IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.46 of 2021

(Against the judgment dated 05.03.2020 passed by learned District Judge-IV, Koderma in Civil Appeal No.11 of 2016)

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1. Smt Suman Prasad W/O Sheo Shankar Prasad Aged about 68 years.

2. Sri Sheo Shankar Prasad S/O Late Gokul Prasad Aged about 77 years.

Both Resident of Old Ward no.14, Present Ward no.22, Jhumri Telaiya, Nagar Parishad, PO Jhumri Telaiya, P.S. Telaiya, Dist. Koderma .... …. Plaintiffs/Respondents/Appellants.

Versus

1. Lakshmi Pandey S/O Late Shyam Lal Pandey
2. Narain Pandey @ Jobraj Pandey S/O Late Shyamlal Pandey
3. Anil Pandey S/O Late Shyamlal Pandey
4. Prakash Pandey S/O Late Shyamlal Pandey
5. Chhoti Pandey S/O Late Shyamlal Pandey

All are residents of Village Gumo, Near Kali Manda, Old Ward no 15, Present Ward no 22, Jhumri Telaiya, Nagar Parishad, PO Gumo, PS Telaiya, Dist Koderma

.... …. Defendants/Appellants/Respondents

For the Appellants : Mr. Bharat Kumar, Advocate
Mr. Sudhir Kumar Sharma, Advocate

P R E S E N T
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

***By the Court*:-** Heard the learned counsel for the appellants.

2. This Second Appeal, filed under section 100 of the Code of Civil Procedure, 1908 has been preferred against the judgment of reversal dated 05.03.2020 passed by learned District Judge-IV, Koderma in Civil Appeal No.11

of 2016 whereby and where under the learned first appellate court reversed the judgment and decree passed by the trial court and dismissed the suit of the plaintiffs being Title Suit No.04 of 2010 filed in the court of learned Civil Judge (Senior Division)-I, Koderma and allowed the appeal in part so far as the land described in Schedule - I of the plaint but dismissed the appeal in part with respect to the suit land described in Schedule -II of the land.

3. The brief facts of the case is that the plaintiffs filed Title Suit No.04 of 2010 in the court of learned Civil Judge (Senior Division)-I, Koderma with a prayer for declaration of right, title and interest over the land described in Schedule I of the plaint and for confirmation of possession over the suit land. Further, the plaintiffs prayed for further reliefs to restrain the defendants from transferring or alienating the suit land and also to restrain their men and agents by permanently injuncting them from interfering with the possession of the plaintiffs over the suit land, cost of the suit and other reliefs.

4. The case of the plaintiffs in brief is that Doman Pandey, Daso Pandey and Gurdi Pandey are own brothers and sons of Jobi Pandey @ Pobi Pandey and they are having title and possession over the suit lands consisting of area 31 decimal in Khata No.539, plot No.5762 described in Schedule-I of the plaint. The same was recorded as *'Gairmajurwa Khas'* land of *"Samilat Malikan."* Doman Pandey was the owner of Khewat No.571, died issueless and his brother and co-Khewatdar namely Daso Pandey inherited the 'Samilat Khewat No.57/4. Daso Pandey died leaving behind his two sons namely Akal Pandey and Dodi Pandey who inherited the said part. Dodi Pandey died leaving behind his two sons namely Govind Pandey and Ramchandra Pandey. Akal Pandey and Dodi Pandey both jointly settled the lands of Khata No.539 with

Haro Devi- wife of Akal Pandey and Govind Pandey- son of Dodi Pandey by way of Hukumnama. Haro Devi and Govind Pandey both sold the lands of Khata No.539 to Bibi Rojani through registered sale-deed No.3524 dated 02.05.1962. Bibi Rojani sold the land to the plaintiff No.1 namely Suman Prasad through registered sale-deed No.7750 dated 20.09.1982. Suman Prasad got her name mutated vide Mutation Case No.134 of 1984. Bibi Rojani subsequently executed a registered deed of rectification No.7020 dated 05.09.1986 for correction of the sale-deed No.7750 dated 20.09.1982. The plaintiffs started construction of the boundary wall over the suit land on plot No.5762. The defendants made efforts to disposes the plaintiffs. A proceeding under Section 144 of the Cr.P.C. was instituted. Again the defendants challenged the title of the appellants over the suit land. Hence, the plaintiffs filed Title Suit No.04 of 2010.

