

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.625 of 1986

Against the Judgment and Decree dated 12.09.1986 passed by Subordinate Judge, Siwan in Title Suit No.232 of 1984.

Suresh Kumar & Ors.

.....Defendants -appellants

Versus

Jhotil Singh & Ors.

.....sole Plaintiff - Respondents

Appearance :

For the Appellant/s :- Mr. Binod Kumar Singh, Advocate
Mr. Raghav Prasad, Advocate

For the Respondent :- Mr. Udai Shanker Saran Singh, Advocate

Dated : 7th day of March, 2017

PRESENT

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV JUDGMENT

1. The defendants have filed this First Appeals against the Judgment and Decree dated 12.09.1986 passed by the learned Subordinate Judge, Siwan in Title Suit No.232 of 1984 whereby the plaintiff respondent's suit had been decreed.
2. The plaintiff respondent filed the aforesaid suit praying for declaration that four sale deeds executed by plaintiff No.1, Bhusi



Singh dated 23.09.1983 are forged and fabricated and without consideration. The sale deeds were never acted upon and the sale deeds are not binding on the plaintiff. The plaintiff also prayed for confirmation of possession of plaintiff No.2.

3. The plaintiff claimed the aforesaid relief alleging that the suit land belonged to Bhusi Singh, plaintiff No.1 who was a religious minded man. For the purpose of constructing temple, he required money and in November, 1982, he agreed to sell the suit land to plaintiff No.2, Jhotil Singh for a consideration of Rs.4500/-. Stamp paper was purchased on 20.11.1982. The plaintiff No.2 paid Rs.3000/- but due to long illness of Bhusi Singh, the deed could not be executed. However, on 03.08.1984, Bhusi Singh executed the sale deed and he got it registered on 30.09.1983. The balance amount of Rs.1500/- was paid at the time of execution of the sale deed.

4. The further case of the plaintiff is that the defendants when came to know about the agreement, they taking advantage of illness of Bhusi Singh took Bhusi Singh in the garb of his treatment by foreign doctor. On 22.09.1983 they took him to Barhaia Anchal office on the pretext that a petition would be filed to obtain certificate in connection with treatment and left thumb impression were obtained on plain paper. Subsequently, the plaintiffs found that the paper on which left



thumb impressions were obtained had been converted to sale deed and registered on 23.09.1983. Criminal case was filed. Thereafter, the present suit was also filed. During pendency of suit, Bhusi Singh plaintiff No.1 died.

5. The defendants appellants filed written statement. Besides taking various legal and ornamental please, the defendants mainly contended that Bhusi Singh had sold the suit land for a consideration of Rs.20,000/- by registered sale deed dated 23.09.1983 and the defendants came in possession of the land, thereafter the plaintiffs purchased the stamp in the back date and got the sale executed only with a view to defeat the title of the defendants. Sale deed was registered on 30.09.1983 in favour of the plaintiff, therefore, the sale deed is fraudulent. The defendants have been acquitted in the criminal case. The sale deed in favour of the defendants have been executed by Bhusi Singh after taking the consideration amount as such those are valid, legal and binding on the plaintiff.

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

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff valid cause of action for the suit?



- (iii) Is the suit barred by law of limitation waiver, estoppel and acquiescence?
- (iv) Whether the suit is hit by Section A(b) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956?
- (v) Whether the sale deeds dt.23.09.1983 executed in favour of defendants are fraudulent, illegal and are not binding upon the plaintiff?
- (vi) Whether the plaintiff is entitled to a declaration as prayed for?
- (vii) To what relief or reliefs, if any, is the plaintiff entitled?

7. The learned trial Court recorded finding that four sale deeds dated 23.09.1983 executed in favour of defendants are fraudulent and illegal and are not binding on the plaintiff No.2. Accordingly, the suit is decreed.

