

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.383 of 1976

**Against the Judgment and Decree dated 22.03.1976
passed by Subordinate Judge, Gopalganj in Title Suit
No.199 of 1968.**

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Mostt. Manju Devi & Ors

.....Plaintiffs - Appellant/s

Versus

Mostt. Kanti Devi & Ors

.....Defendants-Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikas Ratan Bharti, Advocate

For the Respondent/s : None.

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Dated : 16th day of May, 2017

P R E S E N T

CORAM : HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T

1. The original appellant Sitaram Prasad who was plaintiff had filed this First Appeal against the Judgment and Decree dated 22.03.1976 passed by the learned Sub Judge Gopalganj in Title Suit No.199 of 1968 whereby the plaintiff's suit was dismissed.



2. During the pendency of this First Appeal, the sole plaintiff appellant died and in his place, legal representatives have been substituted. Likewise after the death of respondent Nos.1, 2, 3 and others, their respective legal representatives have been substituted.

3. The plaintiff filed Title Suit No.199 of 1968 praying for a declaration that the suit properties belonged to the plaintiff and defendant No.1 has no title. Prayer has also been made for a decree for redemption in respect of Schedule II property.

4. The plaintiff claimed the aforesaid relief alleging that plaintiff is son of Ram Narain Lal. After death of Mother of the plaintiff, the plaintiff's father Ram Narain Lal married one Radhika Devi, daughter of Harihar Lal. From Radhika Devi, four daughters were born. Out of them, one died and the three daughters, i.e., step sister of plaintiff are defendant Nos.11, 12 and 13. Father of Radhika Devi, namely, Harihar Lal died prior to revisional survey leaving behind his widow, Gula Kuer, a daughter Radhika Devi and a son Vindhayachal Prasad. Vindhayachal Prasad was a congenital idiot. So the properties were inherited by Gula Kuer after death of her husband, Harihar Lal. However, she got the name of Vindhayachal Prasad entered in the khatian with respect to the properties of Harihar Lal. During childhood, mother of the plaintiff had died, therefore, he was brought of by his maternal grand father. After death of his grand father, the plaintiff being the only daughter's son became the legal heir of grand father and so he started living



there. Some time he was visiting Jokapur where his father and step mother Radhika Devi were residing.

5. The further case of the plaintiff is that because Gula Kuer was in need of money after death of her husband, Harihar Lal, she mortgaged some properties of Harihar Lal in favour of Ram Anugrah Lal for Rs.2262/- by executing five different mortgage deeds. The defendant No.7 to 10 are the sons of said mortgagee, Ram Anugrah Lal. After partition in the family of mortgagee, the mortgaged property fell in the share of brother of Ram Anugrah Lal, namely, Ambika Lal and defendant No.2 to 6 are sons of Ambika Lal.

6. The further case is that in the year 1937, on account of rent due, the landlord got a certificate issued against Gula Kuer and put the properties to auction sale. Therefore, Mostt. Gula Kuer required the money. Accordingly, Gula Kuer executed a sale deed for Rs.500/- in favour of Radhika Devi and the consideration amount was paid by father of the plaintiff, Ram Narain Lal. Radhika Devi was only a benamidar of father of the plaintiff so the property belonged to the family of Ram Narain Lal, father of the plaintiff. After the death of his father, the plaintiff came in possession over the properties of Gula Kuer situated at Mauza Domahata.

7. The plaintiffs also claimed that he came in possession of the other properties of Harihar Lal situated at Olipur being the only heir of father, Ram Narain Lal as Radhika Devi, daughter of Harihar Lal orally delivered



possession to the father of the plaintiff. Accordingly, the plaintiff became the absolute owner of the suit property. The father of the plaintiff also redeemed one zerpeshgi for Rs.500/- dated 25.08.1931 in redemption Suit No.31 of 1945. To redeem other zerpeshgi, the plaintiff tendered the money to the sons of Ambika Lal. They refused, hence the present suit is filed.

8. The plaintiff further pleaded that the defendant No.1 is the daughter's son of Rajkeshwar Lal of Doma Hata but he was set off by the defendant 2nd set. So, he was described as the daughter's son of Harihar Lal. The defendant No.1 also entered into some transaction. He also filed Title Suit No.426 of 1945 through his guardian and father Jaggu Prasad. However, subsequently, he surrendered the properties described in Schedule II in favour of the plaintiff's father. The defendant No.1 then filed Title Suit No.84 of 1949 against daughters of Radhika Devi wherein plaintiff was not impleaded. The defendant No.1 thus got a fraudulent decree but no delivery of possession was affected in his favour with respect to suit property. The plaintiff continued in possession. Subsequently, defendant No.1 again filed Title Suit No.23 of 1955 praying for recovery of possession but it was dismissed. However, the defendant No.1 got his name mutated and then the plaintiff filed appeal which is still pending.

