

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.603 of 1984

Against the Judgment and Decree dated 20.06.1984 passed by 2nd Addl. Subordinate Judge, Madhubani in Title Suit No.144 of 1980.

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Smt. Chandrakala Devi & Ors

.....Plaintiffs-Appellant/s

Versus

Gopal Jha & Ors

.....Defendants-Respondent/s

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Appearance :

For the Appellant/s : Mr. Ganapaty Trivedi, Sr. Advocate
Mr. Madan Mohan, Advocate
Mr. R. K. Sinha No.2, Advocate
Ms. Pallavi Pandey, Advocate

For the Respondent/s : None.

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Dated : 7th day of August, 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 against the judgment and decree dated 20.06.1984 passed by the learned 2nd Addl. Sub Judge, Madhubani in Title Suit No.144 of 1980 whereby



the learned trial Court dismissed the plaintiff appellant's suit.

2. The plaintiffs appellants filed the aforesaid title suit praying for declaration that the deed of gift dated 04.04.1977 executed by Bhulak Chaudhary, defendant No.4 in favour of Ramrati Devi, defendant No.1, and the two registered sale deed dated 19.09.1977 executed by Bhulak Chaudhary in favour of defendant No.2 and 3 are null and void and not binding on the plaintiff.

3. The plaintiff claimed the aforesaid relief alleging that the suit property was the subject matter of Partition Suit No.101 of 1976. The said suit was filed by these plaintiffs against their father, Baidhnath Chaudhary and grand father, Bhulak Chaudhary. According to them, Bhulak Chaudhary had gifted the properties to plaintiff No.2 and 3 and Sushil Kumar Chaudhary and he had no property left for himself. Sushil Kumar Chaudhary, the brother of plaintiff No.2 and 3 died. Baidhnath Chaudhary, the father of these plaintiff No.2 and 3 and husband of plaintiff No.1 had bad habit and was trying to destroy the joint family property, therefore, the Partition Suit No.101 of 1976 was filed. It was compromised between the parties. After disposal of the title suit, Bhulak Chaudhary filed Title Suit No.38 of 1970 challenging the compromise decree which was also compromised. Subsequently,



the plaintiffs learnt that Bhulak Chaudhary had executed the aforesaid gift deed and registered sale deed. Therefore, the suit had been filed for declaration.

4. The defendant No.1, i.e., Ramrati Devi, daughter of Bhulak Chaudhary, although filed written statement but did not contest the suit. The defendant No.2 and 3 contested the suit by filing contesting written statement. Their main defence is that Sushil Kumar Chaudhary died on 13.06.1977 and not in the month of October, 1977, therefore, the compromise decree passed in title suit in favour of dead person is a nullity in the eye of law. These defendants also deny the gift made by Bhulak Chaudhary in favour of the plaintiff No.2 and 3. According to them, Bhulak Chaudhary never relinquished his share in the joint family property. Therefore, he has filed Title Suit No.38 of 1978. Further, prior to compromise decree, they had already purchased the suit property on payment of consideration amount. Their names have also been mutated. All other allegations are denied. They were not party in the compromise decree, therefore, it is not binding on them.

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

- (a) Have the plaintiffs got valid cause of action and right to sue the defendants?



- (b) Is the suit maintainable as framed?
- (c) Is the suit barred by law of limitation, principle of estoppels, waiver and acquiescence and under Section 34 Specific Relief Act?
- (d) Is the suit bad for jon-joinder of necessary party?
- (e) Is the decree passed in P.S. No.101/76 is genuine, valid and operating and, if no, is it binding on the defendants?
- (f) Are the sale deeds dt.19.09.1977 and the Atainama dt.04.04.1974 fraudulent, void, inoperative and not binding upon the plaintiffs.
- (g) Are the plaintiffs entitled to get decree as prayed for in the plaint?
- (h) Are the plaintiffs entitled to get any relief or reliefs as prayed for in the present suit?

