

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.335 of 1978

Against the Judgment and Decree dated 10.03.1978 passed by 7th Addl. Sub Judge, Bhagalpur in Title Suit No.163 of 1975.

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Janardan Rai & Ors

.....Plaintiffs - Appellants

Versus

Umesh Prasad Rai & Ors

.....Defendants-Respondents

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Appearance :

For the Appellant/s : Dr. Ansuman, Advocate
Mr. Sanjay Kumar, Advocate
Mr. Devesh Shakaran, 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 plaintiffs have filed this First Appeal challenging the judgment and decree dated 10.03.1978 passed by the learned 7th Addl. Sub Judge, Bhagalpur in Title Suit No.163 of 1975 whereby the



learned trial Court dismissed the plaintiff's suit.

2. The plaintiff appellants filed the aforesaid suit praying for declaration of title and for declaration that by execution of sale deed dt.29.01.1975 executed by defendant 2nd party in favour of defendant Ist party has not affected the title of the plaintiffs.

3. The plaintiff case in short is that Anant Ram Rai and Tarni Rai were brothers and members of joint Mitakshra family. The plaintiffs are the descendents of Anant Ram Rai whereas the widow and daughters of Tarni Rai are the defendants 2nd party. The defendant Ist party are the purchasers from defendant 2nd party. Since Tarni Rai had only daughters and was keeping bad health as such was difficulty in borrowing money for marriage of his daughter. Apprehending future litigation, he entered into arrangement with his brother Anant Ram and his sons and according to the arrangements, Tarni Rai relinquished his interest in the joint family properties in favour of his brother, late Anant Ram Rai and the plaintiff. As agreed, Anant Ram Rai maintained the family of Tarni and got married his daughters. This arrangement was made in January, 1962 and Memorandum was prepared on 11.03.1962 and since then the plaintiffs and their father became the exclusive owner of the entire suit property.



4. The further case is that the defendant 2nd party, the widow of Tarni Rai came under influence of the defendant Ist party and executed a sale deed dated 19.01.1975. The sale deed is without consideration and it contains false and fictitious recital of legal necessity. The plaintiffs are owner of the property and still are continuing in possession. Because of this sale deed, a cloud has been casted over the title of the plaintiff so the suit was filed.

5. The defendants on being noticed appeared. Separate written statements were filed by defendant No.7, the defendant No.2 and 3 filed joint written statement, the defendant No.1 and 6 filed joint written statement and the defendant No.8 and 9 filed joint written statement. This defendant No.8 and 9 are the widow and one daughter of Tarni Rai. The defence is almost the same. Mainly, it is contended that after the death of their father, Asharfi, in the year 1952, both the brother separated themselves in mess and status. By provisional arrangement, 50 biggha including the suit land out of 118 biggha joint properties were allotted to Tarni Rai which was being separately cultivated by Tarni Rai. After death of Tarni Rai in 1964, his widow, defendant No.8 came in possession along with her daughters. The story of family arrangement has been denied by these defendants. The allegation of bad health and apprehension of litigation and requirement of money for marriages is also denied by



the defendant.

6. The further defence is that the so called Memorandum dated 11.03.1962 is forged and fabricated document which has been created for the purpose of this suit. The plaintiffs nor their father ever came in possession of the suit land. Tarni Rai himself got his first daughter married in the year 1960. After his death, the defendant No.8 got her second and third daughter married in 1965 and 1975 respectively and the fourth one was still unmarried. The sale deed was executed by them in favour of the defendant Ist party for the benefit of their family and delivered possession to the purchasers and since then the purchasers are coming in possession.

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

- (i) If the suit as framed is maintainable?
- (ii) Have the plaintiffs any cause of action for this suit?
- (iii) Is the suit property valued and court fee paid is sufficient?
- (iv) If the suit is hit by section 34 of the Specific Relief Act?
- (v) Is the suit bad for non-joinder of parties?
- (vi) Was there any separation between Anant Ram Rai and Tarni Rai in the year 1952 as alleged by the defendants?



(vii) Was there any family arrangement on 11.03.1962 as alleged by the plaintiffs and if the plaintiffs acquired absolute title in the properties of Tarni Rai by virtue of the said arrangement?

(viii) Are the plaintiffs entitled for declaration as claimed?

(ix) To what relief or relief, if any, the plaintiffs, are entitled.

8. The learned trial Court after hearing the parties and considering the evidences came to the conclusion that there was neither any family arrangement in January, 1962 or in the month of March, 1962 as alleged by the plaintiff as such the plaintiff have not acquired title over the share of late Tarni Rai. Accordingly, plaintiff's suit was dismissed.

9. The learned counsel, Dr. Ansuman, appearing on behalf of the plaintiff appellant submitted that it is the settled law that family arrangements should be given effect to. The plaintiff produced the family arrangement, i.e., Panchnama, ext.2 in support of his case that there was family arrangement between both the brothers but the learned trial Court discarded this documentary evidence on untenable grounds. The plaintiffs also produced evidences in support of the case that after the family arrangement, the plaintiff continued in possession of the entire property and in fact the plaintiff and their father



maintained the family of Tarni Rai but the learned Court below disbelieved the evidences of the plaintiff. Therefore, the learned trial Court mis-appreciated the evidences as a result of which the plaintiff's suit has been dismissed.

