

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.242 of 2009

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Krishna Kumar son of Sri Munna Sao resident of Mohalla Bakar Ganj Bank Gali
Patna P.S. Pribohare P.O. Bankipur, District-Patna.

.... Appellant/s

Versus

Most Panchola@Parmila Devi wife of late Vinay Prasad resident of Mohalla-Bakar
Ganj Bajaja Gali Patna, P.S. Pribohar, P.O. Bankipur, District-Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh, Adv.

Mr. Vijay Kumar, Adv.

Mr. Shudhansu Shekhar, Adv.

For the Respondent/s : Mr. Nurul Hoda, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-04-2017

Heard Mr. Ajay Kumar Singh, learned counsel for the
appellant and learned counsel for the defendant-respondent.

This second appeal has been filed by the plaintiff-
appellant being aggrieved by the judgment and decree dated
21.04.2009 passed in T.A. No. 18 of 2004 whereby the appellate court
below has allowed the appeal and set aside the judgment and decree of
the trial court granting the decree to the plaintiff.

The matrix of facts discloses that the suit property had
been sold by the registered sale deed dated 26.03.1973 by Most.
Ramnandi Kuer in favour of Ganga Devi. Ganga Devi, in turn, sold
the same to the plaintiff by registered sale deed dated 01.11.1988. The



plaintiff asserting his exclusive title over the suit property filed the suit for declaration of title and recovery of possession against the defendant by evicting her from the suit property claiming that she was in permissive possession over the same.

The defendant in her written statement denied the assertions of the plaintiff and came out with the case that the suit property was not the exclusive property of Ganga Devi rather the same was purchased out of the joint family fund by her husband in her name. The defendant claimed herself to be the widow of the deceased son of Ganga Devi and on that basis she further came out with the case that she had been in possession over the suit property in her own right as co-sharer and the said right was further accepted and acknowledged when the family members opted for settlement of their dispute through Panchayati. It was the categorical case of the defendant that the reference was made by the joint family members to the 'punches' (arbitrators) for partition of the suit property on 27.05.1988 and punches passed the award on the same date i.e. 27.05.1988 wherein the defendant was allotted the suit property in her share.

The trial court granted the decree to the plaintiff as prayed holding that the award (Ext. C), as propounded by the defendant was forged and fabricated document and no right in the suit property could be claimed by the defendant on that basis. The suit was



accordingly, decreed. In appeal, the appellate court below, on reappraisal of evidence, has reversed the findings of the trial court, allowed the appeal and dismissed the suit by the impugned judgment and decree.

This appeal has been admitted for hearing on 15.09.2011 on the following substantial questions of law:-

- (1) Whether an arbitration award of the year 1988 can be made the basis of foundation of a right in immovable property when it is neither registered nor made rule of the Court in accordance with section 22 of the Indian Arbitration Act, 1940?
- (2) Whether the appellate court below has wrongly relied upon the award (Ext. C) for non-suiting the plaintiff without considering the validity and admissibility of the said award?

Mr. Singh, learned counsel for the plaintiff-appellant, after elaborating the facts of the case, has submitted that the impugned judgment of the appellate court below cannot be sustained in law when the finding by the lower court below with reasonings and reference to the evidence and materials on record thereto has not been at all adverted to by the appellate court below. Elaborating the submissions, it has been contended that the appellate court below has



simply proceeded to uphold the claim of the defendant on the basis of the award on the ground that in absence of challenge to the said award in accordance with the provisions of Indian Arbitration Act, 1940, the said award has attained finality. Elaborating his submission, it has been canvassed that a bare perusal of the judgment of the trial court would demonstrate that the trial court has given valid reasons before coming to the conclusion that the award in question (Ext. C) is forged and fabricated documents. It has also been propounded that in the facts and circumstances of the case, the appellate court has wrongly relied upon the law relating to the landlord and tenant relationship. It has also been pointed out on behalf of the appellant that the Ganga Devi had executed earlier sale deed in the year 1992 with regard to the part of the property purchased by her and on that sale deed, her son and daughter appeared as witnesses. The conclusion by the appellate court below, that the suit by the plaintiff suffered from non-joinder of party on the base that Ganga Devi was a necessary party, has also been challenged on behalf of the appellant in view of the principle in that regard as laid down by the Apex Court in the case of **Muddasani Venkata Narsaiah Vs. Muddasani Sarojana, 2016 (4) PLJR (SC) 227**. Developing his submissions from another angle, learned counsel has contended that the defendant deliberately did not choose to make the award in question rule of the



court because if that course would have been adopted, the plaintiff or his vendor on notice would have raised their objection challenging the genuineness of the award. In sum and substance, the submissions on behalf of the appellant have centered around the substantial questions of law formulated in this appeal with main plank that the appellate court below has wrongly overturned the findings of fact by the trial court ignoring the material evidence which have been relied upon by the trial court.