5. In their written-statement, the defendants challenged the maintainability of the suit on various technical grounds. They did not make any claim upon the land described in Schedule II of the plaint. They pleaded that Chaman Pandey- son of Nirpat Pandey was the Khewatdar of Khewat No.2/8 in Khewat No.66 and he died issueless. After the death of Doman Pandey and Chaman Pandey; Gurdi Pandey and Daso Pandey being the surviving sons of Jobi Pandey @ Pobi Pandey succeeded to the entire lands of Khewat No.57/1 and Samilat Khewat of 57/4. There was an oral partition in which the lands of Khewat No.57/1, 57/4 as well as Khewat No.2/8 of village Gumo was allotted to share of Doman Pandey. In the oral partition, the lands of Khata No.539 of Khewat No.57/1 fell in the share of Gurdi Pandey and Khewat No.2/8 of Khata No.66 was allotted to Daso Pandey. The defendants denied that Daso

Pandey alone succeeded the lands of Khata No.539 and that Daso Pandey never remained in possession of the lands of Khata No.539. As per the defendants, after the death of Gurdi Pandey his two sons namely Bhikhan Pandey and Shyamlal Pandey came in possession over the lands of Khata No.539. Bhikhan Pandey died issueless. Shyamlal Pandey became the absolute owner of the lands of Khata No.539. After the death of Shyamlal Pandey, his four sons namely Laxmi Pandey, Jobraj Pandey, Prakash Pandey and Anil Pandey and two daughters namely Sonful Devi and Sangeeta Devi jointly came in possession over the said land and they acquired valid right, title and possession over the lands of Khata No.539. Therefore, Akal Pandey and Dodi Pandey had no authority to settle the land of Khata No.539 with Haro Devi and Govind Pandey. The defendants further pleaded that Rojani Devi never came in possession of the land of Khata No.539 including the suit plot No.5762 the actual plot number of which is 5782 of area 31 decimals. So, Rojani having executed a sale-deed without having any right, title, interest over the subject matter of the land of the sale-deed, no right, title and interest can accrue to the plaintiff-purchasers.

6. On the basis of rival pleadings of the parties, the learned trial court settled the following eight issues:-

(I) Is the suit maintainable as framed in its present form?
(II) Whether the suit is barred by law of limitation?
(III) Whether the suit is barred by acquiescence, waiver and estoppel?
(IV) Whether defendants have acquired title by way of adverse possession?
(V) Whether the suit is bad for non-joinder and mis-joinder of necessary parties?
(VI) Whether the plaintiffs have got right, title, interest over the suit land?
(VII) Whether plaintiffs are in possession of the suit land?
(VIII) Whether plaintiffs are entitled for the relief as prayed?

7. In support of their case, the plaintiffs altogether examined five witnesses and proved the documents which have been marked Ext. 1 to 13 while the defendants also examined six witnesses and the defendants also proved the documents which were marked Ext. A to Ext. C.

8. The learned trial court first took up issue No. (V) and held that the suit is not bad for non-joinder and mis-joinder of necessary parties.

9. The learned trial court next took up issue Nos.(IV) and (VII) together and after considering the evidence in the record came to the conclusion that the plaintiffs are in possession of the suit land and since the plaintiff are in possession of the suit land, the defendants cannot acquire the title by way of adverse possession. So, on the basis of the evidence, the learned trial court decided the issue Nos.(IV) and (VII) in favour of the plaintiffs.

10. Thereafter, the learned trial court next took up the issue No.(III) and decided the same in favour of the plaintiffs by holding that the suit is not barred by the principle of acquiescence, waiver and estoppel.

11. Then the learned trial court next took up the issue No. (VI) and after considering the evidence in the record that the father of the defendants namely Shyam Lal Pandey was a witness to the sale-deed executed by Haro Devi and Govind Pandey, came to the conclusion that the plaintiffs have right, title and interest over the suit land.

12. The learned trial court next took up the issue No. - (I) and held that the suit is maintainable in its present form.

13. In respect of the issue No. (II) next taken up by the learned trial court, it came to the conclusion that the suit is not barred by law of limitation.

14. Lastly, the learned trial court took up the issue No. (VIII) and held that the plaintiffs are entitled to the relief as prayed for and dismissed the suit on contest and declared that the plaintiffs have absolute right, title and interest over the suit land and restrained the defendants from transferring or alienating the suit land and also restrained the defendants, their men and agents permanently from interfering with the plaintiffs' possession on the suit land in any manner.

15. Being aggrieved by the judgment and decree passed by the learned trial court, the defendants filed Civil Appeal No.11 of 2016 in the court of learned Principal District Judge, Koderma which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment as already indicated above.