9. The defendant No.1 filed contesting written statement. The defendant No.7 to 10 also filed separate contesting written statement. The defendant No.4 filed written statement supporting the case of defendant No.1.



The stand taken by the defendant No.7 to 10 is same as that of defendant No.1. The main defence of defendant No.1 and 4 to 7 is that Harihar Lal died leaving behind his widow Gula Kuer and a son Vindhayachal Lal and four daughters including Radhika Devi and Singaro Kuer. This defendant No.1 is the sons of Singaro Kuer. Vindhayachal Prasad was not a congenital idiot rather he was a normal human being. After the death of Harihar Lal, his name was correctly entered in the revisional survey record of right as he was the only male survivor in the family of Harihar Lal. Gula Kuer was not in need of money at any time nor she had any legal necessity. The alleged sale deed was never executed by Gula Kuer in favour of Radhika Devi nor consideration amount was paid by father of the plaintiff. The father of the plaintiff or the plaintiff never came in possession over the suit property. After the death of Gula Kuer and Radhika Devi in the year 1943, the defendant No.1 came in possession of the suit property.

10. The further case of the defendant is that the right, title of the defendant No.1 was finally adjudicated in Title Suit No.84 of 1949. The said suit was filed by the transferee of the plaintiff against the defendant No.1 wherein the transaction entered into by the plaintiff were found to be sham and farzi. After the death of Vindhayachal Prasad, the properties came in possession of Gula Kuer as limited owner and she remained in possession till the year 1943. After her death in May, 1943, Radhika Devi came in possession as limited owner and she also died in July, 1943. After their death,



the property reverted to the defendant No.1 as he was the only next reversioner being the son of daughter of Harihar Lal and sister's son of Vindhayachal Prasad. He remained in possession exclusively and he also dealt with the properties and transfers some properties and the transferees are in possession over the properties transferred to them. Details of the property shown have been given in the written statement. The zerpeshgi executed by Gula Kuer have either been redeemed by the transferee of the defendant No.1 or the same have been merged in the sale deed executed by defendant No.1. All other allegations of the plaintiff are denied.

11. On the basis of the aforesaid pleadings of the parties, the learned trial Court framed the following issues :-

- (i) Has the plaintiff got any cause of action for the suit?
- (ii) Is the suit maintainable?
- (iii) Is the suit bad for defect of parties?
- (iv) Is the suit barred by Section 34 of the Specific Relief Act?
- (v) Is the valuation given correct and the Court fee paid sufficient?
- (vi) Is the suit barred by estoppel, waiver and principles of limitation?
- (vii) Has the defendant No.1 got any right, title or interest to the suit lands?
- (viii) Is the plaintiff entitled to a declaration as claimed?



(ix) Is the plaintiff entitled to a decree for redemption in respect of Schedule 2 lands?

(x) To what relief, or reliefs, if any, is the plaintiff entitled?

12. The learned Court below after hearing the parties and on the basis of the evidences recorded finding that the plaintiff did not produce the sale deed so it is difficult to accept the case of the plaintiff that the sale deed is a genuine and valid sale deed. The learned Court below also held that no legal necessity has been proved by the plaintiff so the alleged sale deed in favour of Radhika Devi by Gula Kuer was a farzi transaction and never became operative. As such the plaintiff did not derive title. The learned Court below also held that defendant No.1 has been able to prove that he is the rightful owner of the property belonging to the family of Harihar Lal. Accordingly, the learned trial Court dismissed the plaintiff's suit.

13. The learned counsel, Mr. Vikas Ratan Bharti, appearing on behalf of the appellant submitted that the learned trial Court mis-appreciated the evidence produced by the appellant and has wrongly held that sale deed in favour of Radhika Devi was a farzi transaction. In fact the father of the plaintiff, namely, Ram Narain Lal, had paid the consideration amount of Rs.500/-, therefore, Radhika Devi was only a benamidar. Gula Kuer, widow of Harihar Lal, was in need of money, therefore, she sold the property to father of the plaintiff by the registered sale deed. After the death of Radhika Devi and father of the plaintiff, the plaintiff came in possession of the



property and became the absolute owner thereof but the learned Court below discarded the evidences of the plaintiff on these points as a result of which the plaintiff had been non-suited.

14. The learned counsel further submitted that the learned Court below wrongly relied upon the evidences of the defendant No.1, D.W.6 and D.W.10 and wrongly held that Vindhayachal was a prudent person. In fact Gula Kuer was the owner who inherited the property of Harihar after death of Harihar and the defendant No.1 is not the son of daughter of Harihar but the learned Court below wrongly held so which has vitiated the judgment.