Per contra, learned counsel appearing on behalf of the respondent has emphatically submitted that the appellate court below has committed no illegality in reversing the findings of the trial court holding the same to be unsustainable in the facts and circumstances of the case. It has been firstly submitted that in view of the fact that the defendant has a pre existing right in the suit property being the admitted widow daughter-in- law of the deceased son of Ganga Devi, the partition of the family property by family arrangement or award was not required to be registered as the same only recognized a pre existing right. It has been contended on the basis of law laid down by the Apex Court in the case of **Sardar Singh Vs. Krishna Devi, 1994 (4) SCC 18** that an award by which the interest in the property is created for the first time is only required to be registered but in cases of pre existing right, no such requirement is there. Learned counsel



for the respondent has further submitted that in view of the admitted fact that the sale deed of the suit property stands in the name of Ganga Devi, adjudication of a right in the suit property could have been done only in presence of Ganga Devi as a party but in the present case Ganga Devi has not been a party in the suit and therefore the finding by the appellate court below that Ganga Devi was a necessary party to the suit is unassailable. It has been next canvassed that the appellate court below has rightly noticed the fact that the award in question has never been challenged by Ganga Devi or any of the co sharers of Ganga Devi, and has therefore rightly set aside the finding by the trial court pertaining to the validity of the award. It has also been submitted that the appellate court below has passed the impugned judgment and award after considering the material evidence on record as well as the established principles of law and therefore no substantial question of law as framed arises for consideration in this appeal. During the course of submission, learned counsel for the appellant has also pointed out that a title suit has also been filed by the defendant for declaration of her title over the suit property on the basis of award.

After considering the rival submissions on behalf of the parties, it is pellucid that the primary note of discord between the parties pertains to the claim of title by the defendant in the suit



property, purchased by Ganga Devi from Most. Ramanandi Kuer by sale deed dated 26.03.1973, on the basis of its allotment in her share by award (Ext. C).

The facts of the case in detail need no notice for the purpose of this appeal and suffice it to state that the sale deed dated 26.03.1973 by which Most. Ramanandi Kuer transferred the suit property to Ganga Devi stands admitted. The principle of law is no more res integra that the property standing in the name of a person shall be presumed to be his/her exclusive property until the contrary is established. This principle is based upon the celebrated doctrine that the apparent state of affairs would be accepted to be the real state of affairs until the contrary is established. It has been the specific case of the defendant that the suit property was acquired in the name of Ganga Devi out of joint family fund, and subsequently the partition took place through 'purchas' and the award (Ext. C) has been prepared where the suit property has been allotted in the share of the defendant. It would be pertinent to take into notice the issues framed by the trial court out of which the only material issue was the issue no. 6 which reads as follows:-

“.....Is the plaintiff entitled to the decree for eviction and restoration of possession in his favour after removing the defendant from the suit premises.”



While recording the finding on this issue the trial court has taken into notice the specific case of the defendant that her claim over the suit property was on the basis of family arrangement by partition as evident by award dated 27.05.1988 (Ext. C). The trial court thereafter proceeded to consider the validity of the said award (Ext. C) and came to the conclusion, on the basis of evidence, that the said award (Ext. C) is not a reliable document in view of the forgery and fabrication therein. The trial court has taken into specific notice that one stamp paper of the said award was purchased on 28.05.1988 but the signature of the punches and the parties thereupon had been put on it on 27.05.1988. It has also been found that the said document is partly handwritten and partly typed but thereafter again the trial court has found that the typing method of the words including the fonts are different from each other, supporting the contention of the plaintiff that the said document is forged and fabricated. The findings by the trial court in this regard have been recorded after elaborate consideration of evidence which were acceptable and could have been relied upon.

From the perusal of the judgment of the appellate court below, it transpires that the appellate court while dealing with the issue of non joinder of the parties has reversed the findings of the trial court holding that the vendor of the plaintiff namely Ganga Devi was



a necessary party to the suit and her presence in the suit was necessary for adjudication of the case. On this base, the appellate court below has come to the conclusion that the suit suffered from the vice of non-joinder of necessary party and fit to be dismissed on that score. Assailing this conclusion by the appellate court below, the learned counsel for the appellant has placed reliance upon ***Muddasani Venkata Narsaiah*** (Supra) and in particular paragraph 12 and 15 of the said decision. In this decision the apex court has ruled as follows:

“12....Thus, in our opinion, there was no serious cloud on the title of the plaintiff so as to force him to seek the relief for declaration of title in the instant case which was in fact based on the strength of the sale deed executed by Buchamma, who was the sole surviving heir of Balaiah as such succeeded to the property and had the right to execute the sale deed in favour of the plaintiff...”

“15... It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary



to examine Buchamma to prove it.....”