8. The learned counsel, Mr. Binod Kumar Singh, for the appellant submitted that learned trial Court decreed the suit only on surmises and conjectures and presuming the facts which are required to be proved by adducing evidence. Although the plaintiffs pleaded fraud but no particulars of fraud had been given in the pleading nor



any evidence has been adduced in support of the fraud. According to the learned counsel, the learned trial Court wrongly relied upon the two decisions of the Patna High Court reported in : (i) ***AIR 1975 Patna 67 Bibi Jamurunisha Vs. Sk. Qudoos*** and (ii) ***1978 BLJR 375 Nanhak Singh Vs. Addl. Collector of Bettiah***. The learned counsel submitted that those decisions are not helpful to the plaintiffs in the present facts and circumstances of this case. In the present case at our hand, the sale deed of the defendant-appellant was registered earlier, therefore, title passed to the appellant. In such circumstances, subsequent registration of the sale deed in favour of the plaintiff will not divest the title of the defendant-appellant.

9. The learned counsel further submitted that it is for the plaintiff to prove that the sale deed in favour of the defendant appellant is fraudulent and without consideration because the sale deed is a registered document and is, therefore, presumed to be valid, legal and binding till the contrary is proved. Here, the plaintiff respondent never prayed for setting aside the sale deed. Moreover, the executants of the sale deed has died. In such circumstances, the plaintiff No.2 is not entitled for the relief claimed. The learned counsel further submitted that only a bald statement was made by the plaintiff that for the construction of temple, money was required by



the plaintiff No.1. No date of purchase of stamp has been pleaded nor the date of payment of Rs.3000/- is pleaded. Likewise there is no pleading as to when the sale deed was presented for registration.

10. The learned counsel further submitted that the defendants appellants purchased the property on payment of Rs.20,000/- as consideration and the property is about 1 biggha. How, this property was sold for Rs.4500/- only in favour of the plaintiff, there is no explanation at all. According to the learned counsel, because the execution is ante dated and no stamp of high denomination was available, so, consideration amount has been shown less with a view to defeat the title of the appellant. The defendants appellants have adduced sufficient evidences in support of their case regarding ante dating. So far fraud is concerned, no evidence has been produced by the plaintiff. On these grounds, the learned counsel submitted that the impugned judgment and decree be set aside and the plaintiff respondent's suit be dismissed.

11. On the other hand, the learned counsel, Mr. Udai Shanker Saran Singh, submitted that the sale deed was executed in favour of the plaintiff on 3rd of August, 1983 and it was presented by plaintiff No.1 for registration. According to the decision of the Patna High Court referred to above and also referred in the judgment, the



registration of the sale deed relate back to the date of execution of the sale deed, therefore, title will pass on the plaintiff retrospectively from the date of execution, i.e., 3.8.1983. The sale deeds of the appellants are dated 23.09.1983. Considering this aspect of the matter, the trial Court has rightly decreed the plaintiff's suit. Moreover, the plaintiff is in possession of the property. Since the plaintiff has got the title and is in possession he is not required to pray for cancellation of the sale deed. The learned Court below has rightly considered the evidences adduced by the parties and then has recorded finding in favour of the plaintiff. Both the decisions relied upon by the plaintiff respondent before the trial Court are clearly applicable in the present case.

12. The learned counsel further submitted that it is the specific pleading that fraudulently, the defendant appellants took the plaintiff No.1 to Siwan in the garb of treating him as he was ill and obtained left thumb impression on blank paper in the garb of obtaining certificate from Barahia and subsequently, they converted the papers to sale deeds. The learned Court below considering this fact has thus rightly decreed the plaintiff's suit.

13. In view of the above rival contentions of the parties, the points arises for consideration in this First Appeal is as to whether the



plaintiffs are entitled to the relief claimed in the suit and whether the judgment and decree passed by the trial Court is sustainable in the eye of law.

14. It is admitted fact that plaintiff No.1 Bhusi Singh was the owner of the suit property. The sale deeds in favour of the plaintiff as well as the sale deeds in favour of the defendants appellants have been registered by him.

15. At paragraph 2 of the plaint, it is pleaded that plaintiff No.1 was in urgent need of money and he offered to sell suit land to plaintiff No.2. The plaintiff No.2 accepted the offer and the agreement was finalized in 1982. At paragraph 3 of the plaint, it is pleaded that at that very time, stamp paper was purchased and sale deed was prepared and the property was sold to plaintiff No.2 for Rs.4500/- and according to the sale, possession was delivered on 3.8.1983.

16. The plaintiff regarding fraud pleaded at paragraph 10 that on 22.09.1983, the defendant took plaintiff No.1 to Barahaia for obtained certificate for getting him treated by foreign doctor. The plaintiff No.1 agreed to obtain the certificate for treatment and went with them where they obtained left thumb impression on different papers.



