in this case who are: plaintiff himself as PW 1, Krishna Deo Thakur PW 2, Shambhu Nath Mishra PW 3, Pramod Kumar Das PW 4, Hasan Ansari PW 5, Upendra Nath Mallick PW 6, Daya Ram Lal Das PW 7, Md. Rafique PW 8, Md. Qamruddin PW 9, Md. Hassan PW 9A and Md. Nasiruddin PW 10. Whereas on behalf of defendant five witnesses have been examined who are Md. Abdul Karim defendant no. 1 himself as DW 1, Bhagirat Prasad Mandal DW 2, Md. Nazim PW 3, Md. Hussain PW 4 and Jagdish Prasad Mandal PW 5.

11. It has been argued on behalf of the appellant that if the age of

the plaintiff as shown is taken as 24 years, vide Ext. 4, on 05.08.1990, then, plaintiff was major on 14.03.1985, further the plaintiff was working as deed writer being major. PW 1 has stated in paragraph 15 that father, uncle and Bua knew his date of birth and his father is stating that he was major. As a matter of fact the date of birth of plaintiff is 25.01.1960. It has also been argued that from Ext. H, which is an Electoral Roll, the date of birth of the plaintiff comes in the year 1960.

12. This Court is not convinced with the arguments of the learned counsel for the appellants as on the record there is Ext. 11 also which is the Electoral Roll of the year 1990 and in that Electoral Roll the plaintiff is shown as aged about 22 years only and, as such, on the basis of Ext. 11 also, the plaintiff becomes minor at the time of execution of sale deed, dated 14.03.1985. This court does not think it proper to consider other oral evidences on this point. The learned court below has rightly considered the evidences available on the record on this point also and the finding of the learned court below is hereby confirmed. Accordingly, this point is decided against the appellants and in favour of plaintiff/respondent holding that the plaintiff was minor at the time of execution of sale deed in question.

13. Points No. (ii) :- It has been held that the plaintiff was minor and, as such, the sale deed executed by a minor cannot be legal and valid. The plaintiff adduced sufficient evidences on the record which is fully mentioned in the impugned judgment that false assurance was given by defendant no. 1/appellant no. 1 for executing the sale deed and as per assurance given by defendant no. 1, his son has executed the sale deed. It has been argued that the plaintiff PW 1, in paragraph 18 of his evidence, has admitted that the deed of gift was executed by father in favour of his wife and he has signed on the same on



20.05.1986 and, as such, the same is binding upon the plaintiff as it has already been held that the plaintiff was minor at the time of execution of the sale deed, so the same is not binding upon the plaintiff and further admission regarding the execution of deed of gift in favour of his wife cannot make the sale deed in question valid. It has also been argued that in paragraph 6 of deposition, PW 1 has admitted that to save stamp his father has shown the value as Rs. 2000/- only, in paragraph 15, this witness has stated that he went to registry office on 14.08.1986. Thus, it has been argued that no fraud was committed on the plaintiff.

14. This Court is not convinced with the argument of learned counsel for the appellant. In this regard learned court below after proper consideration of the evidence available on the record has come to the finding that the fraud was committed upon the plaintiff by defendant no. 1 and on false assurance the sale deed was got executed and registered. Thus, this point is also decided against the appellant and in favour of plaintiff/respondent.

15. Point No. (iii):- According to the plaintiff, the property in the sale deed in question was worth Rs. 1,00,000/-, but was executed for Rs. 2000/- only which is under valued and even no consideration amount has been paid to him. On behalf of appellant it has been argued that PW 1, in paragraph 6, has stated that to save the stamp the price was shown as Rs. 2000/- only by the father, thus, it can be gathered that the plaintiff has received more consideration amount.

16. The argument advanced by the learned counsel for the appellants appears not convincing. In this regard, besides oral evidences, Ext. 18 is the certified copy of agreement to sale executed by defendant no. 1 Abdul Karim in favour of md. Nasimull Hoda with respect to 10 Dhurs of land for consideration of Rs. 10,000/- on 06.01.1988 and thus, on the basis of this document it can be held that the value of the property in question shown as Rs.

2000/- only was not proper and adequate. The learned court below has rightly considered all the evidences available on the record, both oral and documentary in this regard and has given a right finding. The learned court below after relying upon Ext. 18 and other evidences, as discussed in the judgment, in paragraph 8, has rightly come to the conclusion that the cost of 18 Katthas and 4 Dhurs of land would be more than Rs. 1,00,000/-. The statement of DWs in respect of valuation also supports the case of the plaintiff. DW 1 has stated that he paid the consideration amount to his son and wife at different places but this fact has not been mentioned in the sale deed in question, this witness has not stated as to what amount he paid to the plaintiff and further the plaintiff cannot make himself landless by transferring all the lands in favour of his father. Learned court below has rightly disbelieved DW Md. Nazim in this regard. Thus, this point is also decided against the appellants and in favour of respondent and it is held that consideration amount of Rs. 2000/- as shown in the sale deed in question was not proper and not adequate.

17. Since the finding of the learned court below is being confirmed by this Court and, as such, the discussion made by him is not being repeated here.

18. In the result, finding no merit in this appeal the same is hereby dismissed but under the circumstances without cost. The judgment and decree passed by the learned court below is hereby confirmed.

(Jitendra Mohan Sharma, J)

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