

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.594 of 2016

1. Smt. Satnam Kaur W/O Om Prakash Saluja
2. Om Prakash Saluja S/O Late Govind Singh
3. Indrajeet Singh S/O Late Govind Singh
- 4.3. Bhajan Kuar W/O Prakash Singh
- 5.(3a). Surendra Singh S/O Prakash Singh
- 6.(3b). Surjeet Singh S/O Prakash Singh
- 7.(3c). Charan Singh @ Charanjeet Singh S/O Prakash Singh
- 8.(3d). Kulwant Singh S/O Prakash Singh

All 1 to 8(3d) resident of Mohalla-Gurudwara Road,
P.S.-Kotwali, Dist.-Gaya

- 9.(3e). Daljeet Kaur D/O Prakash Singh W/O Indrajeet Singh

9(3e) resident of C/O Raja, R/M, R3 Market Chitranjan, Dist-Bardawan, West
Bengal.

Appellant/s

Versus

Jasbindra Singh S/o Late Bakhtaur Singh resident of Mohalla- Lakshman
Sahay Lane, Gurudwara Road, P.S.- Kotwali Dist/Town- Gaya

Respondent/s

Appearance :

For the Appellant/s : Mr. Rabindra Kumar Priyadarshi, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 10-12-2024 This Second Appeal has been filed against the

judgment of affirmance. The defendants-appellants have filed

present appeal against the judgment and decree dated

27.10.2016 passed by the learned Additional District Judge-VI,



Gaya in Title Appeal No. 14 of 2014 whereby the judgment of trial court has been upheld on 12.11.2012 by the learned Sub-Judge-IV, Gaya in Title Suit No. 69 of 2005/332 of 2005.

2. The plaintiff/respondent brought a suit for declaring that Power of Attorney obtained fraudulently is not binding on the plaintiff and the plaintiff has every right to ignore the Power of Attorney dated 08.10.1999 said to be executed by plaintiff/respondent in favour of defendant no. 3 Indrajeet Singh and also for declaring that the sale-deed dated 17.07.2000 executed by defendant no. 3 on the basis of Power of Attorney dated 08.10.1999 is void and not binding upon the plaintiff and defendant nos. 1 and 2 did not acquire any right, title and interest and hence, defendant no. 4 did not acquire any title by sale deed dated 01.07.2003 as well as cost of the suit.

3. The case of the plaintiff/respondent is that defendant no. 3 Indrajeet Singh was close friend of plaintiff, who always used to come to the plaintiff. Defendant no. 2, namely, Om Prakash Saluja and defendant no. 3 Indrajeet Singh both are full brother and defendant no. 1 Satnam Kaur is the wife of defendant no. 2 and as such defendant nos. 1, 2 and 3 hatched out a plan to any how grab the house of the plaintiff. Defendant no. 2 and his friend Umesh Chandra Sinha in



collusion and conspiracy with each other took the plaintiff to Kolkatta and thereafter managed to obtain Power of Attorney in the name of Indrajeet Singh (defendant no. 3) after getting plaintiff in inebriated state of mind and without going into contents of the Power of Attorney and without understanding the input of the Power of Attorney got the Power of Attorney executed. The plaintiff had no intention that whatsoever nor had any necessity for the execution of the Power of Attorney and as the plaintiff is permanently residing at Gaya and there was no need of appointing any person under Power of Attorney. The alleged Power of Attorney was said to be executed in favour of a person who had not visited Kolkata with the plaintiff, rather, it was defendant no. 2 and one of the friends of defendant no. 2, Umesh Chandra Sinha only visited on pleasure trip and plaintiff did not execute the said Power of Attorney in conscious state of mind rather the plaintiff was in inebriated state of mind. The said defendant no. 2 Om Prakash Saluja knowingly and deliberately with malicious intention brought the plaintiff in inebriated condition and managed to obtain his signature on the alleged Power of Attorney. It is further case of the plaintiff that the plaintiff was at Gaya at the time of execution of sale deed by the defendant no. 3 in favour of defendant nos. 1 and 2. The



