

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.247 of 1985

(Against the judgment and decree dated 27.03.1985 passed by Additional Subordinate Judge IV, Muzaffarpur in Title Suit No.44 of 1979).

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Rajendra Chaudhary

.... Defendant No.1-Appellant

Versus

Krishnanand Chaudhary & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate

For the Respondent/s : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rajesh Kumar, Advocate with him.

For the Respondent No.13: Mr. M.P.Sinha, Advocate

Mr. S.C.P.Sinha, Advocate

Mr. Rajendra Kishore Prasad, Advocate

Mr. Madhu Kumar, Advocate

Mr. Ratan Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 05-01-2016

1. The defendant No.1 has filed this First Appeal against the judgment and decree dated 27.03.1985 passed by the learned Additional Sub Judge IV, Muzaffarpur in Title Suit No.44 of 1979 whereby the learned Court below decreed the plaintiff-respondent's suit.

2. The plaintiffs-respondents filed the aforesaid suit for declaration of title and recovery of possession with respect to the suit property after setting aside the sale deed executed by Khagendra Nath Das in favour of defendant-appellant dated 03.09.1973.

3. The plaintiffs claimed the aforesaid relief alleging



that the suit property described in Schedule I and II belonged to Bibi Tamiz Fatima as her Zirat lands in her zamindari interest and part thereof belonged to Md. Ali Akhtar. Bibi Tamiz Fatima sold her Milkiyat interest including portion of disputed land by registered sale deed dated 24.02.1953 to Kanderi Bala Devi and Haridasi both wives of Khagendra Nath Das in the Benami name of their relation for Rs.7,000. Md. Ali Akhtar sold 1 bigha 5 ½ kathas of kast kaimi land appertaining to C.S. Khata No.163 and C.S. Plot No.269 by registered sale deed dated 07.04.1953 to Dhaneshwar Chandra Das, son of Khagendra Nath Das. The purchasers came in possession of the purchased property. The defendant No.8 purchased C.S. Plot No.269 equivalent to R.S. Plot No.397, 409 and 410 measuring 1 bigha 5 kathas 10 dhurs by registered sale deed dated 7/8th April, 1953. Kanderi Bala Devi died in the year 1965 leaving behind her two sons, Dhaneshwar Chandra Das and Narayan Chandra Das and two daughters namely Daya Dasi and Jayanti Dasi and her husband, Khagendra Nath Das. In private partition, 1 bigha 8 dhurs i.e. item No.1 of Schedule II to the plaint was allotted in the share of two sons and 8 kathas 3 dhurs i.e. item No.II of Schedule II was allotted to the share of two daughters besides other lands. After vesting, they became the tenants under the State of Bihar.

4. The further case is that defendant Nos.8 and 9



were facing difficulty in managing the property, therefore, they executed a special power of attorney in favour of their father, Khagendra Nath Das giving him authority to look after their interest in the property specified therein in Column No.5. However, the defendant No.1 fraudulently managed to win over the confidence of father, Khagendra Nath Das and after getting him addicted to drinking got a sale deed executed on 03.09.1973 in respect of the suit land and some other land and fraudulently got thumb impression of surviving wife, Smt. Hari Dasi who is defendant No.2 on the sale deed. Defendant No.2 was never paid a single farthing and her thumb impression on the sale deed is the result of fraud and she had no knowledge about the transaction. Hari Dasi is an old illiterate simple pardanashin who was duped to give the thumb impression on the sale deed without knowing the contents of the sale deed. Subsequently, the defendant 3rd party cancelled the power of attorney by a registered cancellation deed dated 07.12.1974.

5. The further case of the plaintiffs is that the defendants 3rd party sold 2 bighas 5 kathas 18 dhurs of land described in Schedule I and II for Rs.15,000/- to the plaintiffs by registered sale deed dated 30.12.1975 and plaintiffs are coming in possession and thereafter they came to know that Kanderi Bala Devi had also left two daughters. Therefore, the plaintiffs again obtained sale deed from the

two daughters on 31.12.1977 on payment of Rs.3,000/- to them with respect to 36 decimals i.e. 8 kathas 3 dhurs of land being their share. The sale deed dated 03.09.1973 executed by Khagendra Nath Das in favour of defendants 1st party is illegal, null and void.

6. The defendant-appellant filed written statement denying the case of the plaintiffs. The main defence he took is that the suit is barred by law of limitation as the sale deed is of the year 1973 whereas suit has been filed in the year 1979. The defendant Nos.8 and 9 had given full authority under the power of attorney to deal with the property either by mortgaging or by executing absolute sale deed on behalf of defendant Nos.8 and 9. Khagendra Nath Das had sold the property for self and on behalf of his two sons, defendant Nos.8 and 9 along with defendant No.2 in favour of defendant No.1 who is defendants 1st party. Kanderi Bala Devi had no title. Daya Dasi and Jayanti Dasi are fictitious lady. The sale deed on which the plaintiffs are claiming title are null, void, collusive and for without consideration, as such, the plaintiffs neither acquired title nor possession. However, the defendant left pairvi and did not contest the suit.

