

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.363 of 2012

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1. Dana Lal Yadav @ Danna Lal Yadav @ Dina Lal Yadav
 2. Panna Lal Yadav
Both sons of Sukhdev Yadav R/O Village - Chandpur Bhangha, P.S.
Banmankhi, District - Purnia

... .. Appellant/s

Versus

Laxmeshwar Jha @ Laxmeshwar Jha @ Lachmeshwar Jha S/O Late Arjun
Jha R/O Village - Chandpur Bhangha Tola, Ashok Nagar, P.S. Banmankhi,
District - Purnia

... .. Respondent/s

with

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... .. Respondent/s

Appearance :

(In SECOND APPEAL No. 363 of 2012)

For the Appellant/s : Mr.Prashant Kashyap

For the Respondent/s : Mr.

(In SECOND APPEAL No. 361 of 2012)

For the Appellant/s : Mr.Prashant Kashyap

For the Respondent/s : Mr.Baidya Nath Thakur

(In SECOND APPEAL No. 362 of 2012)

For the Appellant/s : Mr.Prashant Kashyap

For the Respondent/s : Mr.Baidya Nath Thakur

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 02-08-2019

All these three second appeals have been filed against the common judgment and decree passed by Additional District Judge, F.T.C. II, Purnea on 30.03.2012 by which Title Appeal No.25 of 1998, Title Appeal No.26 of 1998 and Title Appeal No.27 of 1998 have been dismissed affirming the judgment and decree passed by learned Sadar Munsif, Purnea on 28.02.1998 in Title Suit No.99 of 1984, Title Appeal No.100 of 1984 and Title Appeal No.101 of 1984 by which learned Munsif dismissed all the three suits of the plaintiffs.

2. The plaintiffs are the appellants in both the Courts. The plaintiffs sought relief in all the three suits for declaration that the plaintiffs after having purchased the suit land through sale deeds dated 02.04.1973 have acquired perfect



and valid right, title and interest and they have come in possession over the lands on 02.05.1973 after payment of the entire consideration money to the defendant-respondent. The plaintiffs further sought relief for declaration that the defendant ceased to have right, title and possession over the suit land since the date of sale as well as since the date of payment of consideration money and thus, the defendant be restrained by permanent injunction from interfering into the peaceful possession of the plaintiffs.

3. The plaintiffs disclosed in the plaint that he purchased 43 decimals of land from south of Plot No.2778 and 1.47 acres of land, on the same day from Plot No.2778 and again purchased 1.47 acres of land of same plot on condition that the consideration money of Rs.1,000/-, Rs.3,500/- and Rs.3,500/- would be paid within one month and thereafter the vendor-defendant shall return the receipts to the vendee-plaintiff and put the plaintiff in possession of the land. The plaintiffs further stated that on 02.05.1973, the plaintiffs paid entire consideration amount i.e. Rs.8,000/- of all the three sale deeds in presence of Kuldeep Singh and Pulkit Mandal, P.W.1 and P.W.2 respectively and in their presence, possession was handed over to them but later on, the defendant started interfering into the



possession of the land on the ground that the defendant got the sale deed cancelled on 20.04.1978, thus, filed all the three suits for the relief stated above. All the three suits were heard analogously.

4. The sole defendant contested the suits that there was partition among the sons of Arjun Jha and in fact, the suit land fell in the share of his brothers but due to mistake of survey authority, the land was recorded in the name of his entire brothers. There was Partition Suit No.29 of 1952 among the sons of Arjun Jha including the defendant. One of the brothers of the defendant got the land mutated although the suit land fell in the share of Shibeshwar Jha. The further case of the defendant is that the plaintiffs got the sale deed executed but did not pay any consideration amount. The possession of the land remained with the defendant till the payment of consideration amount but the plaintiffs never paid consideration amount and, therefore, the title of the suit land did not pass to the plaintiffs on the date of execution of the sale deed and the same remained with the defendant.