6. The learned trial Court after hearing the parties and considering the evidences came to the conclusion that the plaintiffs failed to prove that Sushil Kumar Chaudhary died in October, 1977. On the other hand, the defendants proved the fact that Sushil Kumar Jha@ Chaudhary actually died on 13.06.1977. Therefore, the compromise petition purported to have been signed by both the parties is wrong and decree is a nullity. The compromise petition does not bear the signature of Bhulak Chaudhary, therefore, also the decree is void ab initio. The gift deed and the sale deeds are valid and legal document and accordingly dismissed the plaintiff's suit.

7. The learned senior counsel, Mr. Ganapaty Trivedi, appearing on behalf of the appellant submitted that the learned trial Court has wrongly dismissed the plaintiff's suit by mis-appreciating the law



and fact. It is admitted fact that compromise decree was passed in Title Suit No.101 of 1976 wherein the defendant No.4, Bhulak Chaudhary, admitted the fact that he had gifted half share which he had in the joint family property. The suit was filed for partition of the remaining half share but the father of the plaintiff No.2 and 3 did not take share, as such compromise application was filed and the remaining half share, i.e., the subject matter of partition suit devolve on the plaintiff No.2 and 3 and their brothers, Sushil Kumar Jha. On the death of Sushil Kumar Jha, his share devolved on the plaintiff No.1, the mother of plaintiff No.2, Sri Sushil Kuakr Jha, therefore the plaintiff became the absolute owner. In such circumstances, Bhulak Chaudhary could not have gifted the property either to defendant No.1 or sold the properties to defendant No.2 and 3. He had no right to gift or to sell as he had already admitted to have gifted the property to the plaintiffs in the compromise decree.

8. According to the learned senior counsel, the compromise decree is not required to be registered because the plaintiffs had title in the property, therefore, as soon as the suit was decreed on the basis of compromise, the plaintiffs became the absolute owner. Bhulak Chaudhary, defendant No.4 had wrongly filed Title Suit No.38 of 1978, therefore, it was subsequently withdrawn by him. In such circumstances, whatever statement have been made by him in



the plaint of the suit cannot be admitted in evidence because he was alive and no evidence was adduced by him in support of the pleading. The learned Court below wrongly relied upon the pleading of the said suit.

9. The learned senior counsel, Mr. Ganapaty Trivedi, further submitted that the decree was passed not against the dead person but in favour of the dead person, i.e., Sushil Kumar Chaudhary, therefore, it is not a nullity. Moreover, the Court below wrongly placed reliance on the death certificate which was forged one. In fact Sushil Kumart Jha died in October, 1977 and not in June, 1977. According to the learned senior counsel, the Court below also wrongly came to the conclusion that the Bhulak Chaudhary had not signed the compromise application. In support of his contention, the learned counsel relied upon **2015 (1) BBCJ IV-128 SC Phool Pati Vs. Ram Singh** and submitted that if the previous gift is acknowledged in the consent decree, then it is not required to be registered. In the present case, Bhulak Chaudhary gifted the property to the plaintiff No.2 and 3 which he acknowledged in the compromise application, therefore, the decree is not required to be registered. In support of the same contention, the learned senior counsel relied upon **1995 (5) SCC 709 Bhoop Singh Vs. Ram Singh Major** and submitted that the decree creating new right, title and



interest in presenti in immovable of value of Rs.100/- or above is compulsorily registerable but if the compromise decree declares the pre-existing right, it will not require to be registered as in the present case. The learned counsel also relied upon the decision of Hon'ble Supreme Court reported in **2006 (10) SCC 782 Tulsian Vs. Pyarelal** and submitted that the consent decree is binding on both the parties and the consent decree need not be confined to subject matter of the suit only. On these grounds, the learned counsel submitted that the appeal be allowed and the impugned judgment and decree be set aside and the plaintiff appellant's suit be decreed.

