

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9194 of 2005

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Shyam Sundar Bhagat son of late Janki Bhagat, resident of village-Mahuwawan
Tola Kotwa, P.S. Kateya, District-Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. (i) Birksha Bhagat son of late Gopal Bhagat.
2. (ii) (a) Girja Devi, wife of Kailash Bhagat.
2. (ii) (b) Binod Kushwaha, son of Kailash Bhagat.
2. (ii) © amit Kishwaha son of Kailash Bhagat.
2. (ii) (d) Amrita daughter of Kailash Bhagat.
2. (ii) (e) Anita daughter of Kailash Bhagat.
2. (ii) (f) Nitu minor daughter of Kailash Bhagat through her mother Girja Devi as
natural guardian all resident of village-Mahuwawan, tola-Kotwan, P.S. Kateya,
District-Gopalganj.
2. (ii) (g) Sunita daughter of Kailash Bhagat, wife of Arvind Kushwaha, resident of
village-Basantpur Dhusi, P.O. Tarkulwan, District-Deoria (Uttar Pradesh).
2. (iii) Rampati Bhagat, son of late Gopal Bhagat resident of village-Mahuwawan,
Tola-Kotwan, P.S. Kateya, District-Gopalganj.
2. (iv) Malti Devi daughter of late Gopal Bhagat, wife of Sudama Bhagat, resident
of village-Parsauni, P.S. Tareya, District-Kushinagar (U.P.).
2. (v) Ramki Devi daughter of late Gopal Bhagat wife of Nand Kishore Bhagat,
resident of village-Dumrauna, P.S. Kateya, District-Gopalganj.
2. (vi). Shanti Devi daughter of late Gopal Bhagat wife of Parmanand Bhagat,
resident of village-Dharampur, P.S. Patherwan District-Kushinagar (U.P.).

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Sanjay Kr. Pandey no. 5, Adv.
	Mr. Santosh Kumar Mishra, Adv.
For the Respondent/s :	Mr. Rameshwar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2017



Heard learned counsel for the parties.

The legal tenability of the impugned order by which the learned court below has held that the suit filed by the plaintiff-petitioner has abated under Section 4 (1) (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Consolidation Act') has been questioned in this application under Article 227 of the Constitution of India.

From the perusal of the copy of the plaint (Annexure-4 to the supplementary affidavit on behalf of the petitioner), it transpires that the suit has been filed for declaration that the sale deed dated 25.04.1958 executed by Janki Bhagat in favour of the defendant was entirely Farzi, fraudulent without consideration, inoperative fraudulent, without legal necessity and without benefit of the family, illegal and void document. Further relief was also prayed for confirmation of possession of the plaintiff over the suit land and in case of dispossession for a decree for recovery of possession. From the averments made in the plaint, it transpires that the plaintiff has not disputed the title of his father Janki Bhagat over the suit property. It has also not been disputed that the sale deed in question dated 25.04.1958 for the suit land has been apparently executed by the said Janki Bhagat and is a registered document. The plaintiffs' case



however, is that the said sale deed, in fact, has not been executed by the said Janki Bhagat and the allegation of impersonation, fabrication and fraud in getting the said sale deed has been specifically made against the defendant. The defendant contested the suit by filing written statement. When the suit had reached to an advanced stage where admittedly the evidence on behalf of both the parties had been completed, a petition was filed on 25.05.2005 by the defendant praying for abatement of the suit under section 4 (1) (c) of the Consolidation Act. The learned court below by the impugned order has allowed the prayer of the defendant for abatement of the suit under Section 4 (1) (c) of the Consolidation Act holding that the sale deed in question assailed in the suit is void in nature and therefore within the purview of the Consolidation Act.

Learned counsel for the rival parties have made their submissions highlighting the facts of the case and the facets of the jurisdiction of the civil court vis a vis the jurisdiction of the consolidation authorities under the Consolidation Act. Learned counsel for the parties have also made reference to a number of decisions of the Apex Court as well as this Court which shall be referred appropriately in this order.

