

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.208 of 2007

=====

Ganesh Rai & Ors

.... Appellant/s

Versus

Jitendra Gottam & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. ABDUL WADOOD
Mr. Amrendra Kumar

For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 21-06-2017

1. This appeal has been preferred against judgment and decree dated 07.08.2006 passed by learned Sub Judge, Naugachia in Title suit no. 51/2004 by which and whereunder he dismissed the aforesaid suit ex parte without cost against defendant first party-respondent first party whereas on contest dismissed the aforesaid suit against plaintiffs-appellants.

2. Plaintiffs-appellants (who are hereinafter called as plaintiffs) filed Title suit no. 51/2004 against defendants-respondents seeking reliefs for declaration of the right, title and interest over the plot no. 5877, plot no. 5878, plot no. 5881, plot no. 5882, plot no. 5883, plot no. 5871, plot no. 6035 of khata no. 2896 total area and 9.42 acres. Also sought reliefs to cancel registered cancellation deed dated 31.03.2004 executed by respondent first party (hereinafter referred to call as dependent first party) as null, void, illegal and not being binding upon the plaintiffs and also for declaration that on the basis of the registered sale deed dated 14.10.2004 executed by defendant first party



in favour of defendant second party is void, illegal inoperative and not affected the right, title and interest of the plaintiffs and also for issuance of injunction against defendants till the disposal of the suit.

3. The case of the plaintiffs is that disputed lands originally belonged to one Shyamdeo Kumer who gave a proposal to sell 2 acres 71 decimals lands to plaintiff no.1 for consideration money of Rs. 71, 600/- which was accepted by the plaintiff no.1 and subsequently, an agreement for sale was executed by the aforesaid Shyamdeo Kumer on 05.12.1993 in favour of plaintiffs on payment of Rs 10,000/- in advance. The aforesaid Shyamdeo Kumar often used to take sand, chips etc from plaintiff no.1 and he took the aforesaid articles of Rs 65,000/- from plaintiff no.1 and adjusted the aforesaid amount towards consideration money of the aforesaid agreement for sale. The possession of the land was given to plaintiffs at the time of execution of agreement for sale itself. The above stated Shyamdeo Kumar, unfortunately, died before execution of absolute sale deed and thereafter, plaintiffs requested defendant no. 1(a), namely, Mostt. Usha Devi who happened to be wife of Shyamdeo Kumar, and she executed a power of attorney of her property in favour of defendant no.1, namely, Jitendra Gauttam who agreed to sell the entire 9 acres 45 dismals of lands for consideration amount of Rs 4, 71,000/- and also agreed to adjust Rs 65,000/- earlier paid by the plaintiffs in connection with agreement for sale dated 05.12.1993. Plaintiffs paid Rs 1, 77,000/- through Ramesh Kumar (PW 3), Rs 1, 55,000/- through Sajan Kumar (PW 5), Rs 20,000/- through Akal Singh (PW 4), and again, Rs 54,000/- through Ramesh Kumar (PW 3). Defendant no. 1, namely,



Jitendra Gauttam having got the aforesaid consideration amount, executed registered sale deed of the disputed lands on 22.11.2003 in favour of plaintiffs in presence of the above stated witnesses. Plaintiffs got the possession of remaining portion of lands on the date of execution of the aforesaid registered sale deed but on 31.03.2004 defendant no. 1, illegally and fraudulently, executed registered cancellation deed in respect of the aforesaid transferred lands without giving any notice to the plaintiffs and also transferred the disputed lands in favour of the defendant second party by executing two registered sale deeds on 14.10.2004 and thereafter, defendant second party threatened plaintiffs to dispossess them from the suit lands. Thereafter, plaintiffs filed the above stated Title suit no. 51/2004.