plaintiff has good transport business so there was no need to sale his house and neither consideration was received and paid to the plaintiff and said Indrajeet Singh (defendant no. 3) had no legal right to sell the house to defendant nos. 1 and 2. Defendant no. 3 was not accompanied them while they were going to Kolkata for pleasure trip. Om Prakash Saluja defendant no. 2 forged the signature and L.T.I. of Indrajeet Singh in the relevant documents in Registry Office at Kolkatta. The sale deed was executed by defendant no. 3 in favour of defendant nos. 1 and 2 without any knowledge or consent of the plaintiff and just after creation of sale deed, the defendant nos. 1 and 2 sold part of the house to defendant no. 4 at a very high price, though, in sale-deed it has been shown consideration price only Rs. 1,49,000/- concealing the fact that the building is two storied *pucca* building with modern fitting and fixture. The possession of the house in dispute is still with the plaintiff and he is residing in the house without any interference by his family. The plaintiff along with family had been to Punjab after locking the entire house and when they returned on 29.11.2003, they found one another lock upon his lock and on enquiry, they learnt that defendant no. 2 has locked and thereafter with the help of police the door was opened. After enquiry the plaintiff came to know about the two



sale deeds and also Power of Attorney which are the outcome of fraud and conspiracy committed by defendant nos. 2 and 3 and as such any execution by the plaintiff will deem to be obtained fraudulently by defendant nos. 2 and 3, hence, the plaintiff filed the aforesaid suit.

4. On summons, the defendants/appellants appeared and filed their written statement. The defendant nos. 1, 2 and 4 jointly filed their written statement and defendant no. 3 separately filed his written statement. It is contended that the plaintiff executed Power of Attorney in favour of Indrajeet Singh defendant no. 3 to sell his house on his behalf on 08.10.1999 and handed over the original sale deeds dated 18.02.1972 and 03.05.1974 to Indrajeet Singh. On the basis of Power of Attorney, defendant no. 3 executed registered agreement to sale in favour of defendant nos. 1 and 2 on 12.07.1999 after taking earnest money and ultimately on 17.07.2000 defendant no. 3 executed a registered sale deed in favour of defendant nos. 1 and 2 and put them in possession of the house and also handed over original papers who got mutated their names in Municipal Corporation in the year 2001. Further case of the defendants, is that defendant no. 4 purchased the suit house from defendant nos. 1 and 2 by virtue of registered sale



deed executed on 01.07.2003 for valuable consideration.

5. The case of defendant no. 3 in his written statement is that the plaintiff had gone to Kolkata and executed the Power of Attorney to him in sound mind and out of his own choice and free will on 08.10.1999. Further case of the defendant no. 3 is that the plaintiff occasionally resides in Gaya and his own permanent house is at Punjab, therefore, necessity of execution of Power of Attorney to him arose. Defendant no. 3 along with plaintiff and defendant no. 2 and Umesy Chandra Singh went to Kolkata and on 09.10.1999 they returned to Gaya except Jasbindra Singh who went to Punjab from Kolkatta. All the documents were executed in Kolkata and in Registry office at Kolkatta by the plaintiff. Further case of the defendant no. 3, is that the plaintiff was in necessity and in need of money. Therefore, he requested to sale the suit property after settlement of sale with defendant nos. 1 and 2. The plaintiff received Rs. 80,000/- only by two cheques of Rs. 40,000/- each of Central Bank, Station Road, Gaya. The Cheque was issued in the name of plaintiff and the plaintiff en-cashed the said cheque and accordingly a registered deed of agreement was executed by Indrajeet Singh on 12.10.1999. The plaintiff had executed the Power of Attorney in favour of defendant no. 3 to sale the



property. Therefore, he has full legal right to sale the property. The full consideration amount worth Rs. 1,43,000/- was received by the plaintiff. There is no collusion of this defendant with defendant nos. 1 and 2 and due to collusion, he executed sale-deed in favour of defendant nos. 1 and 2 rather all the work was done with the consent of the plaintiff. Defendant nos. 1 and 2 sold the major portion of house to the defendant no. 4 after three years of the execution of sale deed in favour of defendant nos. 1 and 2. Further case of this defendant no. 3, is that there was a problem in registering the Power of Attorney in Gaya at that time. After registration of the said Power of Attorney, a sale deed was executed on 13.07.2000. Defendant nos. 1 and 2 got all the previous documents concerning the house and after receiving full consideration amount the plaintiff handed over the vacant possession to defendant nos. 1 and 2, who got mutated their names and rent receipts were issued in the name of defendant nos. 1 and 2. The plaintiff had broken the lock and entered into the house for which a criminal case at Kotwali P.S. Case No. 99 of 2002 dated 14.04.2002 was registered by defendant no. 2 and later on defendant no. 2 and plaintiff compromised the case on 15.05.2002. All the allegations of plaintiff are false and the case of the plaintiff is fit to be



dismissed.

6. On the basis of pleadings of the parties and materials on record i.e. documentary evidence as well as oral evidence of the parties, the learned Trial Court decreed the suit in favour of the plaintiff on 12.11.2012.

