

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.75 of 1997

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 24.01.1997 and 07.02.1997 respectively passed by the learned District Judge, Balasore-Bhadrak in S.J. Appeal No.48 of 1990.

Ratnakar Pradhan & Others

....

Appellants

-versus-

Arjuna Ch. Behera

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants

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Mr.R.Ch. Mohanty,
R.K. Mohanty, D.K. Mohanty,
N.Behuria, P.K. Rath &
C. Patnaik
(Advocates)

For Respondent

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Mr.Jagannath Bhuban
Abinash Routray
(Advocates)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 10.05.2022 : Date of Judgment:20.06.2022

The original Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), have assailed the judgment and decree dated 24.01.1997 and 07.02.1997 respectively passed by the learned District Judge, Balasore-Bhadrak in S.J. Appeal No.48 of 1990.

By the same, the Appeal filed by these Appellants under section 96 of the Code has been dismissed and the cross-objection filed by the Respondent No.1 (Plaintiff) has been allowed. The Respondent No.1, who had filed the suit as the Plaintiff, has been declared to be having the right, title and interest over the suit properties and entitled to recover the possession of the same from the Appellants (Defendants).

It may be stated here that the Respondent No.1, as the Plaintiff, had filed the suit, i.e., O.S. No.61 of 1983-I in the Court of the learned Sub-Ordinate Judge, Balasore for declaration of her right, title and interest over the suit properties described in Schedule-Ka, Kha and Ga of the plaint with further declaration that the deed of gift and sale deeds executed in favour of these Appellants and Defendant No.1 and Defendant No.2 (dead) are void and inoperative. The Defendant No.2 having died during pendency of the First Appeal, his legal representatives as Defendant No.2(ka) and 2(kha), who are the Appellants 2 and 3 have come on record.

The Trial Court had decreed the suit in part declaring the gift deed dated 07.01.1994 (Ext.A-1) as inoperative and invalid; the transfer of land made under sale deed dated 07.01.1994 as invalid, illegal and inoperative and the sale deed dated 07.01.1994 (Ext.A) in favour of Defendant No.2 (since dead) as valid. It had directed the Appellant No.1 (Defendant No.1) and Defendant No.2 (represented by Defendant No.2(ka) and 2 (kha) to deliver vacant possession of Schedule-Kha land to the Plaintiff.

The First Appeal, being preferred by Appellant No.1 (Defendant No.1), the Plaintiff filed Cross-Objection. The First Appellate Court, while dismissing the Appeal; has allowed the Cross-Objection and

thereby the suit filed by Respondent No.1 (Plaintiff) has been decreed in full granting her all the reliefs that she had prayed thereunder.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. The Plaintiff's case is that she is an ignorant and pardanashin widow and her husband died 33 years prior to institution of the suit. The Defendant No.1 is the son of Defendant No.2, who happens to be the husband's brother of the Plaintiff. Defendant No.3 is the son of brother of the Plaintiff. Since the husband of the Plaintiff died only after three months of her marriage, she was fully depending upon Defendant No.2 for all her household affairs as well as all the affairs including the protection of her landed properties. She was reposing full faith and confidence upon Defendant No.2 in every matter and they were staying nearby. About 15 years prior to the institution of the suit, the Defendant No.2 requested the Plaintiff to execute a Power of Attorney in his favour for proper management of her landed properties. So, on good faith, she came to the Office of Sub-Registrar, Soro and executed a Power of Attorney in favour of Defendant No.2, which was registered. She had then no discussion with anybody. It is the Defendant No.2, who obtained her LTIs on some papers and after completion of the work, they all came back. It was all along within the knowledge and impression of the Plaintiff that the Defendant No.2 had taken those LTIs for the purpose of execution of Power of Attorney in his favour which she in fact had executed. It is her case that she continued to possess the house and the property as usual. About eight years prior to the institution of the suit, the Defendant No.2 proposed to construct the