10. Nobody appeared on behalf of the respondents although notice has already been validly served and the names of Advocates is also printed in the daily cause list.

11. In view of the above submission of the learned senior counsel, Mr. Ganapaty Trivedi, the only point arises for consideration is as to whether the plaintiffs are entitled to decree as claimed for by them and whether the judgment and decree passed by the trial Court requires interference or not.

12. The plaintiff's case is entirely based on the compromise decree passed in Title Suit No.101 of 1976. According to the plaintiffs, Bhulak Chaudhary had already gifted his half share in the



suit property to the plaintiff, therefore, the aforesaid suit was filed for partition. In the compromise, Bhulak Chaudhary, defendant No.2, admitted the fact that he had gifted all his shares. The father of plaintiff No.1 and 2 who was defendant No.1 did not claim his share and likewise the plaintiff No.4 Chandrakala Devi, the mother of other plaintiff also disclaimed her share as a result of which the plaintiff No.1 and 2 became the owner of the entire property. The compromise application has been marked as ext. '1'. In this compromise application, it is mentioned that defendant No.2, i.e., Bhulak Chaudhary had gifted his property to plaintiff No.1 to 3, i.e., grand son of defendant No.2. The plaintiff No.4 was the mother and defendant No.1 is the father of plaintiff No.1 and 2. It may be mentioned here that originally, there were four plaintiffs but one of the plaintiff died, namely, Sushil Chaudhary. The compromise application was signed by the parties on 14.05.1977. However, subsequent to this compromise application, Bhulak Chaudhary sold some property to the defendants of this case and likewise gifted some property to his daughter defendant No.1 and these sale deeds and gift deeds are under challenge.

13. It is admitted fact that Bhulak Chaudhary has half share in the property as has been admitted in the compromise application. The plaintiffs are claiming his half share on the ground that Bhulak



Chaudhary had gifted the property to them. There is no documentary evidence. The gift was never made by registered gift deed. The question is whether by mere admission in the compromise that Bhulak Chaudhary had gifted, title will pass to the plaintiff?

14. The learned senior counsel, Mr. Trivedi, for the appellant submitted that a consent decree is final between the parties and the consent decree need not be confined only to the reliefs prayed for nor be confined to the subject matter of the suit. The learned counsel in support of his contention relied upon the decision of the Hon'ble Supreme Court reported in **2006 (10) SCC 782 *Tulsian Vs. Pyarelal & ors.*** So far this decision is concerned, there is no dispute about the law laid down by the Hon'ble Supreme court.

15. The learned senior counsel further submitted that decree passed by the Court below is not required to be registered. The learned counsel relied upon the decision of Hon'ble Supreme Court reported in **1995 (5) SCC 709**. From perusal of these decisions, it appears that the Supreme Court has held that the exception under Clause VI of Section 17 (2) is meant to cover that decree or order of a Court including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by



itself create new right, title or interest in presenti in immovable of the value of Rs.100 or upwards. On the same line, the learned counsel relied upon the other decision of the Hon'ble Supreme Court reported in **2015 (1) BBCJ page IV-128 Phool Pati Vs. Ram Singh**, wherein the Supreme Court has held that if the claim of gift is acknowledged in the consent decree, it did not require compulsory registration in view of Section 17(2) (vi). So far these principle of law is concerned also, there is no dispute but in the present case, in my opinion, these decisions are not applicable for the reasons that consent decree was passed on 29.09.1977 whereas the gift deed is dated 04.04.1977 and the sale deeds are dated 19.09.1977. It means that prior to the consent decree, Bhulak Chaudhary had already transferred his right, title and interest by gift deeds as well as registered sale deed and the title vested on the donee and the transferee prior to the compromise decree. On the date of the decree, i.e., when the compromise was recorded by the Court below, Bhulak Chaudhary had no title over the property which he had already gifted and sold. Therefore, with respect to those property, he could not have given any consent. Neither the donee nor the transferee of Bhulak Chaudhary were made party.

