

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.16 of 2018

- 1.1. Mostt. Manju Devi Wife of late Krishna Mandal
1(ii) Prabhakar Kumar
1(iii) Diwakar Kumar
1(iv) Smt Mamta Raut
2. Parmanand Mandal
3. Anil Kumar Mandal
4. Arun Mandal @ Arun Kumar All Sons of Late Hari Prasad Mandal @ Hari Lal Mandal All residents of Mohalla - Sadar Bazar, Jamalpur, Post Office - Jamalpur, Police Station - Jamalpur, District - Munger.

... .. Appellant/s

Versus

1. Pran Kumar
2. Pranav Kumar
3. Pravin Kumar
4. Arvind Kumar
5. Rawan Kumar @ Ravan Kumar All Sons of Keshav Kumar All residents of Mohalla - Sadar Bazar, Jamalpur, Post Office - Jamalpur, Police Station - Jamalpur, District - Munger.
6. Nawal Kishor Maharaj @ Nawal Sharma Son of Late Niranjana Lal Maharaj
7. Sanjiv Kumar Maharaj Son of Nawal Kishor Maharaj @ Nawal Kishore Sharma Both residents of Mohalla - Sadar Bazar, Jamalpur, Post Office - Jamalpur, Police Station - Jamalpur, District - Munger.
8. Smt. Bina Devi
9. Smt. Shyama Devi Both daughters of Late Hari Prasad Mandal All residents of Mohalla - Sadar Bazar, Jamalpur, Post Office - Jamalpur, Police Station - Jamalpur, District - Munger.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. J. S. Arora, Sr. advocate
Mr. Manoj Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 29-07-2019

Heard Mr. J.S. Arora, the learned senior counsel for the
appellants.



2. This Second Appeal is preferred against the judgement and decree dated 16.11.2017 passed by the learned Additional District Judge (Fast Track Court), Munger in Title Appeal No. 1 of 1998 by which the judgement and decree dated 15.11.1997 passed by the learned Sub Judge-II, Munger in Title Suit No. 201 of 1996 has been affirmed and the appeal has been dismissed.

3. Keshav Kumar was the plaintiff. Respondent 1st set are sons of Keshav Kumar. Respondents 2nd set were defendant No.2 and 3 in the suit and appellants are sons and legal heirs of defendant No.1. Respondents 3rd set are also descendants and legal representative of defendant No.1.

4. The plaintiff filed the suit stating that defendant No.2 owned the suit property and he executed a registered sale deed on his behalf and on behalf of his minor son, defendant No.3, on 04.05.1978 for consideration of Rs. 10,000/- which was to be paid at the time of registration before the Sub Registrar or at the time of Takavijul Badlain (exchange for equivalents duly signed by the vendor after receiving consideration money). The defendant No.2 received the entire consideration money on 05.05.1978 and the registration receipt was handed over to the plaintiff with his signature acknowledging the payment of entire consideration



money. The plaintiff came in possession over the suit land and mutated his name. The defendant No.2, in collusion with defendant No.1, executed a registered deed of cancellation on 26.07.1978 canceling the registered sale deed dated 04.05.1978 and on the basis of which the defendant filed petition before the LRDC for cancellation of order mutating the name of the plaintiff in the record of rights. The plaintiff filed Misc. Appeal No. 2/78-79 before the Additional Collector against the order of Circle Officer, Jamalpur. The defendant No.1 also filed appeal No. 22/78-79 before the LRDC against the order dated 02.07.1978. The Additional Collector dismissed the appeal directing the plaintiff to take recourse to the Civil Court. The revision petition bearing No. 55/81-82 filed by the plaintiff was also dismissed. The further case of the plaintiff is that defendant No.2, in collusion with defendant No.1, began to prepare documents. The defendant No.1 also got an ante dated Baybyanama and defendant No.2 executed sale deed in favour of defendant No.1, which is void and illegal.

5. The case of defendant No.1, the subsequent purchaser from defendant No.2, is that the plaintiff did not pay the consideration amount nor came in possession over the suit property and the plaintiff did not acquire any title over the suit land. The plaintiff fraudulently got his name mutated. The



defendant No.1 had entered into an agreement to purchase the land on 13.04.1978 from defendant No.2 on consideration amount of Rs. 8500/- and on the same day defendant No.1 paid Rs. 1500/- as advance to defendant No.2. The defendant No.1 entered into the suit premises much prior to the date of execution of agreement to sale as tenant from 13.04.1978. The defendant No.1 became the owner of the property.