5. Learned Munsif recorded the finding on the issue “whether the plaintiff paid consideration amount to the rightful owner and came in possession over the suit land and



whether he derived a valid title over the suit land” that the evidence of the plaintiff’s witnesses namely, Kuldip Singh and Pulkit Mandal P.W.1 and P.W.2, on the point of payment of consideration amount to the defendant on 02.05.1973 and delivery of possession to the plaintiff after payment of consideration money, held that the plaintiffs did not pay the consideration amount to the defendant nor the defendant delivered the possession to the plaintiffs and thus, the plaintiffs did not have any title over the suit land on account of non-payment of consideration money on a subsequent date as stipulated in the sale deed as well as according to the case of the plaintiffs. Learned Additional District Judge also recorded the same finding concurrenting with the finding of the learned Munsif while dismissing all the three title appeals preferred by the appellants. Being aggrieved, the appellants filed these three second appeals.

6. Mr. J.S.Arora, learned senior counsel for the appellants submits that admittedly defendant-respondent executed three sale deeds on 02.04.1973 after receiving consideration amount. The recitals of the sale deeds show that the title passed over to the plaintiffs on the date of execution of the sale deed itself. Learned counsel placing reliance on the



Division Bench judgment of this Court in the case of **Tiwari Rai v. State of Bihar and others, 2008(1) PLJR 702** submits that a sale effected on promise to pay consideration in future cannot be put to an end for non-payment of consideration money. The question arises whether the transfer has taken effect or it stands postponed till the payment of the consideration money. If the sale has taken effect in consideration of promise to pay the consideration money in future, the sale cannot be avoided for non-payment of the consideration money as was agreed. In such situation, the remedy of the vendor would be to take recourse to law for enforcement of the charge created in the property sold by the Act itself and that is, by initiating a suit in a Civil Court for realisation of a consideration amount. Mr. J.S.Arora, learned senior counsel for the appellants relying on **(1993) 3 Supreme Court Cases 573(Vidhyadhar v. Manikrao and another)** submits that it is admitted fact that all the three sale deeds were executed on 02.04.1973 and the title is transferred to the buyer before payment of the wholesale price, vendor is entitled to a charge on that property for the amount of sale price as also interest thereon and such charge provides him right to enforce the charge by a suit but does not entitle the vendor to retain the property. It is further submitted that the



vendor by getting a deed of cancellation registered on 20.04.1978 started creating hindrance in peaceful possession of the plaintiffs-appellants. There is no provision for cancellation of registered sale deed in the Registration Act. Therefore, finding of both the Courts are illegal, erroneous and thus, substantial question of law is “whether the title passed over to the vendee on the date of execution of the sale deed executed by the vendor on 02.04.1973 itself and the consideration amount was duly paid to the vendor on 02.05.1973.” Both the Courts have illegally misreading the evidence of P.W.1 and P.W.2 has recorded the finding that neither the consideration amount was paid to the vendor-defendant nor the possession was ever handed over to the plaintiffs.

7. The question arises for consideration in this appeal is “whether the title to the property covered by the three sale deeds will pass to the vendee or not without payment of the full consideration amount on the date of execution of the sale deed and whether the plaintiffs-appellants paid the consideration money on 02.05.1973 to the defendant-vendor and on the same day the vendor handed over the possession of the suit land to the plaintiffs?”

8. The first question whether the title to the



property covered by the sale deeds will pass to the vendee or not without the payment of the full consideration money is the subject matter of controversy and it depends upon the recital of the sale deeds and it depends on the facts and circumstances of the each case. In some cases, even if no consideration money has been paid, still the parties to the deed might agree the title will nonetheless pass to the vendee. In some cases, the vendor and vendee made recitals in the sale deed itself that the title will pass to the vendee on the date of registration of the sale deed and consideration paid in presence of the registering authority itself. In some other cases, the payment of the consideration money may be the condition for passing of the title to the vendee. In the present case, the payment of consideration is the condition for passing of title to the vendee. The plaintiffs-appellants themselves admitted and pleaded in the plaint that title of the land covered under the three sale deeds would pass on payment of entire consideration money to the vendor and on that delivery of possession would be given to the vendee-plaintiff by the vendor. Therefore, the judgment, Tiwari Rai(supra) decided by Division Bench of this Court and Vidhyadhar (supra) are not helpful to the appellants on the facts of the present case.