As noticed above, it is nowhere the case of the plaintiff that his father Janki Bhagat was not legally competent to execute the



sale deed in question in favour of the defendant. However, it is the case of the plaintiff that his father Janki Bhagat never executed the said sale deed which is forged, fabricated, fraudulent and inoperative document. It is also the case of the plaintiff that there was no legal necessity for the father of the plaintiff Janki Bhagat to execute the sale deed for the benefit of the family. It is also demonstrably clear from the submissions on behalf of the parties as well as the materials on record that the primary relief is for declaration of the invalidity of the sale deed in question and further relief is for confirmation of possession or in the alternative for recovery of possession.

The ambit and scope of Section 4 (1) (c) has been examined by the Full Bench of this Court in **Hari Mohan Thakur Vs. Mahendra Narain Chand 1987 PLJR 88** where their lordships have ruled as follows:-

“.....What deserves highlighting herein is that clause (c) of Section 4 does not talk of every suit and every proceeding in a vacuum. It does not declare that every suit or every proceeding shall stand abated consequent to a notification under Section 3 (1) of the Act. The crucial and the meaningful qualification is that such suit or such proceeding must be for the “declaration of rights or interest in the land” lying in the area under the Consolidation. This would also take its hue from the subsequent clause of “declaration or



adjudication of any other right in regard to which proceedings can or ought to be taken under this Act". I may reiterate that the crucial language herein is that clause (c) visualizes the determination or adjudication of rights and interest of the parties in the land and their declaration. It is only such suits and proceedings which are mandated for abatement and not other....."

It is not far to conclude on the anvil of the above dictum by the Full Bench that the present suit does not directly come within the purview of Section 4 (c) of the Consolidation Act in absence of the relief for declaration of right or interest in the land lying in the area under consolidation as the primary relief is against the sale deed in question and another relief is for confirmation of possession or in the alternative for recovery of possession.

At this juncture, however, it would be apposite to take into notice the emphatic submission on behalf of the respondents that in view of the allegations of the plaintiff primarily in the nature of denial of the execution of the sale deed in question by Janki Bhagat, the said sale deed is clearly void. This submission, however, appears to be misconceived in view of the settled principles of law for adjudging the voidability of a document. It is well settled by now that a distinction has to be maintained between the different facets of void



acts or transactions and a case where apparent state of affairs does not lead to inevitable inference of nullity and a declaration is required to take away the legal effect of such act or transaction, the same cannot be taken to be void act or transaction altogether from the beginning until such declaration is made. An identical issue with reference to the Consolidation Act has fallen for consideration in a Bench decision in **Jiawan Pandey Vs. Mahendra Rai 1985 PLJR 686** where their lordships after taking into notice the Full Bench decision in the case of **Most. Rupia Vs. Bhatu Mahto A.I.R. 1944 Pat. 17** have observed as follows:-

“7.....It was held in that case that the sale deeds on their very face had been duly executed and properly registered carrying with them the necessary legal consequence that title passed from the transferor to the transferee and, therefore, they would necessarily require to be cancelled in order to get rid of the legal consequences attaching to it, even though the relief for cancellation was not asked for explicitly, the same was implicit in the relief sought for. On the allegations of the plaintiff such a document would therefore be voidable and not void and that is why it is required to be cancelled before any relief could be granted to the plaintiff”

It would be fruitful to mention here that in Jivan Pandey



(supra) the relief in the suit was for declaration of a gift deed as illegal, void, fraudulent, fabricated and a collusive document without consideration and not binding upon the plaintiff and their lordships have come to the conclusion that such suit would not be covered under the mischief of Section 4 (1) (c) of the Consolidation Act. The learned court below, while passing the impugned order, has ignored the decisive aspect of the matter that the sale deed in question will be valid and binding between the parties until the allegations of the plaintiff are established entitling the plaintiff to have the same cancelled or set aside. The said sale deed, by no means, can be said to be ineffectual or having no legal force or binding effect, nugatory on the face of it. This Court, therefore, holds that the impugned order is erroneous and deserves to be overturned.

Accordingly, this application is allowed and the impugned order is quashed. The learned court below is directed to proceed with the suit in accordance with law. However, none of the observations made in this order shall prejudice the claim or case of either of the parties in the suit which shall be decided on merit in accordance with law.

(V. Nath, J)

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