4. Although all defendants, except defendant no. 1(A), appeared and filed their joint written statement but defendant no. 1 (A) namely, Mostt. Usha Devi did not appear to contest the suit even after publication of substituted notice on her. Defendants admitted this fact that registered sale deed dated 22.11.2003 had been executed in favour of plaintiffs by defendant no. 1 on the basis of power of attorney dated 03.10.2000 executed by defendant no. 1 (A) in favour of defendant no.1 but consideration amount of the aforesaid sale was not paid by plaintiffs who assured defendant first party that the consideration amount shall be paid after execution of the sale deed and also agreed that chirkut of the aforesaid sale deed would remain in possession of defendant no. 1 till payment of consideration amount and that chirkut shall only be returned to the plaintiffs after payment of entire consideration amount. The defendant first party requested several times to plaintiffs to pay



consideration amount of transferred lands but they did not make any payment then, defendant first party cancelled sale deed dated 22.11.2003 by executing registered cancellation deed dated 31.03.2004. Defendants also denied so-called execution of the sale deed by Late Shyamdeo Kumer in respect of 2.71 acres of the disputed lands and also handing over possession of the aforesaid lands to the plaintiffs. They also denied that the plaintiffs made payment of consideration amount of transferred lands through Ramesh Kumar, Sajan Kumar and Atal Singh. Further case of the defendants is that due to non-payment of consideration amount of registered sale deed dated 22.11.2003, title of the suit lands was never passed to plaintiffs and, therefore, there was no valid sale of the suit lands.

5. Defendants also pleaded in their written statement that after execution of the cancellation deed, defendant first party executed registered sale deed in favour of defendant second party on 14.10.2004 for valid consideration and handed over possession of disputed lands to defendant second party. Defendants also pleaded that on the basis of certified copy of registered sale deed dated 22.11.2003, plaintiffs got mutated their names in the revenue record but in Jamabandi case no. 745, aforesaid entry was corrected by the competent authority.

6. On the basis of pleadings of both parties, following issues were framed by the learned court below.

- i) Is the suit as framed maintainable?
- ii) Whether plaintiffs have valid cause of action for the suit?
- iii) Whether plaintiffs have failed to pay consideration amount to defendant first party or not?
- iv) Whether plaintiffs acquired right, title, interest and



possession over the suit lands?

v) Whether sale deed dated 14.10.2004 in favour of defendant party is valid and affected right, title and interest of plaintiffs?

vi) To what relief or reliefs plaintiffs are entitled for?

7. Plaintiffs got examined five plaintiffs' witnesses including plaintiff no.1, namely, Ganesh Rai. Plaintiffs also got exhibited unregistered agreement for sale deed dated 05.12.1993 as exhibit 1, registered sale deed dated 22.11.2003 executed by defendant no. 1 in the capacity of holder of power of attorney of Mostt. Usha Devi in favour of plaintiffs as exhibit 2, certified copy of cancellation deed dated 31.03.2004 as exhibit 3 and certified copy of khatiyani of the disputed lands as exhibit 4.

8. Defendants also got examined, altogether, eight witnesses and got exhibited rent receipts as exhibit A series, registered sale deed dated 14.10.2004 as exhibit B, cancellation deed dated 31.03.2004 as exhibit C and certified copy of the orders of revenue officials as exhibit D series, Khatiyan of the disputed plots as exhibit E and one sale deed dated 24.02.1998 was marked as "X" for identification.

9. The learned court below took issues nos. 3, 4 and 5 together for decision and after analysing the evidences, the learned court below came to the conclusion that no title of suit lands was passed to the plaintiffs in respect of suit lands due to non-payment of consideration amount of registered sale deed dated 22.11.2003 and accordingly, sale deed dated 22.11.2003 was never made effective and accordingly, the learned court below decided the above stated issues against the



plaintiffs.

10. The learned court below while deciding issue nos. 1, 2 and 6 held that plaintiffs failed to prove their right, title and possession in respect of the suit lands and they had no valid cause of action for the suit and, therefore, they were not entitled to reliefs as sought for by them.