15. The learned counsel further submitted that the statement made by the plaintiff in Title Suit No.84 of 1949 and any finding recorded by the Court in the said Title Suit is not at all binding because plaintiff was not a party to the said suit. Likewise the learned Court below wrongly came to the conclusion that the defendants are in possession of the suit property. In fact the plaintiff is in possession of the suit property. Accordingly, the learned counsel for the appellant submitted that the Court below wrongly held that the suit is barred by Section 34 of the Specific Relief Act. The Court below should have held that the plaintiff had got right, title and interest over the suit land. On these grounds, the learned counsel submitted that the First Appeal be allowed and the impugned judgment and decree be set aside and plaintiff's suit be decreed.

16. Nobody appeared on behalf of the respondent.



17. In view of the submission of the learned counsel for the appellant, the point arises for consideration in this First Appeal is as to whether the plaintiff is entitled for declaration of his title and non-title of defendant No.1 over the suit property.

18. The plaintiff's simple case is that Harihar Lal died leaving behind his widow Gula Kuer, a son Vindhayachal and a daughter Radhika Devi. The properties of Harihar Lal is recorded in the name of Vindhayachal wrongly at the instance of Gula Kuer because Vindhayachal Prasad was a born idiot. In fact Gula Kuer remained in possession on the properties of Harihar Lal as owner thereof. On the contrary according to the defendant No.1, Harihar Lal died leaving behind his widow, Gula Kuer, a son Vindhayachal Prasad and four daughters including Radhika Devi. Out of four daughters, two died unmarried. Radhika Devi was married with father of plaintiff, namely, Ram Narain Lal and defendant No.1 is the son of the other daughter Singaro Devi.

19. It is admitted fact by both the parties that Vindhayachal Prasad died in the year 1927. Harihar Lal died prior to the revisional survey record of right. Gula Kuer died in the year 1943 and Radhika Devi also died in the year 1943. However, the plaintiff is claiming title on the basis of so called sale deed executed by Gula Kuer in favour of Radhika Devi. This sale deed was never produced by the plaintiff.

20. Now let us consider the evidences produced by the parties in support of their respective cases.



21. The plaintiff has examined P.W.5 who is his cousin brother and P.W.6 who is the plaintiff himself. Both are on the point of idiocy of Vindhyachal Prasad. P.W.5 in his examination-in-chief has not stated any thing regarding the case of born idiot. In the cross-examination only, he has stated that Vindhyachal was a fool. Plaintiff no doubt has stated that Vindhyachal was a born idiot. However, it appears that except this bald statement there is nothing on record to show that Vindhyachal was a born idiot. According to the age of the plaintiff, P.W.6, he was born during the year 1918-20. Admitted fact is that Vindhyachal died in the year 1927. How can a person who was aged about 7-8 years at the time of death of Vindhyachal can say that Vindhyachal was a born idiot, particularly when it is a admitted fact that in the revisional survey record of right, the name of Vindhyachal is recorded. Since Harihar Lal died prior to revisional survey, the property was inherited by Vindhyachal Prasad and his name was recorded.

22. It is the case of the plaintiff that Vindhyachal Prasad was born idiot, therefore, the burden is on him to prove this fact by adducing cogent and reliable evidence but except this statement made by P.W.6, there is no other reliable evidence in support of the case.

23. On the other hand, D.W.3, 4, 6, 10 all have stated that Vindhyachal was a man of average understanding and his name was correctly recorded in the revisional survey record of right.



24. In view of the above evidence, it is difficult to hold that Vindhyachal was a born idiot. Now, therefore, it can very safely be held that Vindhyachal was a person of average understanding and after death of his father, prior to the revisional survey, his name was correctly recorded in the survey record. After his death in the year 1927, his mother became the limited owner of the property.

25. So far the case of plaintiff that Radhika Devi was in need of money because the suit property was put in auction sale by the ex.landlord who got decree in rent suit but in support of this case is concerned, the plaintiff has not produced any chit of paper to prove this fact that any rent decree was obtained and the property was to be auction sold. As stated above, the plaintiff even has not produced the sale deed on the basis of which the plaintiff is claiming title. Therefore, the very foundation of the plaintiff's title is missing.

