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Ct. No. 04

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S.A.T. 289 of 2015
CAN 1 of 2015 (Old No. CAN 5903 of 2015)

Makhan Chandra Hazra & Ors.

Vs.

Netai Chand Hazra & Ors.

Mr. Krishna Das Poddar,

Mr. Pradip Paul,

Ms. Renesa Dey.

... for the appellants.

Both the Courts below have decreed the suit in part and the concurrent findings are sought to be assailed in the instant appeal raising an issue that those are perverse and mutually destructive.

A suit for declaration of right, title and interest in respect of the suit property consisting of 2.92 decimal of land on the basis of a deed of sale being No. 3485/1957 dated 28th April, 1957 was filed by the plaintiffs/respondents. Admittedly the entire suit property belong to Bholanath Hazra, the predecessor of both the parties. It is a categorical stand of the plaintiffs/respondents that the said original owner during his lifetime executed and registered a deed of sale in favour of one of his son, namely Haripada Hazra, being the predecessor of the plaintiffs/respondents and, therefore, excluded the other heirs to inherit the said property. Since the defendants/appellants were creating a cloud on the title acquired by the plaintiffs/respondents by way of inheritance from his father, namely Haripada Hazra, the suit came to be filed for declaration of title in respect thereof.

Basically it is a suit based upon the said sale deed dated 28th April, 1957, which according to the defendants/appellants is sham transaction. According to the defendants/appellants the sale deed lacks consideration, which is one of the integral part of

transfer of immovable property and, therefore, cannot be regarded as valid in the eye of law. It is further contended that it is inconceivable that a father during his lifetime would execute a purported sale deed in favour of one of his son depriving the other heirs and, therefore, such transaction is not real. A further stand is taken that the said Haripada Hazra during his lifetime never asserted the right, title and interest in respect of the suit property even after the entry made in the Record of Rights in favour of all the heirs of the said Bholanath Hazra, which conclusively proves that the property was never intended to be sold by the said original owner. Lastly, it is contended that a story of execution of deed of relinquishment is made out in the plaint which implies that the purported sale deed was never acted upon and, therefore, no right, title and interest would pass upon the plaintiffs/respondents on the basis thereof.

Both the Courts disbelieved the story set up by the defendants/appellants. The transaction of immovable property fetching more than a value of Rs.100/- is required to be executed by a written document and is compulsorily registrable under Section 17 of the Registration Act. The moment the document is executed by the original owner having right, title and interest in respect of the immovable property and the said document is duly registered with the Registering Authority, it passes the title immediately upon execution and registration thereof. A plea is sought to be taken that the sale deed without any consideration is ineffective, bad and illegal in the eye of law.

There is no quarrel to the proposition that in order to pass on the title or in other words transfer the title in respect of the immovable property, the consideration is an integral part thereof. We had an

occasion to peruse the certified copy of the sale deed relied upon by the defendants/appellants, wherefrom it appears that the price of the property was shown at Rs.300/-. The recital in the deed would further evince that the aforesaid price has been paid to the original vendor by the said Haripada Hazra and, therefore, it cannot be said that there is no consideration shown in the deed.

We cannot overlook the fact that there are various modes of writing the sale deeds effecting the transfer of immovable property. Sometimes the deeds are executed in English language and the format, which is being used in respect thereof, shows something differently than the sale deed executed in vernacular language. What is important in the aforesaid matter that the executant is transferring his right, title and interest in respect of the immovable property to the other on a consideration shown therein. It is not necessary that a memo of consideration is to be appended in the sale deed executed in vernacular language, if the recitals or contents thereof clearly indicates the payment of such consideration money by the purchaser to the seller.

We do not ascribe to the view of the learned Advocate for the appellants that every deed must contain a memo of consideration appended at the end of the deed in order to convey the property in favour of the purchaser. We thus do not find any substance in the stand of the defendants/appellants that the sale deed lacks consideration and, therefore, is void in terms of Section 5 of the Transfer of Property Act.

Another plea relating to the entry in the Record of Rights in favour of the heirs of Bholanath Hazra does not appeal us. The entry in the Record of Rights neither creates title into a person nor extinguishes the title. The

Record of Right is prepared for the purpose of collection of land revenue and fixing the responsibilities on a person, who is liable to pay such land revenue. The entry in the Record of Rights may have presumptive value on possession but can never be construed to have any impact on the title in respect of the immovable property. Mere recording the name of the heirs of Bholanath Hazra in the Record of Rights neither whittle down the legal efficacy of the sale deed executed in accordance with law nor render such sale deed sham, ineffective, illegal and void for all purposes.

The aforesaid aspect can be seen from another angle. The plaintiffs/respondents claim right, title and interest in respect of 2.92 decimal of land on the basis of the said sale deed. Both the Courts after assimilating the contents of the sale deed arrived at the firm conclusion that the said Bholanath Hazra intended to convey and transfer 1.95 decimal of land in favour of Haripada Hazra and not the entire property.

Even if the entry in the Record of Rights shows the name of all the heirs of the said Bholanath Hazra, we do not find any incongruity or inconsistency in the aforesaid entry that the other heirs of Bholanath Hazra had a right in respect of the other portion of the suit property beyond 1.95 decimal of land. It does not create any impediment on the part of a person to approach the Court claiming his right, title and interest on the basis of the sale deed.

Section 34 of the Specific Relief Act postulates that the right to accrue would arise the moment the title is clouded and a rival claim is asserted by other person. The claim of execution of the deed of relinquishment have to be construed in the perspective of the balance portion of the property, as the plaintiffs asserted that the said Bholanath Hazra actually

conveyed and transferred the entire land comprising of 2.92 decimal of land, although the said sale deed indicates the transfer of 1.95 decimal of land.

We thus do not find any infirmity and/or illegality in the judgement of both the Courts below declaring the title in favour of the plaintiffs/respondents to the extent of 1.95 decimal of land on the basis of the said sale deed.

We also do not find any substantial questions of law involved in the instant appeal.

The appeal and the connected application are thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)