

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.84 of 2017

IN

C.Misc. 378 of 2017

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Bajnath Prasad, s/o Late Babu Sadhu Lal, r/o Gurhatta, P.S.-Patna City, Town and District-Patna, presently residing in Manisha Complex, Bakarganj, Bari Path, P.S.-Pirbahore, Town and District-Patna.

.... Petitioner/s

Versus

Suresh Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar Sinha, Sr. Adv.
Mr. Abhinay Raj, Adv.
Mr. Pramod Kumar Sinha, Adv.
For the Respondent/s : Mr. Mahendra Prasad Verma, Adv.
Mr. Vishwanath Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 31-10-2017

The petitioner is aggrieved by an order, dated 03.02.2017, passed in Title Suit No. 344 of 2013 by learned Sub-Judge V, Nalanda, whereby the court below has rejected the petition filed by the petitioner, who is defendant before the court below, under Order 7 Rule 11 of the Code of Civil Procedure (*hereinafter referred to "C.P.C."*).

I have heard learned senior counsel appearing on behalf of the petitioner and learned counsel representing plaintiff/respondent.

It appears from the materials on record that the plaintiff filed the said Title Suit no. 344 of 2013 before the court below for declaring the registered sale deed dated 12.07.1989 executed by him,



to be *Sham, showy and void* and the same be treated as a mortgage deed. The plaintiff asserted in his plaint that the suit property was purchased by the plaintiff on 18.04.1973. It is his case that a sum of Rs. 1,37,000/- was paid by the defendant and instead of a mortgage deed, the plaintiff executed the sale deed. It is the case of the plaintiff that when in the year 2014 he approached the government official for grant of rent receipt, he learnt that a mutation case was initiated vide Misc. Case No. 461 of 2011, on the basis of which, the name of the defendant was entered therein. It is the case of the plaintiff that thereafter he applied for certified copy of the sale deed on 28.10.2013, whereafter he came to know about the entire facts and filed the title suit immediately thereafter.

The petition, under Order 7 Rule 11 of the C.P.C., was filed on behalf of the defendant, after he appeared on notice, for rejection of the plaint, mainly on the ground that the suit was barred by law of limitation. It was the specific case of the defendant before the court below on his application under Order 7 Rule 11 that the suit filed for declaring the sale deed to be showy and void by the executant more than three years after the date of execution, deserved to be dismissed at the threshold being barred by limitation.

The court below has, however, dismissed the said petition under Order 7 Rule 11, mainly on the ground of a document



dated 03.08.2005, which is notarized, in which the defendant himself is said to have treated the sale deed dated 12.07.1989 to be a mortgage deed.

Mr. D.K. Sinha, learned senior counsel appearing on behalf of the petitioner, has submitted that the court below had no other option but to reject the plaint in view of clear provision under Order 7 Rule 11 of the C.P.C. read with Article 59 of the Limitation Act, 1963.

Learned counsel appearing on behalf of the respondent, on the other hand, has submitted that there is no illegality in the impugned order. He submits that the plaintiff did not have any knowledge that the defendant had treated the said document as sale deed and on the basis of that he had got his name mutated. According to him, the moment, the plaintiff learnt that based on the said document, dated 12.07.1989, the defendant got his name mutated, he came in action and filed the suit in the year 2013. According to him, the suit cannot be said to be barred by limitation and since it was filed only for the purpose of seeking a declaration that the said sale deed is in fact a mortgage deed, Article 59 of the Schedule to Limitation Act shall have no application.

I am convinced with the submission made on behalf of the petitioner. The plaintiff himself does not dispute the fact that the



said registered sale deed was executed by him on 12.07.1989. It is not the case of the plaintiff that essential ingredients of transfer of immovable property through sale are not available in the said sale deed.

Learned counsel for the Respondent (Plaintiff) has, however, submitted that the said sale deed needs to be interpreted as mortgage deed in view of mutual understanding between the plaintiff and defendant.

The submission, so advanced, on behalf of the plaintiff/respondent cannot be accepted. It is well settled principle that a document has to be read on the basis of its contents. A sale deed is to be interpreted on the basis of recitals in the sale deed and not with the aid of anything external to the said sale deed. The story, developed on behalf of the plaintiff that he was not knowing about the fact that the defendant had acted upon the sale deed, could not have been accepted by the court below.

Article 59 of the Schedule to Limitation Act prescribes three years limitation for filing of a suit to cancel or set aside an instrument or decree or for rescission of a contract. As per the said Article 59, the time of limitation begins to run when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded 'first become known to him'. The fact of



execution of sale deed dated 12.07.1989 was certainly known to him on the date when he had executed the said sale deed.

Learned counsel for the plaintiff himself has produced before this Court, a copy of the said sale deed. Learned counsel has, however, not been able to satisfy this Court as to how the said document can be read to be a mortgage deed.

From the said undisputed document, it appears that the transfer of immovable property was made for consideration.

Apparently, the suit, filed, was barred by the law of limitation. Learned court below has committed illegality by rejecting the defendant’s application under Order 7 Rule 11 of the C.P.C.

Accordingly, the impugned order, dated 03.02.2017, is set aside. As consequence of what has been held above, the application, filed by the defendant before the court below under Order 7 Rule 11 of the C.P.C., stands allowed and the plaint of Title Suit No. 344 of 2013 stands rejected.

(Chakradhari Sharan Singh, J.)

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AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	16.11.2017
Transmission Date	