16. The learned first appellate court on the basis of the materials available in the record and the submissions made before it, formulated the following two points for determination:-

> *"I. Whether plaintiffs have valid right, title and possession upon the suit land?*
> *II. Whether the suit suffers from non-joinder of necessary parties?"*

17. The learned first appellate court first took up the point for determination No. I and after making independent appreciation of the evidence in the record considered that the plaintiff No.2 who was examined as P.W.-1, was the advocate of the defendants and thus, was having fiduciary relationship with the defendants and was having opportunity to obtain the signature of the defendants. The learned first appellate court then considered that there was no occasion for the defendants to execute 'Kabuliyat-cum-Bazidawa' in respect of the suit land by the defendants in favour of the wife of the plaintiff No.2, being

the plaintiff No.1- Suman Prasad and such a document is not recognized by the Transfer of Property Act. The learned first appellate court also came to a finding of fact that the Ext.-3- Kabuliyat-cum-Bazidawa was not executed by the defendants rather it has been created by the plaintiffs fraudulently after obtaining signature of the defendants in fiduciary relationship. Therefore, the documents have no evidentiary value and on the basis of such document, title of the plaintiffs upon the suit land described in Schedule I of the plaint cannot be established. The learned first appellate court then considered that the plaintiffs have failed to prove that the suit land was settled in favour of Haro Devi and Govind Pandey, so in the absence of any evidence regarding acquisition of title in respect of the suit Schedule I land by Haro Devi and Govind Pandey, certainly they were not in a position to transfer any right, title and interest to Bibi Rojani and hence, no right, title and interest has been acquired by the plaintiff No.1 by way of the sale-deed marked Ext. 9 and by thus considering, the learned first appellate court came to the conclusion that the plaintiffs have failed to prove their title upon the suit land and the learned trial court committed an error in deciding the title of the suit land in favour of the plaintiff.

18. The learned first appellate court next took up the second point for determination and considering that all the legal heirs of Dodi Pandey and Shyamal Pandey since they were having interest in the suit land, were necessary parties to the suit but the plaintiffs having not made them parties, held that the suit of the plaintiffs suffers from the non-joinder of the necessary parties and answered the point for determination No. II by holding that the suit of the plaintiffs is bad for non-joinder of necessary parties, hence, the court

below committed grave error in holding otherwise in the judgment impugned before the learned first appellate court and dismissed the suit in respect of the Schedule I of the land and allowed the appeal in part.

19. Learned counsel for the appellants submits that as per Section 60 (2) of the Registration Act, 1908, a registered document has a sanctity which has been failed to be considered by the learned first appellate court. It is next submitted that the learned first appellate court has failed to consider and give adequate weightage to the signature of Shyamal Pandey- the father of the defendants in the sale-deed marked Ext. 9. It is further submitted that the appellate court has committed perversity by not considering the rent receipts of Bibi Rojani though Ext. 1/4 is the rent receipt issued in the name of Bibi Rojani and Ext.1, 2 and 3 are the rent receipts issued in favour of the plaintiff No.1.

20. Learned counsel for the appellants relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Ranganayakamma & Another vs. K. S. Prakash (Dead) by Lrs. & Others** reported in **(2008) 15 SCC 673** paragraph-48 to 50 of which read as under:-

> ***48***. *We may now consider the submission of Mr Chandrashekhar as to what is meant by "release". Reliance has been placed on De'Souza's Conveyancing, p. 1075, wherein it has been stated:*
>
> *"A deed of release does not create title. A release may be drafted in the same form as a deed of transfer or simply as a deed poll or a deed to which both parties may join stating the circumstances under which the release is based. Either the monetary consideration or 'the premises' i.e. facts in consideration of which the release is made shall be stated."*
>
> ***49***. *Our attention has also been drawn to essentials of "release" from the said treatise, which are as under:*
>
> *" - IFull recitals of the origin of the claim, which form the most important part;*
>
> *(ii) Knowledge of the releaser about the claim, intended to be released;*

(iii) Words and expressions sufficiently clear to convey the intention of the releaser to discharge the right or the claim."

***50**. A deed of "release" for a consideration is a transaction. When, thus, a release is made for consideration, the particulars of consideration and other particulars which (sic) are required to be averred in the deed being essential elements thereof. Relinquishment of a property by a sister in favour of her brother for a consideration or absence of it, stands on a different footing. Section 25 of the Contract Act must be read and construed having regard to the fact situation obtaining in the cases. In Manali Singhal v. Ravi Singhal [AIR 1999 Del 156] it was held: (AIR p. 160, para 20)*

"20. Learned counsel for the defendants has then argued that the impugned settlement is without any consideration. Hence the same is hit by Section 25 of the Contract Act. The contention of the learned counsel may be an ingenious one but can be brushed aside without any difficulty. Parties more often than not settle their disputes amongst themselves without the assistance of the court in order to give quietus to their disputes once and for all. The underlying idea while doing so is to bring an era of peace and harmony into the family and to put an end to the discord, disharmony, acrimony and bickering. Thus the consideration in such type of settlements is love and affection, peace and harmony and satisfaction to flow therefrom."

and submits that in para-48 of the said judgement though it has been observed that the general principle is that a deed of release does not create title but relinquishment of a property by a sister in favour of her brother for a consideration or absence of it, stands on a different footing.

