

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.220 of 2017

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Krishna Prasad @ Krishna Sah, Son of Late Laxman Sah, Resident of
Mohalla Nai Bazar, P.O. Chapra, P.S. Bhagwan Bazar, District- Saran.

... .. Appellant

Versus

1. Kusum Devi, Wife of Sheo Shankar Sah.
2. Sheo Shankar Sah, Son of Late Laxman Sah.
Both residents of Mohalla Nai Bazar, P.O. Chapra, P.S. Bhagwan Bazar,
District- Saran.
3. Lalo Devi, Wife of Sitab Lal Sah, resident of Mohalla Bhagwan Bazar, P.O.
Chapra, P.S. Bhagwan Bazar, District- Saran.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Waliur Rahman
Mr. Jai Kishore Sharma
Mr. Nishant Kumar Sinha

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

Date : 02-02-2018

The present second appeal has been placed under the
heading 'For Hearing under Order 41 Rule 11 CPC'.

2. I have heard learned Counsel for the appellant on the
point of admission of the present second appeal.

3. According to learned Counsel for the appellant, the
present second appeal involves several substantial questions of law,
requiring determination by this Court.

4. The appellant was the defendant in Title Suit No. 303
of 2004, before the Trial Court. The Suit, filed by the plaintiffs-



respondent 1st set herein, for declaration of title and recovery of possession, was dismissed by judgment and decree, dated 21.05.2008, passed by learned Sub Judge III, Saran, at Chapra, which has been reversed by judgment and decree, dated 20.03.2017, passed by the learned Additional District Judge VI, Saran, at Chapra, in Title Appeal No. 36 of 2008, and has decreed the suit in favour of the respondent 1st set. The appellant herein is aggrieved by the said judgment of reversal passed by the appellate court below.

5. The case of the plaintiff, as explained in the plaint, was that the disputed suit property had fallen in the share of defendant no. 1-appellant, who, through sale deed, dated 07.09.1987, had transferred the same in favour of Lalo Devi. Lalo Devi, through two sale deeds, both executed on 18.09.1990, had transferred the suit property in the name of Kusum Devi, plaintiff no. 1-respondent no. 1 herein. The plaintiff no. 2 (respondent no. 2 herein) is the husband of said Kusum Devi. It appears that earlier eviction suit was filed, giving rise to Eviction Suit No. 05 of 1998, with a plea that defendant no. 1 was allowed to remain in the suit premises as a tenant and since the plaintiffs required the said suit premises for personal necessity, the defendant no. 1 was required to be evicted. The said eviction suit was dismissed on the ground



that the plaintiff could not establish the relationship of landlord and tenant between her and defendant no. 1. The appeal preferred against the eviction suit, being Eviction Appeal No. 18 of 2003, also came to be dismissed.

6. Thereafter, the plaintiffs filed the present suit for declaration of title and possession over the suit land. It transpires from the records that the appellant-defendant no. 1 entered appearance and filed his written statement.

7. Learned Counsel appearing on behalf of the appellant has submitted that it was the specific case of the appellant before the Trial Court, in his written statement, that the said sale deed, dated 07.09.1987, was executed by him when he was in the state of intoxication and he was not in a position to understand as to what was he doing. He pleaded that he did not have any knowledge about the execution of the said sale deed, dated 07.09.1987, when it was executed. It was his further case that the moment he realized about the execution of the said sale deed, dated 07.09.1987, he executed a cancellation deed, dated 28.09.1987.

8. Learned Trial Court, on the basis of rival pleadings, framed altogether six issues, including Issue Nos. III and V, which read thus:-

III. Whether the suit is barred by law of limitation?



V. Whether the plaintiffs are entitled to get over this suit property as detailed in schedule 2 of the plaint and the plaintiffs are entitled for a decree for recovery of possession?

9. An issue, that whether suit was barred by principle of resjudicata, was also framed. The Trial Court, upon examining all the evidence adduced at the trial, deciding issue no. IV, recorded that the suit was not barred by resjudicata. On the question of execution of sale deed, learned Trial Court held that the sale deed, dated 07.09.1987 was forged and fabricated. On the question of limitation, the learned Trial Court held the suit as not barred by limitation.

10. The finding, recorded by the Trial court to the effect that the sale deed, dated 07.09.1987, was forged and fabricated and was executed by the defendant no. 1 in a state of intoxication, has been reversed by learned appellate court below by the impugned judgment and decree.