17. In support of the pleadings, the plaintiffs have examined witnesses. Let us examine the evidences. P.W.1 to P.W.7 are either formal witnesses or they have stated that the plaintiff is in possession of the suit property. The sale deed was explained and Bhusi put his left thumb impression. P.W.8 has proved the stamp register as exhibit '2'.

18. P.W.9 is the plaintiff No.2, Jhotil Singh. At paragraph 2 and 3, he has stated that the defendants in the garb of treating him took Bhusi Singh to Barahia and they got the sale deeds registered. Bhusi Singh told him that fraudulently they got the sale deed registered. This is the evidence adduced by the plaintiff in support of the case pleaded regarding fraud. There is neither pleading nor any evidence has been adduced by the plaintiff to show that what was the requirement of plaintiff No.1. However, much emphasis has been given by the trial Court that for the purpose of construction of temple, money was needed. There is no evidence at all that the money was required for full construction of temple or for completion of half constructed temple. It will not be out of place to mention here that the consideration amount is only Rs.4500/-. According to the plaintiff themselves, plaintiff No.1 was ill. So much so that for eight months, the deed was neither executed nor registered. Therefore, what was the



amount needed for treatment and what was the amount needed for construction of temple or completion of temple.

19. There is no pleading as to on which date Rs.3000/- was paid to plaintiff No.1 and likewise who was treating plaintiff No.1. Moreover not a single chit of paper either prescription or any medical report regarding ailment of plaintiff No.1 has been produced by the plaintiff No.2. Further, there is no explanation as to why although the sale deed was executed on 3.8.1983, it was registered on 30.09.1983. Although it is pleaded that plaintiff No.1 was ill but except this bald statement, nothing has been produced in support of this pleading. No explanation is there as to what was the extent of his illness and nature of illness. According to the plaintiff, agreement was completed in November, 1982 and stamp was purchased. For this long eight months delay, only explanation is that the plaintiff No.1 was ill. If he was ill then how he accompanied the defendant appellants to Barhaia for obtained certificate. It means that he was able to move. If he was able to move and in fact accompanied the defendant then why he did not present the sale deed of the plaintiff for registration as the sale deed was executed on 3.8.1983 in favour of the plaintiff and amount of Rs.3000/- was paid to him as claimed by the plaintiff themselves. It is not their case that plaintiff No.1 was bed ridden or was unable to



move or the doctor advised him not to go outside.

20. The Hon'ble Supreme Court in the case of *Vimal Chand Ghevar Chand Jain and others vs. Ramakant Eknath Jadoo 2009 (5) SCC 713* has held that 'a registered deed of sale carries presumption that the transition was a genuine one. If execution of sale deed is proved, onus is on the defendant to prove that the deed was not executed and it was a sham transaction.' In the present case, the plaintiffs only pleaded that left thumb impression were obtained on papers which were converted to sale deeds. However, there is no reliable evidence in support of this pleading. Here, it is not a question of one sale deed rather four sale deeds have been executed and registered in favour of the defendants-appellants. It is not the case of the plaintiff that the sale deeds were not presented by plaintiff No.1 before the Sub-Registrar for registration. Only explanation is fraudulently it was obtained by the defendants-appellants. Therefore, the execution of the sale deeds are admitted here.

21. The Hon'ble Supreme Court in the case of *Union of India Vs. Vasavi Cooperatives Housing Society Ltd. 2014 (2) SCC 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. Even if the title set up by the defendants is found against them in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.'

22. In view of this decision, the weakness of the defendants will not prove the title of the plaintiff. The plaintiff is seeking the declaration with respect to four sale deeds. Therefore, the onus is on him to prove fraud played by the defendants on plaintiff No.1. If the plaintiff failed to prove fraud, then the sale deeds are genuine sale deeds. As stated above, except the pleading and bald statement, no reliable evidence had been adduced. Now, therefore, when the registered sale deeds are genuine sale deeds title passed to the defendants-appellants. There is no denial that consideration was not paid to plaintiff No.1. From perusal of the impugned judgment, it appears that the trial Court presumed that plaintiff No.1 was religious minded person, therefore, it is not believable that he would have sold



to the defendants-appellants for Rs.20,000/- particularly when he had already executed the sale deed in favour of the plaintiff earlier. In my opinion, the Court cannot presume a fact which is required to be proved by adducing evidence. Admittedly, the sale deeds in favour of the defendants appellants are executed and registered by rightful owner of the property.