21. Learned counsel for the appellants next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Shyam Kumar Inani vs. Vinod Agrawal & Others** reported in **2024 SCC OnLine SC 3223** wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that the burden of proving fraud and misrepresentation always lies upon the person making such allegation to substantiate his claim.

22. Learned counsel for the appellants next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Azgar Barid (Dead) By Legal**

Representatives & Others vs. Mazambi alias Pyaremabi & Others reported in **(2022) 5 SCC 334** and submits that if the learned first appellate court overlooks material facts on appreciation of the documentary or oral evidence, the same will amount to perversity. Hence, it is submitted that the judgment and decree passed by the learned first appellate court being a perverse one, the same be set aside by formulating appropriate substantial question of law.

23. Having heard the submissions of the learned counsel for the appellants made at the Bar and after going through the materials available in the record, it is pertinent to mention here that, it is a settled principle of law that the plaintiff has to stand on its own legs and it cannot take benefits from the weakness of the defendants.

24. So far as the contention of the appellants regarding Section 60 (2) of The Registration Act, 1908 is concerned, the same reads as under:-

> "***60. Certificate of registration.-***
> *(1) …….*
> *(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned."*

The plain reading of Section 60 (2) of The Registration Act, 1908 makes it abundantly clear that the same provides for the contents of the certificate to be given by the registering officer but it is a settled principle of law that merely because an instrument has been registered, the same is not debarred to be challenged on the ground of the same having been executed by practicing fraud.

Assuming for the sake of arguments that Ext. 2 is a valid document, still the same by itself is not sufficient to establish the title of the plaintiff no.1, keeping in view, the settled principle of law that a deed of release cannot create title in favour of the person such release is made. As it is not the case of the plaintiff that she is the ancestral inheritor or legal heir so the ratio of **Ranganayakamma & Another vs. K. S. Prakash (Dead) by Lrs. & Others (Supra)** is not applicable to the facts of this case.

25. Now, coming to the facts of this case, the plaintiffs have filed the suit with a prayer for declaration of right, title and interest. It is not the case of the plaintiffs that they have acquired title on the basis of Ext. 2 rather the plaintiffs claim title on the basis of Ext. 9 which is the sale-deed executed by Bibi Rojani in her favour. The undisputed fact remains that Bibi Rojani can acquire title if and only if her vendors namely Haro Devi and Govind Pandey would be having title. Though it is the case of the plaintiffs that Haro Devi and Govind Pandey acquired title by way of settlement but the plaintiffs could not produce any document to substantiate their pleadings in this respect. So, obviously as the plaintiffs cannot establish any title in respect of the suit property having been accrued to Haro Devi and Govind Pandey, certainly the plaintiffs failed to establish accrual of title to Bibi Rojani and in the absence of any title of Bibi Rojani in respect of the Schedule I property, the plaintiff No.1 cannot acquire any right, title, interest in respect of the same by virtue of the Ext.9 i.e. the sale-deed executed in her favour by Bibi Rojani.

26. In view of this, the finding of fact of the learned first appellate court that the plaintiffs failed to establish their right, title and interest over the suit land cannot be termed as perverse, even if assuming for the sake of arguments that

the Ext. 2 was a genuine document, still it being a deed of release cannot confer title and since Haro Devi and Govind Pandey were not having title merely because the father of the defendant was a witness in the sale-deed executed by Haro Devi and Govind Pandey in favour of Bibi Rojani, the same cannot confer a title upon Haro Devi and Govind Pandey.

27. So far as the contention of the appellants that if the first appellate court overlooks the material facts on appreciation of documentary evidence or oral evidence, the same will amount to perversity as has been reiterated by the Hon'ble Supreme Court of India in the case of **Azgar Barid (Dead) By Legal Representatives & Others vs. Mazambi alias Pyaremabi & Others (supra)** is concerned, the same is no doubt a settled principle of law but after carefully going through the materials available in the record, this Court finds that the learned first appellate court has not overlooked any material facts on appreciation of documentary evidence or oral evidence in respect of the title of the plaintiffs of Schedule I land of the plaint, hence, the ratio of **Azgar Barid (Dead) By Legal Representatives & Others vs. Mazambi alias Pyaremabi & Others (supra)** is not applicable to the facts of this case.

28. Under such circumstances, this Court do not find any perversity in the finding of fact arrived at by the learned first appellate court, as such finding of fact by the first appellate court has not been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or the finding does not so outrageously defy the logic so as to suffer from the vice of irrationality incurring the blame of being perverse.

29. Under such circumstances, this Court is of the considered view that there is absolutely no substantial question of law involved in this Second Appeal.

30. Accordingly, this appeal, being without any merit, is dismissed but under the circumstances without any costs.

31. Let a copy of this judgment be sent to the courts concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 04th of December, 2024
AFR/ Animesh