7. The learned court below on the basis of these pleadings framed the following issues:

I. Is the suit as framed maintainable?

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- II. Have the plaintiffs got cause of action and right to sue?
 - III. Is the suit barred by law of limitation and the principles of estoppel, waiver and acquiescence?
 - IV. Whether late Khagendra Nath Das was holding the power of attorney to manage the estate and receive compensation on behalf of his sons..defendants no.8 and 9, or whether he had powers to transfer their lands also?
 - V. Is the sale deed dated 3.9.73 in favour of the defendant no.1 a valid piece of document?
 - VI. Has the defendant no.1 played fraud upon the late Khagendra Nath Das in obtaining the sale deed in his favour in respect of the suit lands?
 - VII. Is the story of possession and dispossession proformed by the plaintiffs correct?
 - VIII. Are the plaintiffs entitled to declaration of title to and recovery of possession of the suit lands with mesne profits?
 - IX. To what other relief or reliefs are the plaintiffs entitled?

8. The learned trial Court on the basis of the evidence and materials held that Late Khagendra Nath Das was holding the power of attorney only to manage the estate and received compensation money on behalf of his sons, defendant Nos.8 and 9 and had no power to transfer their lands in any manner whatsoever. The sale deed dated 03.09.1973 is fraudulent, illegal and conferred no title on defendant No.1 and accordingly, decreed the plaintiff's suit after relying on the sale deed of the plaintiffs.

9. The learned counsel appearing on behalf of the



appellant submitted that in this case, evidence is not at all required to be gone into. The only question to be decided in this case is whether by the power of attorney, Exhibit 5, the defendant Nos.8 and 9 authorized their father, Khagendra Nath Das to sell their property or not. There is clear recital in the power of attorney that Khagendra Nath Das is authorized to sell the property in any manner for defendant Nos.8 and 9 but the Court below wrongly interpreted the same on the basis of the oral evidences which are not admissible at all. Secondly, the learned counsel submitted that the sale deed is of the year 1973 and the suit has been filed in the year 1979 for setting aside the sale deed is barred by law of limitation but the Court below has not considered this aspect of the matter according to law. The learned counsel next submitted that there is no pleading in the plaint by the plaintiffs to the effect that without the knowledge of defendant Nos.8 and 9, their father got wrong entries made in the power of attorney in collusion with the scribe but adduced evidence to that effect which could not have been looked into by the trial Court but on the basis of this evidence, the Court below held that by exercising undue influence and enticing their father got the sale deed. On these grounds, the learned counsel submitted that the impugned judgment and decree are liable to be set aside.

10. On the other hand, the learned senior counsel, Mr.



Ramakant Sharma for the respondents submitted that in Column No.5 of Exhibit 5, there is specific purpose recited for which power of attorney was executed. Since the purpose was only to manage the property and receive compensation, the father had no authority to sell the property. In such circumstances, the Court below has rightly held that Khagendra Nath Das was not authorized to sell the property. In the evidence, the defendant No.8 clearly stated that for that purpose only the power of attorney was executed. Moreover, according to this evidence, the father subsequently got the wrong entry in the power of attorney in collusion with the scribe. The Court below considered this evidence also. On the contrary, no evidence has been produced by the defendant-appellant repudiating the case of the plaintiffs. In such circumstances, now he cannot repudiate before this Court the case of the appellant that Khagendra Nath Das was authorized to sell the property. No evidence has been adduced by the appellant to the effect that there was no collusion between Khagendra Nath Das and the scribe and the entry in the power of attorney is not collusive entry. Considering all these aspects of the matter, the Court below has rightly held that fraud was played on by the father of the defendant Nos.8 and 9.

11. The learned senior counsel further submitted that here limitation will not apply because the plaintiffs have been able to

prove that the sale deed in favour of the defendant-appellant was the result of fraud, therefore, the plaintiff can prove the fraud at any time and if it is found that in fact, fraud was played on, it will vitiate everything. On these grounds, the learned counsel submitted that the First Appeal be dismissed with cost.

12. In view of the above submissions of the parties, the following points arise for consideration in this First Appeal:

I. Whether by Exhibit 5, Khagendra Nath Das was authorized to sell properties of defendant Nos.8 and 9 and, therefore, the sale deed in favour of plaintiff is valid, legal and genuine?

II. Whether the plaintiff's suit is barred by law of limitation?

Point No.I

13. Exhibit 5 is the power of attorney. From perusal of this power of attorney, I find that there is clear recital in the deed that Khagendra Nath Das is authorized to sell the properties by mortgage or by sale. Therefore, by this Exhibit 5, defendant Nos.8 and 9 authorized their father for even selling the property on their behalf. Here, this deed is to be interpreted.

14. The five Judges Bench of the Hon'ble Supreme Court in the case of **Ramkishorelal and another v. Kamalnarayan, AIR 1963 Supreme Court 890** has held as follows:

“The golden rule of construction, it has been said, is to ascertain the intention of the

parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used.”