23. The Hon'ble Supreme Court in the case of ***Prem Singh Vs. Birbal (2006)5SCC 353*** has held that 'there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof thus would be on a person who leads evidence to rebut the presumption.'

24. The Hon'ble Supreme Court in the case of ***Md. Noorul Hoda Vs. Bibi Raifunisha (1996)7 SCC 767*** has held that 'when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act regulates suits for cancellation of an instrument.' In the present case at our hand, admittedly, the plaintiff is not praying for cancellation of the sale deed



which are genuine sale deeds. Only a declaration has been prayed for that the sale deeds are not binding on the plaintiff.

25. This Court in the case of *Seeta Sharan Prasad Vs. Manorama Devi 2012 (2) BLJ 165* has held that ‘a registered sale deed is presumed to have been validly executed with all its legal consequences. Such document cannot be said to be void ab initio. There cannot be presumptive in validity attached to such a transaction. Such document remains valid on principal that apparent state of affairs is real state of affairs until facts invalidating the sale are established.’ In the present case, no such evidences has been adduced by the plaintiff in support of his pleading regarding fraudulent act of the defendants.

26. In view of the above facts and circumstances of the case and the evidences discussed, the title passed to the defendants appellants as soon as the four sale deeds were registered on 23.09.1983. In other words, on 30.9.1983 plaintiff No.1 had no title for transferring the suit land in favour of the plaintiff. It will not be out of place to mention here that the plaintiff No.1 is and the plaintiff No.2 has not prayed for declaration of his title with respect to the suit property. If he is not the title holder then at his instance, how the sale deed of the defendants will be set aside and moreover, no prayer has



been made for setting aside the sale deeds.

27. Now, let us consider the two decisions relied upon by the trial Court.

28. *In AIR 1975 Patna page 67 Bibi Jamirunisha*, the High Court was considering the effect of registration and held that ordinarily whenever a document is registered, it takes effect from the date of registration. In case of a document which is voluntarily admitted before the sub Registrar, it operates from the time of its execution and not from the time of its registration. In the case of documents which are compulsorily registered, the law is slightly different. It shall take effect not from the date of its execution but from the date of its first presentation for registration vide paragraph 8 of the judgment. Here, sale deed is compulsorily registerable. Therefore, in view of this decision read with Section 75 sub Section 3 of the Registration Act, the registration will relate back to date of presentation, however, the plaintiff had not given any date when it was presented for registration.

29. So far the decision of *Nanhak Singh (Supra)* is concerned, in that case, it has been held that on registration of the sale deed, title will pass from the date of execution. There is no dispute about these settled principle of law but the facts of both those were entirely



different. In 1975 Patna case, the sale deed was executed in favour of the plaintiff which was presented for registration in October, 1951. Prior to registration of the document, two sale deeds were executed in favour of the defendants. In the present case, this is not the fact. There is nothing on record to show that whether the sale deed was presented prior to registration of sale deed in favour of the defendants appellants. Here, the sale deed in favour of the defendants is challenged on the ground of fraud only. I have already held that plaintiff failed to prove fraud. Therefore, four sale deeds are genuine sale deed. As soon as the sale deeds are registered, title passed in favour of the defendants appellants. In such circumstances, the presentation of the subsequent sale deeds for registration will not divest the title of the defendant because the sale deed which was presented by person for registration had no title over the suit property on the date of its presentation before the Sub Registrar. In my opinion, therefore, the learned trial Court has not considered the second part of paragraph 8 of 1975 Patna and Section 75 sub Section 3 of the Registration Act which has vitiated the finding of the trial Court.

30. In view of the above discussion, I find that the plaintiff failed to prove that the defendants fraudulently obtained the sale deeds



from plaintiff No.1. In other words, the plaintiff failed to rebut the presumption of genuineness and valid execution of the four sale deeds by plaintiff No.1 in favour of the defendants-appellants. The finding of the trial Court on this point is therefore, reversed.

31. In the result, this First Appeal is allowed. The impugned Judgment and Decree are set aside and the plaintiff's suit is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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