Testing the submissions on behalf of the parties and the findings of the appellate court in this regard on the anvil of the above dictum of the Apex Court, it is evident that the sale deed in the name of Ganga Devi for the suit property and its subsequent transfer by her to the plaintiff through sale deed have not been denied, and in fact the real contest is not over the title of Ganga Devi but the acquisition of title by the defendant over the suit property as a cosharer of Ganga Devi on the strength of the award (Ext. C). At this juncture, it would be fruitful to take into notice the conclusion of the appellate court below with regard to the allegation of forgery and fabrication of the said document (Ext. C). The appellate court below has taken the view that as the plaintiff has not challenged the validity of the award in accordance with the provision of Arbitration Act, there cannot be challenge to the title and possession of the defendant on the basis of the said award because the said award has attained finality. It has been also held that the finding by the trial court that the award is forged and fabricated is illegal and without jurisdiction. It has been further also clarified by the appellate court below that the trial court has no jurisdiction and has illegally and arbitrarily decided that the award is forged and fabricated. The appellate court below has also referred to Paragraph-19 of the judgment of the trial court in this regard. This



finding by the appellate court below has apparently been recorded on the basis that under the Indian Arbitration Act, 1940, an award was required to be challenged within the stipulated period and if not challenged it attained finality. The appellate court below has also taken into notice Section 30 of the Arbitration Act 1940 to come to that conclusion.

From the facts of this case as well as the averments made in the plaint, it is manifest that plaintiff has sought for declaration of his title over the suit property on the basis of his purchase by sale deed dated 01.11.1998 executed in his favour by Ganga Devi. It was the defendant who has come out with the case of the award (Ext. C) as the basis of acquisition of her title over the suit property. The said award has admittedly been not made the rule of court nor has been registered. It is pertinent here to notice the submission on behalf of the respondent, on the strength of the Apex court decision in the case of **Sardar Singh Vs. Krishna Devi, 1994 (4) SCC 18**, that if the Panchnama/award is in recognition of the pre-existing right, there is no requirement for getting the same registered. During the course of submission, learned counsel for the respondents has also propounded that such award is further also not required to be made on stamp paper and it could have been made on a plain paper or even orally. As in the present case, Panchanama/award has been prepared on a stamp paper,



the issue as to whether such Panchnama/award can be prepared on a plain paper or there can be an oral award also, does not arise for consideration in the present case. While looking into the document (Ext. C) as well as the material evidence in that regard, the finding of the trial court is that the said award is forged and fabricated document. The trial court has come to the said finding, besides others, on the ground that one of the stamp papers on which the award has been prepared was in fact purchased on 28.05.1988 but the same bears the signature of the Panches made on 27.05.1988. During the course of submission this anomaly has been tried to be explained by learned counsel for the respondent by submitting that one of the stamp papers on which the award has been prepared was in fact purchased on the next date but the signature of the Panches on that paper was also made by antedating the same. The evidence with regard to this fact is not on record nor it is the case of the defendant either in the pleading or in evidence aliunde that one of the stamp papers was purchased on the next date for certain reasons but the signatures by the punches was made on the said stamp paper giving the date of the previous day. This explanation on behalf of the respondent therefore is entirely a new case on fact which cannot be raised and adjudicated at the second appellate stage as there is no foundation for the same supporting the said fact. It is demonstrably clear therefore that the appellate court



below has not at all considered the materials and evidence as well as the reasons which prevailed upon the trial court to discard the award (Ext. C) as forged and fabricated document. The conclusion that the trial court had no jurisdiction to go into the genuineness of the award (Ext. C) as it was not challenged as required by the Arbitration Act is not legally sustainable in the facts of the present case. The appellate court was required to reconsider the said finding of the trial court upon the basis of appraisal of evidence because in case of affirmance of the said finding there would have been no occasion for challenging the said award under Arbitration Act, if at all required, and its attaining finality. This Court, therefore, finds that the conclusion of the appellate court below that the finding of the trial court with regard to award (Ext. C) is without jurisdiction cannot be legally acceptable. This conclusion is erroneous and deserves to be overturned.

As the genuineness of the award (Ext. C) is the fulcrum of the claim of the defendant in the suit property and as the appellate court below has not at all touched the finding of fact as recorded by the trial court holding the award (Ext. C) to be forged and fabricated document, this Court holds that the impugned judgment and decree by the appellate court below is not sustainable in law. The substantial questions of law as framed in this appeal are accordingly decided in



favour of the appellants.

In result, this appeal is allowed and the impugned judgment and decree by the appellate court below is set aside and the matter is remitted back to the appellate court below for decision afresh on the basis of the materials on record and after grant of opportunity of hearing to the parties in accordance with law. This Court further directs the appellate court below to decide the matter preferably within a period of six months from the date of receipt/production of a copy of this order.

(V. Nath, J)

Devendra/Nitesh-

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