11. Learned counsel appearing for appellants challenged the impugned judgment and decree arguing that the learned court below failed to appreciate evidences available on the record in right perspective. The court below failed to take note of the evidences of PW 3, PW 4 and PW 5. Learned counsel further submitted that the aforesaid plaintiffs' witnesses very clearly stated that the consideration amount was paid in their presence and the evidence of the aforesaid witnesses was never confronted by the defendants. Continuing his submissions, he submitted that neither defendant no. 1(a), namely, Usha Devi who happens to be real owner of the land in question nor defendant no.1, namely, Jitendra Gauttam in whose favour power of attorney was executed by defendant no. 1(a), namely, Most. Usha Devi appeared as witness before the court below to deny the factum of payment of consideration amount but even then learned court below failed to draw an adverse inference against the defendants. He further submitted that all witnesses examined on behalf of the plaintiffs, very specifically, stated about payment of consideration amount as well as possession of the plaintiffs over the disputed land and the aforesaid facts were not confronted by the defendants. He also submitted that the plaintiffs, specifically, averred



in their plaint regarding payment of consideration amount as well as their possession over the disputed plots but the learned court below failed to take note of the aforesaid facts and committed error in passing the impugned judgment and decree.

12. Learned counsel for the appellants further submitted that a valid sale deed can not be cancelled only by execution of cancellation deed and only civil court can cancel the valid sale deed but in the present case, defendant no.1, namely, Jitendra Gauttam executed cancellation deed dated 31.3.2004 and after that executed sale deed in favour of other persons which was not in accordance with law because at the time of execution of the sale deed in favour of other defendants by defendant no.1, neither defendant no.1, namely, Jitendra Gauttam nor defendant no. 1(a), namely, Most. Usha Devi had any right to execute sale deed of the disputed plots and, therefore, even if any sale deed was executed by defendant no. 1 in favour of remaining defendants, the aforesaid sale deed was illegal and void but the learned court below failed to consider the aforesaid legal as well as factual aspect.

13. No one appeared on behalf of the respondents to convert the aforesaid submissions of the learned counsel for the appellants, though hearing of this first appeal was adjourned several times.

14. Having heard the contentions of learned counsel for the appellants I went through the record along with the impugned judgment and decree.

15. The claim of the appellants is that they jointly purchased the disputed land on 03.10.2000 through registered sale deed executed by



defendant no.1, namely, Jitendra Gauttam who was holding power of attorney executed by defendant no. 1(a), namely, Most. Usha Devi and after purchase they came in possession over some parts of the disputed land whereas they were already in possession of remaining portion of the land prior to execution of the aforesaid sale deed as the original owner namely, Shyamdeo Kumer had executed an agreement of sale on 05.12.1993 in respect of some portions of the disputed land and gave possession of the aforesaid land. Further case of appellants is that total consideration amount of the land in question was Rs. 4,71,000, out of which some part of the consideration amount had already been paid to the original owner namely, Shyamdeo Kumer whereas remaining part of the consideration amount was paid to defendant no. 1 on various dates either through witnesses or in presence of those witnesses. Therefore, entire claim of the appellants hinges upon registered sale deed dated 03.10.2000 said to be executed by defendant no.1, namely, Jitendra Gauttam. The learned court below, while dealing with issues nos. 3, 4 and 5, came to the conclusion that consideration amount of sale deed dated 03.10.2000 had not been paid and, therefore, title of the disputed lands could not pass to appellants.

16. Now, question arises as to whether the learned court below dealt with the evidences available on record properly while deciding issue nos.3, 4 and 5 and furthermore, it has to be seen as to whether on the basis of registered sale deed dated 03.10.2000, title was passed to the appellants or not?. It is case of the plaintiffs- appellants that original land holder namely, Shyamdeo Kumer agreed to sell 2 acre 71 decimals of disputed land to plaintiffs at the consideration amount of