16. The learned senior counsel, Mr. Trivedi, submitted that there was compromise between the parties and compromise application



was filed in May, 1977. According to the learned counsel, after the compromise application was filed, Bhulak Chaudhary acted contrary to the terms and conditions of the compromise. So far this submission is concerned, it will not be out of place to mention here that by mere compromise, title will not pass to the plaintiff. The compromise is nothing but agreement between the parties which will neither create title nor extinguish title. At best it can be said that Bhulak Chaudhary had admitted that he had gifted the property in the compromise application but then there is no document, i.e., gift deed showing gift to the plaintiff and prior to the recording of compromise, Bhulak Chaudhary had transferred the property to the defendant Nos. 1 to 3 of the present suit. Impliedly, it means that he repudiated the admission made by him in the compromise application. In other words, what he agreed was violated subsequently by him. In my opinion, merely, on the basis of statement made in the compromise application, exhibit '1', title never passed to the plaintiff regarding the share of Bhulak Chaudhary and prior to the decree, he had already transferred his share. Therefore, by the consent decree, the title which had already vested on the donee and the transferee, i.e, defendant No.1, 2 and 3 will not be divested. Further, the plaintiffs Nos.1 and 2 had no title in the property. They are entitled to a share from the share of their



father. They claim $\frac{1}{2}$ property on the basis of compromise which means that the compromise decree created title for the first time on them so far property of Bhulak is concerned. Therefore, also the registered document is necessary.

17. It appears that both the parties have adduced oral evidences also. From perusal of the evidences of plaintiffs witnesses, P.W.6, 7, 8, I find that these witnesses are only the point of possession of the plaintiff over the suit property. P.W.11 has stated that in partition, the suit property came in the share of the plaintiff. Such is the evidence of P.W.12, 13, 15, 16 and 17. Therefore, the witnesses of the plaintiff have only stated that there was a partition and in that partition, the suit property came in the share in the plaintiffs and they are in possession. So far these oral evidences are concerned, these are not very material or decision of the controversy between the parties.

18. The defendants have also examined many witnesses. Defendant No.2 is the D.W.21. D.W. 5, 6, 7, 8, 9, 14, 15, 18 have all stated that Bhulak Chaudhary had transferred the property. D.W.20 is purchaser of other land from Baidhnath Chaudhary, i.e., defendant No.1 of Title Suit No.101 of 1976. He had purchased the property from Baidhnath Chaudahry by registered sale deed



dt.19.09.1977.

19. The plaintiffs case is that their father, i.e, Baidhnath Chaduahry did not take any share in the property and the plaintiff became the absolute owner then how Baidhnath Chaudarhy sold some land in the year 1981 to D.W.20 This clearly falsified the claim of the plaintiffs.

20. According to the plaintiffs, Sushil Chaudhry died in October, 1977 but no evidence is there on behalf of the plaintiff. On the contrary, death certified has been produced by the defendant which shows that Sushil died on 13.6.1977. Further, in the compromise application which was signed by the parties in May, 1977, there is reference of four plaintiffs whereas in the compromise decree dt. 29.09.1977, there are only three plaintiffs wherein the name of Sushil Chaudahry is not there. It means that on the date of compromise decree, Sushil was not alive. This fact also clearly falsified the case of the plaintiff that Sushil died in October, 1977.

21. In view of my above discussion, I find that the defendant No.1 to 3 were not party in Title Suit No.101 of 1976. Prior to the date of compromise decree, they had acquired title in the property transferred to them by gift and by sell. Since they were the title holder on the date of the compromise decree, ext. '2', their title is



not affected by the consent decree and since they were not party, the consent decree is not binding on them. Thus, the finding of the trial Court that the plaintiffs are not entitled to the relief as claimed for is hereby confirmed. The point formulated is answered against the appellant.

22. In the result, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

Sanjeev/-

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