house on the homestead of Plaintiff to which she did not agree and then the Defendants 1 and 2 threatened her and told that they would construct a house over that homestead at any cost when they also disclosed that she had already transferred these properties in their favour. The Plaintiff thus being astonished to hear about the sale as claimed, made necessary enquiry and came to know that one deed of gift had been obtained from her in respect of the Schedule-Ka properties in favour of Defendant No.1. So, she cancelled the deed of gift. After that, when she went to deposit the rent for the said land, she was surprised to know that the land had been mutated in favour of Defendant No.1. She made an application for review of the order of the Tahasildar granting the mutation, but her prayer was rejected. Then it was ascertained that her 'Kala' and 'Jala' lands had been transferred in favour of Defendants 1 to 3 and those were by two others sale deeds; one in favour of Defendant No.2 and the other one in favour of Defendant No.3, which concern with the properties described in Schedule-Kha & Ga of the plaint. She thus having come to know that the Defendants have connived together and managed to obtain all these deeds (one gift deed and two sale deeds) from her, filed the suit.

4. The Defendants 1 and 2, who are the father and son, contested the suit by filing written statement. It is stated that after the death of Plaintiff's husband, she was under the influence of her brother's son (Defendant No.3), who was having his eye over the properties. The Plaintiff, out of love and affection for Defendant No.1, had voluntarily gifted Schedule-Ka land in his favour by executing deed of gift, which she is falsely refuting being influenced by Defendant No.3. It is further stated that being in need of money, she executed two sale deeds which stood registered in favour of Defendant No.2. These documents are said

to be valid and genuine and duly executed and registered. It has been further stated that one Moharir had obtained the signatures of Defendant No.2 on some blank papers falsely representing him that the dispute between him and the Plaintiff would be settled, but those were used for creating a written statement with the confirmation that the transactions are benami in nature. Later on, having come to know about that, the written statement was amended.

The Defendant No.3 did not file any written statement nor contested the suit.

5. Faced with the rival pleadings, the Trial Court has framed seven issues.

Answering issues concerning the validity of the registered gift deed dated 07.01.1974 in respect of Ac.1.71 1/5 decimals of land in favour of Defendant No.2; upon examination of evidence and their evaluation, the Trial Court has held that the registered deed of gift (Ext.A-1) and sale deed dated 07.01.1974 in favour of Defendant No.3 as invalid, illegal and inoperative but it has saved the registered sale deed dated 07.01.1974 vide Ext.A holding it to be valid.

6. The suit have accordingly been decided. the Defendant No.1 preferred the First Appeal when the Plaintiff also filed the cross-objection in respect of the finding relating to the validity of the registered sale deed (Ext.A) as had been held by the Trial Court against her questioning the refusal to grant the relief in that regard.

The Appellate Court has finally held all those three registered deeds as well as gift deed to be illegal, invalid and inoperative and accordingly the title of the Plaintiff over the entire suit land has been

declared and she has been held entitled to recover the possession of the same.

Hence, the Second Appeal is at the instance of Defendant Nos.1, 2(ka) and 2(kha).

6. The present Appeal has been admitted on 29.04.1997 only to answer the substantial question of law as indicated in Ground No.2(a) of the Memorandum of Appeal, which reads as under;-

“(a) Whether the learned lower Appellate Court erred in law in disposal of the appeal without passing any order on the appellant’s petition under Order 6 Rule 17 of the code?”

7. Learned counsel for the Appellants, in urging for answering the above substantial question of law in favour of the Defendants; submitted that when an application under Order 6 Rule 17 of the Code had been filed before the First Appellate Court and it had been ordered that he same would be taken up for hearing at the time of final hearing of the Appeal and would accordingly stand disposed of, the First Appellate court has not touched upon the same and, therefore, the judgment and decree passed by the First Appellate court stands vitiated and are liable to be set aside.

8. Learned counsel for the Respondents, while not disputing the position as seen from the judgment passed by the First Appellate Court that said application under Order 6 Rule 17 of the Code has not been disposed of, however, contended that those amendments as proposed to have been made by the Defendants in their written statement when are gone through, it would be clear that those are wholly unnecessary for the purpose since all those proposed amendments concern with certain facts about which parties have led evidence in great detail and the Courts

below have not discarded the evidence that they had so let in for the reason that those are not to be looked into being not so pleaded. He, therefore, submitted that this Court, simply should not get swayed away by the fact that as because the prayer for amendment of the written statement has not been addressed to by the First Appellate Court, its judgment and decree are liable to be set aside, but it be seen that had those even been allowed whether it would have improved the case of the Plaintiff in securing the findings to the contrary and there is any such possibility. According to him, the amendments even if would have been allowed; the fate of the case would have been the same as it has met.