15. This decision of the Supreme Court is subsequently followed in many decisions and there is no contrary decision to the above. Now, therefore, in view of this settled principles, the document itself has to be looked into. As stated above, from bare perusal of the document, it is clear that Khagendra Nath Das was authorized to sell the property. When this authorization is recited in the document, the oral evidence cannot be looked into. Moreover, P.W.2, who is defendant No.8, deposing on behalf of the plaintiff in his evidence stated that they had not authorized their father to sell the property but without their knowledge, their father got such wrong entries made therein in collusion with the scribe. Therefore, the defendant No.8 is also admitting the fact that there is authorization in the power of attorney to sell the property. The explanation given in the evidence is as stated above by P.W.2.

16. From perusal of the plaint, it appears that there is no such pleading in the plaint. Now, therefore, this part of the evidence stated by P.W.2 is without pleading.

17. The Hon'ble Supreme Court in the case of **Union**

of India v. Ibrahim Uddin, 2013(1) PLJR 48(SC) at paragraph 69

sub para (vii) has held as follows:

“(vii)The Court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. Though, it may be a different case where in spite of specific pleadings, a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.”

18. Here, there is no pleading nor there was any issue as to whether the father of the defendant Nos.8 and 9 namely Khagendra Nath Das in collusion with the scribe got this recital about authorizing him to sell the property inserted. It is for the first time raised in the evidence giving surprise to the appellant. From perusal of the impugned judgment, it appears that the Court below has given much emphasis on this evidence.

19. Further, this power of attorney is of the year 1969 but the defendant Nos.8 and 9 never challenged this entry nor after purchase the plaintiff ever challenged the entry regarding collusion between scribe and Khagendra Nath Das. The only case pleaded is defendant No.8 fraudulently got the sale deed although, father was not authorized to sell.

20. The other witnesses P.W.3, P.W.1 all have stated that

Khagendra Nath Das was not authorized to sell the property. These evidences are contrary to the recital in the power of attorney itself.

21. So far cancellation of this power of attorney is concerned also, in this cancellation deed, which is Exhibit 4, there is no recital that the entry was made fraudulently by the father in collusion with the scribe. The Court below gave much emphasis and held that there is no evidence on record to rebut the plaintiff's stand regarding fraudulent, illegal and unauthorized recital in Exhibit 5. In my opinion, this approach of the Court below is wrong.

22. The Supreme Court in the case of **Union of India and Others v. Vasavi Cooperative Housing Society Limited and Others, (2014) 2 Supreme Court Cases 269** has held that "in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not." In view of this principle laid down by the Supreme Court, it is for the plaintiff to prove that the recital is fraudulent.



Merely because one person is coming and deposing before the Court after long period i.e. more than ten years, can the recital in the deed be said to be fraudulent. Whether the Court of law will rely on this evidence? The answer will be no. Because here the conduct of the defendant No.8 and 9 is clear. They prior to the sale deed in favour of defendant No.1 in the year 1973 never cancelled the said power of attorney. After the sale deed in favour of the defendant No.1, they cancelled this power of attorney in the year 1974. Therefore, the cancellation has got no effect in the right of the defendant No.1.

23. In view of my above discussion, I find that by the power of attorney, Exhibit 5, the defendant Nos.8 and 9 had also authorized their father, Khagendra Nath Das to sell the property and in exercise of that power, Khagendra Nath Das has sold the property. Not only this, the defendant No.2 is also a signatory to the sale deed. Therefore, the sale deed in favour of the defendant-appellant is valid, legal and genuine one. In such circumstances, defendant Nos.8 and 9 could not have conferred title on the plaintiff by subsequent sale deeds. The finding of the learned Court below on this point is, therefore, reversed. Thus, the point No.I is answered in favour of the appellant.

Point No.II

24. Here, the sale deed of the plaintiff is of the year 1973

and this suit for setting aside the sale deed has been filed in the year 1979. It is not the case of the plaintiff that he had no knowledge about the sale deed.

25. The Hon'ble Supreme Court in the case of **Abdul Rahim & Ors. v. Sk. Abdul Zabbar & Ors., AIR 2010 Supreme Court 211** has held as follows:

“A suit for cancellation of transaction whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act. The suit, therefore, should have been filed within a period of three years from the date of knowledge of the fact that the transaction which according to the plaintiff was void or voidable had taken place.”

26. This Court also in the case of **Sita Sharan Prasad V. Manorma Devi, 2012(2) BLJ 165** has held that “a registered sale deed is presumed to have been validly executed with all its legal consequences and such document cannot be said to be void ab initio and there cannot be presumptive invalidity attached to such a transaction. Such document comes within the category of documents which remain valid, on the principle that the apparent state of affairs is the real state of affairs, until the facts invalidating the same are established.” In the present case, admittedly, the suit has been filed much after the limitation period. Therefore, the suit itself is barred by law of limitation. The finding of the Court below on this point is,

therefore, reversed. The point No.II is also answered in favour of the appellant.

27. In the result, this First Appeal is allowed. The impugned judgment and decree are set aside and the plaintiff's suit is dismissed.

(Mungeshwar Sahoo, J)

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