11. Learned Counsel appearing on behalf of the appellant has submitted that the specific case of the defendant that the sale deed, dated 07.09.1987, was obtained fraudulently in the state of intoxication, has not been duly considered by the appellate court below. He has also submitted that the plaintiff could not establish before the Trial Court that the entire consideration amount was



paid so as to establish the case of completion of the sale deed. However, it held that the sale was complete. According to him, the present second appeal involves following substantial questions of law:-

- (a) Whether the judgment and decree by way of reversal by lower appellate court is legally sustainable in the eye of law when the learned trial court while dismissing the suit taken adverse view due to the non-examination of Kusum Devi and also Lalo Devi?
- (b) Whether in view of the fact that if the possession of the land in dispute was remain with the defendant no. 1 then in that circumstances limited to any person for instituting a suit for possession of any property, his right to such property will extinguished?
- (c) Whether the plaintiff who has to succeed on their own leg were rightly granted a decree by the lower appellate court when the plaintiff failed to prove the story of previous tenancy and its surrender and then subsequent possession by dispossession of the plaintiffs which form integral part of the cause of action of the plaintiffs for filing of the present suit?
- (d) Whether the finding and the observation with regrd to the completion of the sale on the event of execution and registration of



document is legally sustainable in the eye of law, when the finding as given by the Trial Court lacks otherwise?

12. I have perused the judgments and decrees by the court below and have given my anxious consideration to the submissions advanced on behalf of the appellant.

13. This is not, at all, disputed that a sale deed was executed by the appellant in favour of Lalo Devi on 07.09.1987. It is the appellant's case, however, that it was obtained fraudulently in the state of intoxication. Had that been so, it was open for the appellant to have taken steps for cancellation of the said sale deed on that ground in accordance with law. The appellant, on the other hand, took plea that he had cancelled the said sale deed, dated 07.09.1987, by a cancellation deed, executed on 28.09.1987. It is trite that a sale deed cannot be cancelled unilaterally by execution of cancellation deed. A sale deed can be cancelled only through the process of law by filing a suit.

14. There is yet another perspective of the case. The pleading of the defendant itself suggests that the appellant was well aware of the execution of the said sale deed, dated 07.09.1987, since according to his own case, he had cancelled the said sale deed, dated 07.09.1987. It was, thus, within his knowledge throughout that the said sale deed, dated 07.09.1987, had been



executed by him. The finding recorded by the Trial Court, in such circumstance, that the sale deed was obtained fraudulently, in my view, has been rightly reversed by the appellate court below.

15. Learned Counsel appearing on behalf of the appellant has further submitted that at the trial, plaintiff no. 1, in whose name, the sale deeds were executed by Lalo Devi, did not appear for evidence. It is also his contention that Lalo Devi also did not appear before the Trial Court as defendant and did not file any written statement. In such circumstance, appellate court below ought to have taken into account these glaring aspects. According to him, in the absence of plaintiff no. 1, the suit itself could not have been maintained.

16. I do not find much force in such submissions made on behalf of the appellant. The suit was filed by plaintiff no. 1 and plaintiff no. 2. Plaintiff no. 2 is the husband of plaintiff no. 1. The merit of the rival claims was required to be decided on the basis of evidence available.

17. Learned Counsel for the appellant has also placed reliance on a Supreme Court's decision, in the case of **Janak Dulari Devi and Another v. Kapil Deo Rai and Another**, reported in **(2011) 6 SCC 555**, in support of his plea that the sale, through the said sale deed, dated 07.09.1987, was not completed,



in the absence of proof of payment of the entire consideration amount.

18. The said decision of the Supreme Court, in the case of **Janak Dulari Devi** (supra), has no application in the facts and circumstances of the present case. The said decision is in a different context altogether, where the Apex Court was considering the practice of *ta khubzul badlain*, prevalent in the State of Bihar (i.e. title to the property passing to the purchaser only when there is exchange of equivalents), where sale deed though recites that entire consideration has been paid and possession has been delivered, but the registration receipt is retained by the vendor as “agreed consideration” (either full or in part) is not received; irrespective of recital in the sale deed, the title would not pass to the purchaser till payment of the entire consideration to the vendor and the registration receipt is obtained by the purchaser. Paragraph 14 of the said decision reads thus:-

“14. At this stage, we may refer to the practice prevalent in Bihar known as '*ta khubzul badlain*' (that is, title to the property passing to the purchaser only when there is *exchange of equivalents*). As per this practice, where a sale deed recites that the entire sale consideration has been paid and possession has been delivered, but the registration receipt is retained by the vendor and



possession of the property is also retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed, the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the registration receipt is obtained by the purchaser in exchange. In such cases, on the sale deed being executed and registered, the registration receipt (which is issued by the Sub-Registrar) authorizing the holder thereof to receive the registered sale deed on completion of the registration formalities, is received and retained by the vendor and is not given to the purchaser. The vendor who holds the registration receipt will either receive the registered document and keep the original sale deed in his custody or may keep the registration receipt without exchanging it for the registered document from the sub-Registrar, till payment of consideration is made. When the purchaser pays the price (that is the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession. If the payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration receipt/registered document, as the case may be, which is in his custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale.”



19. In that context, the Supreme Court, acknowledging the said practice, held that effect of such transaction would be that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, i.e. *ta khubzul badlain*.

20. Situated thus, since no such case was set up by the appellant before the court below, the judgment of Supreme Court, in the case of **Janak Dulari Devi** (supra) will have no application in the present case.

21. In my view, in the backdrop of the discussion, as above, the present second appeal does not involve any question of law, much less, substantial question of law.

22. The second appeal does not deserve admission and is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06-03-2018
Transmission Date	N/A