9. In the present case, the plaintiffs themselves admitted and pleaded in the plaint that on the date of execution of the sale deed i.e. 02.04.1973, the title did not pass to the vendees-plaintiffs and the plaintiffs had no money to pay the consideration amount and the passing of the title of the land covered under the sale deeds deferred to future date on payment of consideration amount and return of the registration slips duly bearing the acknowledgment and endorsement of the vendor for receiving the consideration amount so that the vendees may get the original sale deeds. Therefore, the question of payment of consideration money on the future date has to be proved by the plaintiffs-appellants as it is admitted case of the appellants themselves that registration slips were not handed over to the vendees but as defendant even after receiving the consideration amount disclosed that registration slips were lost. This practice known as Ta-khubzul-badlail i.e. title to the property passing to the purchaser only when there is exchange of equivalents, where a sale deed recites that the entire sale consideration has been paid even 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 receipts 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 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. In such cases, the 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 consideration.

10. In the case of **Janak Dulari Devi and another v. Kapildeo Rai and another, 2011(6) Supreme Court Cases 555**, Hon'ble Supreme Court has held in para 11 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 vs. Anmol Devi & Ors.](#), 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 :

"[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 a 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."

11. Therefore, having considered the facts and the law laid down on this point by the Hon'ble Supreme Court and also the pleadings of the plaintiffs-appellants, I have got no hesitation to hold that even if there is recital in the sale deed, the title of the land covered under three sale deeds executed by the defendant-respondent in favour of appellants on 02.04.1973 did



not pass to the appellant and the passing of the title of the land covered under the sale deeds was deferred on payment of consideration and return of equivalent registration receipts. The appellants have contended that he paid entire consideration amount to the defendant on 02.05.1973 in presence of P.W.1 and P.W.2 but registration slips could not be handed over to the appellants on the pretext that the registration slips were lost. The appellants however claimed that on the same day, the respondent-vendor handed over the possession of the land to them but the trial court as well as the appellate court on appreciation of the evidence of P.W.1 and P.W.2 have very categorically held that no payment of consideration was made to the defendant-vendor nor the possession was handed over to the vendees-appellants on 02.05.1973. The possession remained with the vendor and thus, the vendees had no title over the lands by virtue of the aforesaid three sale deeds as the title of the land covered under the sale deeds did not pass to the appellants. It is needless to say that there is no provision of cancellation of registered sale deed and it has got no meaning in the eye of law even if the defendant got it cancelled on 20.04.1978 by a registered deed on account of non-payment of consideration amount but at the same time, I find that there is concurrent



findings of both the Courts that on the basis of the aforesaid sale deeds, no title of the land covered under the sale deeds pass to the appellants-vendees and the consideration was never paid. This Court under Section 100 of the Code of Civil Procedure is not to re-appreciate or reappraise the evidence on the basis of which concurrent finding is made and it is not a case that the finding based on non-appreciation of evidence or no evidence.

12. In the case of refusal of accepting consideration amount or if even after receipt of consideration amount the vendor did not hand over the registration slips exchange of equivalents, the vendee has got right to file a suit for a direction to the vendor to return the registration slips and the original sale deed on receipt of full or part of consideration amount to be paid later on but the appellants have filed the suit for declaration of title since the title did not pass to the vendee on the date of execution of sale deed on account of non-payment of consideration amount and both the Courts have held concurrently on appreciation of evidence on record that the vendees did not pay the consideration amount to the vendor nor the possession was delivered to the vendees and thus, the vendees have got no title.

13. Therefore, I find that substantial questions of



law which are suggested by the learned counsel for the appellants have already been settled by different pronunciation of this Court as well as by the Hon’ble Supreme Court as when the title would pass to the vendee on the execution of sale deed. Consequently, I find no substantial question of law arises for consideration in this second appeal. Accordingly, all the three Second Appeals are dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
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