6. The case of defendant No.2 is that the plaintiff practiced fraud upon defendant No.2 and without payment of consideration money got the sale deed executed and registered. On the date of registration of sale deed the plaintiff obtained the signature of defendant No.2 on many papers and on registration receipts showing payment of consideration money. In pursuance of agreement for sale dated 13.04.1978 the defendant No.2 executed sale deed in favour of defendant No.1 on 26.07.1978 and the defendant No.1 has valid title and possession over the suit land.

7. The learned Sub Judge framed altogether 8 issues but issue No. 4, 5, 6 and 7 are the main issues, which are as follows:-

“(4) Whether the Jarbyana dated 13.04.78 is ante dated, forged and fabricated without the knowledge of the plaintiff?”

(5) Whether the registered deed executed by defendant No.2 in favour of plaintiff dated 04.05.1978 is legal valid and for consideration?”



(6) Whether the plaintiff has acquired possession by virtue of sale deed dated 04.05.1978 over the suit land?

(7) Whether the sale deed executed by defendant No.2 in favour of defendant No.1 on 11.08.1978 is a valid and genuine document for consideration?"

8. The learned Sub Judge while deciding issue No.4 and 7 held that the deed of agreement to sale said to have been executed by defendant No.2 in favour of defendant No.1 on 13.04.1978 is forged, fabricated and ante dated as the defendant No. 1 and 2 could not be able to prove its execution as they did not examine any of the witness and the scribe of the document and plaintiff had no knowledge about the execution of deed of agreement for sale on or before execution of the sale deed in favour of the plaintiff. The learned Sub Judge further held that defendant No.2 did not have any title over the suit land after execution of the sale deed by him in favour of plaintiff on 04.05.1978. Unilateral cancellation of sale deed by defendant No.2, executed in favour of plaintiff, is of no consequence and has got no meaning in the eye of law and it has been held that defendant No.1 did not get any title by virtue of such sale deed. The learned Sub Judge while deciding issue No. 5 and 6 held that defendant No. 2 executed the sale deed on 04.05.1978 and received entire consideration amount from the plaintiff and thereafter defendant No.2 acknowledged the receipt of entire



consideration amount from the plaintiff and handed over registration slip to the plaintiff by putting his signature and acknowledging the receipt of entire consideration money. The defendant No.1, being aggrieved by the judgement and decree passed in Title Suit No. 201 of 1986, filed Title Appeal No. 1 of 1998 but the same was also dismissed by the learned Additional District Judge (Fast Track Court), Munger thereafter the defendant 1st set preferred this Second Appeal.

9. Mr. J. S. Arora, the learned senior counsel for the appellants submitted that the case of defendants 1st set is that defendant 2nd set did not receive the entire consideration amount at the time of execution of the sale deed. The plaintiff also admitted this fact that consideration amount was not paid at the time of registration of sale deed. The case of the plaintiff is that on 05.05.1978 the plaintiff paid the entire consideration money to the defendant No.2 who returned the registration receipts with signature and endorsement thereon acknowledging the receipt of entire consideration money but the defendant No.2 stated that plaintiff took his signature on the registration receipt and other papers on the day of registration of the sale deed, that is, on 04.05.1978. It is further submitted that there is evidence of the plaintiff himself that consideration money was not paid at the time



of execution of sale deed, therefore, both the courts have illegally held that under Section 91 and 92 of the Evidence Act extrinsic evidence to prove payment of consideration amount cannot be taken into consideration. Citing the judgement of the Supreme Court in the case of **Janak Dulari Devi & anr. v. Kapildeo Rai & another** Reported in (2011) 6 SCC 555 the learned senior counsel for the appellants submits that mere execution of the sale deed does not operate as transfer in praesenti but postpones the actual transfer from the time of execution and registration of deed to the time of exchange of equivalents, that is, registration receipt and the sale consideration. It is submitted that on the point of payment of consideration money at the time of handing over registration receipts (*Khubzul badlain*/ exchange of equivalents) both the courts failed to appreciate evidence on record that no consideration money was paid.

10. Mr. J. S. Arora, the learned senior counsel for the appellants further placed reliance on a division bench judgement of this court in the case of **Panchoo Sahu v. Janki Mandar & others** reported in **AIR 1952 Patna 263** and submitted that the question whether title passes on execution and registration of deed or on payment of consideration depends upon intention of parties to be gathered from a deed. The recital in the sale deed is that



consideration money was paid at the time of handing over the registration receipts but the defendant No.2 refuted the receipt of consideration amount and also adduced evidence that plaintiff did not prove that he paid entire consideration amount at the time of handing over the registration receipts.