7. Being aggrieved by the said judgment and decree, the defendants have filed title appeal bearing Title Appeal No. 14 of 2014.

8. After hearing the parties, learned lower Appellate Court has affirmed the judgment and decree passed by the Trial Court and held that there is no prove of presence of Indrajeet Singh at Kolkata at the time of execution of Power Of Attorney. Although the stamp was purchased in the name of Indrajeet Singh but there is no signature of Indrajeet Singh on that stamp paper and has held that anybody can purchase the stamp paper in anyone's name and it will not be the proof of the presence of that person at that place. It is further held that D.W.- 13 (defendant no. 2) has admitted that talk for purchase of the suit property was held with Indrajeet Singh defendant no. 3 in the month of November-December, 1999, then the agreement for sale was executed and registered on 10.10.1999 and the agreement for sale was executed and registered on 10.10.1999



and Rs. 80,000/- alleged to have been paid by defendant nos. 1 and 2. D.W.-13 (defendant no. 2) has admitted that he has not filed any documentary proof in support of the payment of Rs. 63,000/- and 80,000/- through cheques. The defendants have not filed any documents to prove the payment of Rs. 63,000/- and Rs. 80,000/-. The witness Indrajeet Singh (defendant no. 3) has admitted that he has not produced any paper to show that Jasbindar was paid Rs. 80,000/- through cheque. The plaintiff/respondent has vehemently challenged the payment of money through cheque but despite of these challenges, not a chit of paper has been filed to show that Rs. 1,43,000/- was ever paid to the plaintiff as price money for the suit property either by defendant nos. 1 and 2 or by defendant no. 3. Defendant no. 3 Indrajeet Singh also failed to produce any paper to establish that defendant no. 3 Indrajeet Singh was present in Kolkata at the time of registration of Power of Attorney. The Power of Attorney is not a bonafide document rather it is fraudulent document fraudulently obtained by the defendants by getting the plaintiff into intoxicated state and the sale deed executed by defendants on the basis of Power of Attorney are also not genuine documents and it is void and not binding upon the plaintiff/respondent.



9. The plaintiff (P.W. 5 Jasbinder Singh) has denied about handing over original sale deeds to defendant nos. 1 and 2 on account of the sale made in their favour. The original sale deeds were given to defendant no. 2 Om Prakash Saluja by way of security of the loan taken by him from defendant no. 2. He has produced the note books written by defendant no. 2 Om Prakash Saluja regarding loan given by him to the plaintiff for financing his truck business and these documents have been marked as Ext- 1, 1/a, 1/b and 1/c and the same have been exhibited by the court without objection. The said Om Prakash Saluja has been examined as D.W. 13 but he has not denied his writing on Ext.-1 to 1/C rather the existence of truck business has been admitted by both defendant no. 3 Indrajeet Singh and D.W.- 13 Om Prakash Saluja (defendant no. 2). Therefore, the learned Appellate Court held that the possibility of handing over sale deeds Ext.- E/1 and E/2 by way of security by way of loan given by defendant no. 2 to the plaintiff cannot be ruled out. The learned lower Appellate Court has held that defendants/appellants had attempted to procure the suit property by fraud and fraudulently created the deed of Power of Attorney dated 08.10.1999, which is not outcome of free will rather outcome of fraudulent manner and accordingly Ext.-E/4 General



Power of Attorney is held null and void and not binding upon the plaintiff/respondent.

10. Accordingly, the sale deed dated 17.07.2000 executed by defendant no. 3 in favour of defendant nos. 1 and 2 on the basis of Power of Attorney is also null and void and not binding upon the plaintiff and plaintiff has perfect right, title, interest and possession over the suit house.

11. After hearing the averments made on behalf of the parties and after perusal of materials on record including the judgment of the learned courts below, it appears that learned court of appeal below which is the final court of facts after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that the defendants have obtained Power of Attorney fraudulently. Therefore, both the courts below have held that the document i.e. Power of Attorney has been obtained fraudulently. So far sale deed executed on the basis of fraudulent document and the defendants have not brought any chit of paper to establish that they had paid consideration amount of Rs. 1, 43,000/- to the plaintiff, no statement of the Bank has been produced before this Court to establish the fact. Both the courts, accordingly, held that the plaintiff has successfully proved his title and possession.



12. Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the judgment and decree of the courts below are covered by the findings of the fact and no question of law much less substantial questions of law arises for consideration in the instant Second Appeal.

13. Accordingly, this Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 C.P.C..

(Khatim Reza, J)

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