Rs, 71,600 and subsequently, executed an unregistered agreement of sale dated 05.12.1993 in favour of plaintiff no.1. The aforesaid agreement of sale dated 05.12.1993 was executed in respect of plot no. 5871, plot no. 5877, plot no. 5878, plot no. 5881 and plot no. 5882 total area 2 acres 71 decimals. The aforesaid unregistered agreement of sale has been brought on record as exhibit 1. The aforesaid agreement of sale dated 05.12.1993 goes to show that Rs. 8,501/- was received by Shyamdeo Kumer in cash and again, on 13.05.1994, he took Rs. 10,000/- and put his signature. However, terms of aforesaid agreement for sale go to show that the absolute sale deed was to be executed by 30.04.1994, failing which the advanced amount paid to Shyamdeo Kumer shall be forfeited. Exhibit 1 goes to show that Rs. 18,501/- was received by Shyamdeo Kumer. Further case of plaintiffs is that Shyamdeo Kumer took sand, chips etc. worth Rs. 65,000/- from plaintiff no.1 and made entry in a copy book in his own handwriting but no copy book was brought before the court below in the evidence by the plaintiffs. It is an admitted position that Shyamdeo Kumer died after so-called execution of the agreement of sale. The date and year of death of Shyamdeo Kumer has neither been mentioned in the plaint nor in evidence of plaintiff no.1 who got examined himself as PW 1. In course of evidence, defendant no. 1 had also not disclosed the date or year of the death of Shyamdeo Kumer. However, defendants denied the execution of the agreement of sale dated 05.12.1993 by Shyamdeo Kumer. Moreover, it is admitted position that after death of Shyamdeo Kumer defendant no. 1(a), namely, Most. Usha Devi being widow of Shyamdeo Kumer inherited the property and subsequently, executed a



power of attorney in respect of disputed land in favour of the defendant no. 1, who, in his turn, executed registered sale deed dated 22.11.2003 in favour of the plaintiffs. Certified copy of registered sale deed dated 22.11.2003 was brought on the record by the plaintiffs as exhibit 2. The aforesaid exhibit 2 goes to show that vendor and vendee agreed to exchange chirkut after full payment of consideration amount and also agreed that after exchange of chirkut the vendee shall be entitled to get possession of original sale deed. The dispute between the parties is that vendee had paid entire consideration amount but even then defendant no. 1 executed registered sale deed of disputed plots in favour of other defendants, though he had already transferred the aforesaid land in favour of the plaintiffs. On the point of payment of consideration amount, PW 1, who happens to be plaintiff no.1 says that Rs. 1, 77, 000/- was paid to defendant no. 1 through and in presence of Pw 3, namely, Ramesh Kumar, Rs. 1, 55,000/- was paid to the defendant no. 1 through and in presence of Sanjay Kumar (PW 5), Rs.20, 000/- was paid to defendant no. 1 through and in presence of Pw 4 and similarly, Rs.54, 000/- was paid to defendant no. 1 through and in presence of Pw 3, namely, Ramesh Kumar. Pw 3, namely, Ramesh Kumar supported the factum of payment of Rs. 1, 77, 000/- and Rs. 54, 000/- through him but neither PW 1 nor PW 3 disclosed the date or year of the aforesaid payment. Plaintiffs also failed to bring even a chit of paper to prove payment of consideration amount. Similarly, PW 4 claims that Rs.20, 000/- was paid to defendant no. 1 in his presence but this witness says that the aforesaid payment was made on 22.11.2003 at his village. This witness admits



that no receipt of the aforesaid payment was prepared. This witness also states that the above stated Rs.20, 000/- was paid in his presence as well as in presence of PWs. 3, 5 and plaintiff no.1. He also admits that except Rs.20, 000/- nothing was paid in his presence. PW 5, Sanjay Kumar says that Rs.20, 000/- was paid to the defendant no. 1 in his presence and the aforesaid payment was made in the year 2001. This witness also admitted that no receipt of the aforesaid payment was prepared. However, this witness contradicts the statement of PW 4 as PW 4 stated that the aforesaid payment was made in the year 2003 whereas this witness states that the payment was made in the year 2001. Moreover, PW 1 who happens to be plaintiff no.1 says that Rs. 1, 55, 000/- was paid to defendant no. 1 through and in presence of PW 5. Therefore, evidences of the plaintiffs' witnesses on the point of payment of consideration amount are not consistent rather there are several contradictions in evidences of the aforesaid plaintiffs' witnesses.