11. Mr. J. S. Arora, the learned senior counsel for the appellants, further placed reliance on a division bench judgement of this court in the case of **Baldeo Singh v. Dwarika Singh** reported in **AIR 1978 Patna 97** and submitted that passing of the title depends on the recital of the sale deed. In some cases even if no consideration has been paid still the parties to the deed might agree that title will nonetheless pass to the vendee but in other cases payment of the consideration money may be the condition for passing of the title to the vendee and in such cases extrinsic evidence is required to prove facts with regard to payment of consideration money.

12. Having considered the submissions and on perusal of the judgements of both the courts, it is apparent that the plaintiff brought the suit on the facts that the defendant No.2 executed the sale deed on 04.05.1978 for consideration amount of Rs. 10,000/- which was to be paid at the time of registration before the Registrar or alternatively at the time of *Takavijul Badllan*



(exchange of equivalents) and these facts are recited in the sale deed. The plaintiff filed registration receipts (Exhibit-3) bearing the signature, endorsement and acknowledgement of the defendant No.2 on the registration slips that he received Rs. 10,000/-, the entire amount of consideration. However, the defendant No.2 denied to have received any consideration amount and contested the suit on the premises that the plaintiff took his signature on some papers.

13. The defendant No.2 contended that when he did not receive consideration amount he got a deed of cancellation registered by which the sale deed executed in favour of plaintiff on 04.05.1978 was cancelled but unilateral cancellation of sale deed has got no meaning in the eye of law. There is no provision in the Registration Act that if a sale deed is executed the vendor has got no right to get the same cancelled unilaterally by getting the deed cancelled. Both the courts have come to a concurrent finding and held that the deed of agreement to sale, said to have been executed by defendant No.2 in favour of defendant No.1, is ante dated, forged and fabricated and there is no evidence on record to prove the deed of agreement to sale as neither the scribe nor any witness of the deed was examined. Even the payment of part consideration



money is disputed and not proved and this concurrent finding does not require any interference.

14. Now on the facts of the case and on the basis of submissions the question arises for consideration whether the title to the property covered by the sale deed dated 04.05.1978 will pass to the vendee or not on the date of registration of the sale deed or on the date of exchange of equivalents and whether the plaintiff paid the entire consideration amount on 05.05.1978 and got the registration receipts with endorsement and signature of the defendant No.2 about the receipt of consideration money. This question came up for consideration in the case of *Janak Dulari Devi & anr. v. Kapildeo Rai & another* (supra). The Supreme Court in paragraph 11 of the aforesaid judgement held as follows:-

“11. Where the intention of the parties is that passing of title would depend upon the passing of consideration, evidence is admissible for the purpose of contradicting the recital in the deed acknowledging the receipt of consideration. In Bishundeo Narain Rai v. Anmol Devi this court had occasion to consider the question as to when the ownership and title in a property will pass to the transferee, under a deed of conveyance. This court observed (SCC p. 503, para 11)

“11. ...Section 8 of the Transfer of Property Act declares that on a transfer of property, all the interests which the transferor has or is having at that time, capable of passing in the property and in the legal incidence thereof, pass on such a transfer unless a different intention is expressed or necessarily implied. A combined reading of Section 8 and Section 54 of the Transfer of Property Act suggests that though on execution and registration of a sale deed, the ownership



and all interests in the property pass to the transferee, yet that would be on terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of sale deed, the ownership title and all interests in the property pass to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that title has not passed on registration of the sale deed. Such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject, of course, to the provisions of Section 92 of the Evidence Act 1872.”

15. On perusal of the aforesaid judgement it is apparent that where the intention of the parties is that passing of title would depend upon the passing of consideration, evidence is admissible for the purpose of contradicting the recital in the deed acknowledging the receipt of consideration. In the present case the vendor, defendant No.2, admitted genuineness of his signature and endorsement on the registration receipts duly signed by him on 05.05.1978 but disputed the fact about the payment of consideration money. Mere disputing the facts that he did not receive money is not enough and the appellants did not adduce any cogent evidence on the point of non payment of consideration money at the time of exchange of equivalents (registration slip). Both the courts have very categorically held that defendant 2nd set received the consideration amount at the time of exchange of equivalents (registration slip) and he made endorsement on receipt of entire consideration money. Therefore, the submission of



learned Senior counsel for the appellants that consideration money was not paid does not constitute a substantial question of law as it has been concluded by a concurrent finding of facts on the basis of evidence. It has also been held by both the courts that title passed to the plaintiff on payment of consideration amount and the subsequent sale deed executed by defendant No.2 in favour of defendant No.1/ appellants did not transfer any title as the vendor left with no title over the suit property. Therefore, I find that no substantial question of law arises for consideration in this Second Appeal and consequently the same is dismissed.

BKS/-

(Prabhat Kumar Jha, J)

AFR/NAFR	NAFR
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