26. It appears that in Title Suit No.84 of 1949 filed by defendant No.1 against daughters of Radhika Devi, the defendant No.1 was claiming title as next reversioner of Vindhyachal Prasad whereas the daughters of Radhika Devi were claiming title on the basis of this sale deed said to have been executed by Gula Kuer in favour of Radhika Devi. In this suit also, the present plaintiff appellant was doing pairvy in the suit on behalf of his stepsister, i.e., daughters of Radhika Devi and he was examined as D.W.4. In that suit, it was held that Radhika Devi had no right, title or interest in the suit property as the sale deed was a farzi transaction and not operative. In the said



suit, it was also decided that defendant No.1 of this case was plaintiff in that suit was the sister's sons of Vindhyaachal and he was entitled to recover possession over 16 dhurs of land. From perusal of ext. 'B', which is the judgment of Title suit No.84 of 1949, it appears that the plaintiff of that suit who is defendant No.1 in this suit was decreed. In this judgment, it was clearly held that the sale deed in favour of Radhika Devi was without consideration, without legal necessity, and therefore, it is not a genuine transaction. The defendant of the suit filed appeal and the appellate Court remanded the case to the trial Court and then again after remand judgment was passed which has been marked as exhibit 'B/1'. From perusal of this judgment also, it appears that similar findings have been recorded.

27. Against this judgment, Title appeal No.392 of 1957 / 71 of 1958 was filed which was also dismissed. This judgment is exhibit 'B/2'

28. The defendants have also produced the order passed by the High Court dated 5.10.1961 which is exhibit 'E'. The High Court dismissed the Second Appeal No.486 of 1960 filed against the lower appellate judgment and decree ext. 'B/2'. The writ of delivery of possession is also produced by the defendant which is ext.'D' which proves that the defendant No.1 herein obtained the delivery of possession pursuant to the decree passed in Title Suit No.84 of 1949.

29. In view of the above facts now it becomes clear that on the same questions of fact and law, i.e., parentage of defendant No.1 and genuineness



of sale deed executed by Gula Kuer in favour of Radhika Devi, the parties fought Title Suit No.84 of 1949 and the sale deed was held inoperative and farzi transaction. The present plaintiff was examined as D.W.4 in that case. He had the knowledge about the case and pleading of the parties and also the findings recorded therein. The question is whether the property belong to Ram Narain Lal or Radhika Devi, it will devolve on their heirs after the death of Ram Narain Lal and Radhika Devi. Some heirs of Radhika Devi and Ram Narain Lal, i.e., daughters of Radhika Devi fought / contested Title Suit No.84 of 1949 wherein the same issues were raised which has been decided in favour of the present defendant No.1 in this suit who was plaintiff in the suit of the year 1949. Now, another heir, i.e., the present plaintiff who was not party in that earlier suit but was examined as D.W.4 has filed this present suit on the same set of fact raising the same issue against the defendant No.1 in this present suit.

30. It will not be out of place to mention here that in the present suit, the plaintiff never challenged the judgment and decree passed in Title Suit No.84 of 1949. He has not even sought any relief of declaration with respect to the aforesaid judgment and decree. Now, therefore, unless this judgment and decree passed in the aforesaid Title Suit No.84 of 1949 is set aside, the finding recorded therein will be binding on the present plaintiff as it is not his case that he had no knowledge about the aforesaid litigation. The four daughters were also claiming title on the basis of the alleged sale deed



executed by Gula Kuer in favour of Radhika Devi. The present plaintiff is also claiming title on the basis of the same very sale deed executed by Gula Kuer in favour of Radhika Devi. In the present case, the sale deed is never filed. In the previous suit No.84 of 1949, the sale deed was held to be farzi transaction without consideration and inoperative. How, this finding can be ignored in this present suit, particularly when the plaintiff is not claiming any relief with regard to the judgment and decree of that suit and moreover, the daughters of Radhika Devi and the present plaintiff are claiming title on the same ground which has been held to be a farzi transaction. In my opinion, therefore, the finding recorded in the aforesaid suit will operate res judicata in the present suit. It cannot be said that because he was not party in the earlier suit, the sale deed executed by Gula Kuer in favour of Radhika Devi was a valid transaction as such the plaintiff acquired title. This will be directly in conflict with the finding of the earlier suit and this Court cannot record such finding on the same set of fact. On this score alone, the plaintiff's suit is liable to be dismissed.

31. It appears that the plaintiff in support of his case that he is in possession of the suit property produced various rent receipts and other oral evidences. However, in view of the fact that delivery of possession had already been obtained by the defendant No.1 as stated above on the basis of rent receipt or oral evidences, no such finding can be recorded that delivery was never affected in favour of the defendant No.1. It is settled law that



possession follows title. The plaintiff never claimed that after delivery of possession in favour of defendant No.1, he ever dispossessed the defendant. Therefore, the presumption of continuous possession is in favour of the defendant No.1.

32. In view of my above discussion, I find that the plaintiff failed to prove his title over the suit property. The claim of the plaintiff is barred by res judicata also and in fact the plaintiff had not approached the Court with clean hand. The defendants have been able to prove their title and possession over the suit property. Thus, the findings of the trial Court on these points are hereby confirmed.

33. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. The parties shall bear their own costs.

(Mungeshwar Sahoo, J)

Sanjeev/-

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