17. It is also an admitted position that in the sale deed dated 22.11.2003, there was rider in respect of completion of the transaction as it was stipulated in the sale deed that after payment of full consideration amount chirkut shall be exchanged but there is nothing on record to show that chirkut was ever exchanged because plaintiffs failed to bring chirkut on the record and also failed to bring on record original sale deed.

18. It is well settled principle of law that no sale deed is valid unless consideration amount is passed to the vendor. It is also settled principle of law that mere execution of registration of the sale deed



does not create any title in favour of vendee unless consideration amount is passed over to the vendor. However, intention of the parties to the sale deed in respect of consideration amount shall be gathered from the contents of the sale deed. In the present case, it is admitted position that it was intention of the parties of the registered sale deed dated 22.11.2003 that title of the disputed land shall pass to the vendee after exchange of chirkut and after payment of full consideration amount. Therefore, the aforesaid agreement of the parties goes to show that title of the disputed land will not pass to vendee unless full payment of consideration amount is paid and chirkut is exchanged. The averments of the sale deed dated 22.11.2003 also go to show that consideration amount had not been paid by the plaintiffs at the time of execution of the registered sale deed dated 22.11.2003 and that was the reason, it was scribed in the aforesaid sale deed that chirkut shall be exchanged after payment of full consideration amount and till payment of consideration amount, chirkut shall remain in possession of vendor. PW 1, who is plaintiff no.1, himself, has admitted at para 29 of his deposition that chirkut was still in the custody of vendor. So, the aforesaid admission of plaintiff no.1, itself, an indication of non-payment of consideration amount because had the plaintiffs paid the entire consideration amount to defendant no. 1 or defendant no. 1(a), Chirkut would have been handed over to them by defendant no. 1 or defendant no. 1(a). Therefore, it is explicit clear from the aforesaid admission as well as above stated facts that plaintiffs had not paid consideration amount and that was the reason title of the disputed land was not passed to them even after execution of the registered sale deed



dated 22.11.2003. In my view, the learned court below rightly and correctly came to the conclusion that title of the disputed land was not pass to the plaintiffs due to non-payment of consideration amount and the plaintiffs could not acquire right and title of the disputed plots on the basis of registered sale deed dated 22.11.2003.

19. No doubt, defendant no.1, namely, Jitendra Gauttam did not appear as defendant witness and similarly, defendant no. 1(a), namely, Most. Usha Devi also did not appear as witness nor contested the suit but in the face of admission of plaintiff no.1, no adverse inference could be drawn against defendants in respect of so-called payment of consideration amount. According to the plaintiffs, unregistered agreement for sale deed dated 05.12.1993 was executed in respect of plot no. 5871, plot no. 5877, plot no. 5878, plot no. 5881 and plot no. 5882 whereas sale deed dated 22.11.2003 was executed in respect of plot no. 5877, plot no. 5878, plot no. 5881, plot no. 5882, plot no. 5883 and plot no. 6035 and, therefore, it is obvious that no agreement of sale was executed in respect of plot no. 5883 and plot no. 6035. Moreover, it is admitted case of the plaintiffs that agreement for sale was executed on 05.12.1993 and there was specific averment in the said agreement that the absolute sale deed had to be executed by 03.04.1994 and admittedly, no absolute sale deed was got executed by the plaintiffs within the above stated period. Admittedly, present case was brought in the year 2004 that is after eleven years of execution of agreement for sale and therefore, the learned court below rightly observed that plaintiffs had no right to make any claim on the basis of so-called agreement of sale dated 22.11.2003.



20. No doubt, disputed lands were mutated in the name of the plaintiffs but admittedly, the aforesaid mutation order was set aside by the competent authority and moreover, order of mutation does not constitute any title or possession in respect of any land.

21. On the basis of the aforesaid discussions, I am of the opinion that learned court below rightly dismissed the suit of the plaintiffs by passing impugned judgment and decree and this appellate court also does not find any ground to interfere into the judgment and decree and accordingly, this appeal stands dismissed and impugned judgment and decree are, hereby, confirmed.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	01.05.2017
Uploading Date	23.6.2017
Transmission Date	23.6.2017