10. The learned counsel further submitted that it is quite natural that a father who has got only daughters will think for the future of the daughters and will naturally be worried that his property will be grabbed by any person and therefore, in this situation, Tarni Rai entered into the family arrangement with his brother, Anant Rai and relinquished his interest in the property by ext.'2'. Since the said family arrangement the title of Tarni Rai vested on the Anant Rai and his son but the learned trial Court disbelieved this case also. The widow and the daughters of Tarni Rai had no right to sell the property because Tarni Rai during his life time, himself had relinquished his share, therefore, the widow and daughters did not inherit anything as such there was no question of transferring the suit property, the title of which vested on the plaintiff but the learned trial Court disbelieved this story and this case also and wrongly dismissed the plaintiff's suit. On these grounds the learned counsel, Dr. Anshuman submitted that this First Appeal be allowed, the judgment and decree be set aside and the plaintiff's suit be decreed in toto holding that the sale deed executed by defendant 2nd party in favour of defendant 1st party is as



void document and did not affect the title of the plaintiff.

11. Nobody appeared on behalf of the respondent.

12. In view of the above submission of the learned counsel for the appellant, the only point arises for consideration is as to whether by the relinquishment, i.e., Panchnama, ext.'2' title passed to plaintiff and their father?

13. The main dispute between the parties is the relinquishment of title by Tarni Rai. According to the plaintiffs, by this family arrangement, Tarni Rai relinquished his title. On the contrary, according to the defendants, neither there was any family arrangement nor there was any panchnama and Tarni never relinquished his title. The decision of this First Appeal centers around this point. If it is held that by this relinquishment, title passed to Anant Rai and his sons then naturally the consequences will be that Tarni's heir had no right but if it is held that by family arrangement and relinquishment deed, i.e., Panchnama, ext.2. Title did not pass to Anant Rai then the consequences will be that title remained with Tarni Rai and after his death, his heirs inherited. Therefore, the other evidences regarding rent receipt, possession or that the sale deed is without consideration will be immaterial.

14. The plaintiff has examined the Panches who had prepared



the Memorandum of Panchnama, i.e., ext.2. The Punches are P.W.4, 5, 6, 8. They have deposed that there was oral arrangement between the two brothers and pursuant to the said oral arrangement ext. '2' was prepared by them. The other witnesses P.W.1, 3, 7, 9 including the punches also have stated about the bad health of Tarni Rai. Their statement is only to the fact that Tarni Rai was keeping bad health. Therefore, these statements made by these witnesses are only bald statement without there being any supporting documentary evidences. Moreover, keeping bad health or entering cannot be ground of relinquishment of his interest. If he was in bad health then he could have got himself treated out of the income of 50 bigghas or he could have sold some land for generating fund for his treatment or for managing the family affairs. It is not believable that he will relinquish his title over the land.

15. On the contrary the defendant also produced the witness D.W.2, 7, 9 and 11. All of them have denied illness of Tarni Rai.. As stated above, these oral evidences are not very material as these evidences related to the illness or bad health of Tarni Rai. Now, let us consider accepting the case of plaintiff that Tarni Rai was keeping bad health and he entered into arrangement and relinquished his share by ext. '2'. It may be mentioned here that this ext. '2' is unregistered



deed. The property involved is 50 bigghas.

16. The Hon'ble Supreme Court in the case of *Yellapu Uma Maheshwari Vs. Buddha Jugagheeswara Rai 2015 (4) PLJR 494 SC* has held that 'it is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the document and that the admissibility of a document is entirely dependent upon the recitals contained in that documents but not on the basis of the pleadings set up by the party to seek to introduce the document in question. Where there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence ext. 'B-21' and 'B-22' are the document which squarely fall within the ambit of Section 17 (1) (b) of the Registration Act and hence are compulsorily registerable document and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties.'

17. It appears that in the case before the Supreme Court, Ext. B-21 and B-22 were the two relinquishment deed. The Supreme Court held that because of non-registration, these documents are



inadmissible. In the present case according to the plaintiff by this family arrangement, ext. '2' Tarni Rai relinquished title over 50 biggha land. The nomenclature has been given as Memorandum of Panchanama. In view of the decision of the Supreme Court, the nomenclature is immaterial but the recital is the decisive factor for considering the nature of document. By this document, title with respect to immovable property has been relinquished, therefore it requires compulsory registration. Since it is not registered, it is inadmissible in evidence.

18. It is settled principle of law that on admission, title will not pass. Title will pass only after registering a document and on payment of consideration amount. Therefore, merely by oral relinquishment coupled with Panchnama, ext.'2', title never passed to Anant Rai. In other words, title remained with Tarni Rai. So far the mutation paper or rent receipts are concerned, it is also settled law that the revenue records or documents neither create title nor extinguish title. Now, therefore, when title did not pass because of ext. '2', there is no question of passing title because of mutation or because of obtaining rent receipt arises.

19. The learned counsel for the appellant submitted that the leaned trial Court itself has recorded that there was some sort of



family arrangement between the brothers which supports the case of the plaintiff. So far this submission is concerned also, it has got nothing to do with passing of title from Tarni Rai to Anant Rai.

20. In view of my above discussion, I find that the plaintiff appellant failed to prove their title over the suit property. The finding of the trial Court on this point is, therefore confirmed. The point is answered against the appellant and in favour of the respondent.

21. In the result, I find no merit in this First Appeal. Accordingly, this First Appeal is dismissed. Since nobody is appearing on behalf of the respondent, no order to cost.

(Mungeshwar Sahoo, J)

Sanjeev/-

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