9. Keeping in view the submissions made, I have carefully gone through judgments passed by the Courts below. I have read the plaint and written statement as well as the application under Order 6 Rule 17 of the Code filed before the First Appellate Court. I have also perused the evidence both oral and documentary.

10. It is not in dispute that the Defendants, during pendency of the First Appeal, on 26.09.1996, had filed an application under Order 6 Rule 17 of the Code. Objection being invited, the Court had asked the parties to produce respective documents in support of the same which they had filed and then the Court had passed an order that those would be taken up for consideration at the time of hearing of the First Appeal and would be disposed of in accordance with law.

Fact remains that said application has not been dealt with while passing the judgment.

Perusal of the application under Order 6 Rule 17 of the Code filed by the Defendants reveals that the substance of the amendment of the written statement, as proposed by the Defendants, concern with certain

facts relating to sale of certain properties to Defendant No.3 way back on 22.03.1954 and thereafter.

The purpose of such amendment of the written statement as it appears is to show that the Plaintiff, who is the executant of those documents and the parties to the transactions, was not so ignorant about such facts concerning the transaction and as to how those are made since she had one such prior experience. The suit having been filed in the year 1983, it stood disposed of on 16.07.1990, i.e, after lapse of about seven years and six years thereafter, this application under Order 6 Rule 17 of the Code had been filed when the First Appeal was in progress. The Defendants were all along aware of the fact that the gift deed and sale deeds standing in their favour have been attacked by the Plaintiff as to have been obtained by fraud, misrepresentation and taking advantage of their relationship as well as in breach of the faith and confidence reposed upon them.

The Plaintiff is said to have executed all those deeds on one day, i.e., 07.01.1974 and on the very next moment of registration of those documents, she has not only become landless but also homeless and the properties involved are of quite large extent. By these deeds, as per the case of the Defendants, the Plaintiff has been divested by all her rights over the properties involved in the documents and thereby even had no roof to put her head and coming to the street with begging alms purely remaining at the mercy of the Defendants and others.

The First Appellate Court, having discussed the evidence as to execution of the documents in great detail, on the aspect of the execution, independent advice has arrived at a conclusion that in view of the circumstances emanating from the evidence as to the status of the Plaintiff-executant concerning her position with all such relationship,

the evidence let in by the beneficiaries under those transactions fall far short of standard to hold that the burden of proof lying upon those Defendants on those scores has not been discharged. The First Appellate Court is also found to have rightly differed from the view taken by the Trial Court invalidating the transaction under Ext.A, the registered deed standing in favour of Defendant No.2 on the ground that as the same had been made for repayment of the loan, it is not liable to be impeached. It has for the purpose given a very good reason that when all these documents are executed and registered on the same day and when other documents are held to be invalid that one document being fished out cannot be kept out beyond the realm of such suspicion and, therefore, such an approach of the Trial Court, basing upon the recitals of said document, has been held to be improper.

In my considered view, all these facts which have been proposed to be introduced in the written statement by way of amendment are said to have taken place long before the execution of these three documents which are under challenge in the present suit. The evidence of record when being gone through carefully by this Court, it is seen that the transactions are wholly unconscionable that a lady, depending upon the Defendants for all such purposes, on the fine morning, has been stripped of all her immovable properties and thereby during that day coming down to the street to seek shelter in places of others.

In that view of the matter, even by introduction of the proposed amendment in the written statement by allowing the application under Order 6 Rule 17 of the Code filed by the Defendants, the findings recorded by the First Appellate Court holding all those transactions to be illegal, invalid and inoperative would have remained firm and the same. Therefore, this Court is of the view that the proposed amendments

of the written statement having no such impact over the final decision as ruled by the First Appellate Court; its non-disposal while deciding the Appeal has in no way caused any prejudice to the Defendants so as to say that the judgment and decree passed by the First Appellate Court are vulnerable.

All the aforesaid provide the answers to the substantial questions of law against the case projected by the Defendant.

11. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.



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