

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.294 of 2017

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Sharda Devi, Wife of Radhey Shyam Chaudhary Resident of Mauza-
Madapur Chapra, P.S. Tajpur at Present pusa, District Samastipur.

... .. Appellant/s

Versus

1. Saukhilal Sah Son of late Ram Prasad Sah
2. Ram Sakhi Devi Wife of Bishwanath Sah and Daughger of Ram Prasad Sah
Both Resident of Village- Saidpur, P.S. Chakmehsi, District Samastipur.
3. Fakira Sah Son of Lakshman Sah
4. Ram Lalit Sah Son of Fakira Sah
5. Ram Ekbal Sah Son of Fakira Sah
6. Ram Balak Sah Son of Fakira Sah
7. Ram Basar Sah Son of Fakira Sah All residents of Village- Rampur Bhasaun,
P.S. Sakra, District Muzaffarpur.
8. Rekha Devi Wife of Ramesh Sah Resident of Village- Sehan, P.S. Mahua,
District Vaishali.
9. Bhauti Devi Wife of Mahanth Sah and Daughter of Ram Prasad Sah
Resident of Village- Saidpur, P.S. Chakmehsi, District Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. J. S. Arora, Sr. Adv. with
Mr. Manoj Kumar, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 14-05-2026 Heard Mr. J. S. Arora, learned senior counsel assisted
by Mr. Manoj Kumar, learned counsel for the appellant.

2. This Second Appeal has been preferred against the
judgment and decree of affirmance dated 31.03.2017 passed in
Title Appeal No. 19 of 2000 / 53 of 2017 by the learned Fast
Track, Court No. 1, Samastipur, whereby, the learned First
Appellate Court has upheld the judgment and decree dated



23.02.2000 passed in Title Suit No. 96 of 1989 by the learned Sub-Judge-III, Samastipur.

3. The defendant is the appellant in the instant Second Appeal.

4. The original plaintiff filed Title Suit No. 96 of 1989 for declaration and setting aside 3 sale deeds dated 20.08.1986 executed by the defendant Most. Yasoda Devi in favour of defendant Sharda Devi (appellant) on the ground of being forged, fabricated and illegal and also for recovery of possession of the land mentioned in Schedule-II of the plaint.

5. The case of the plaintiffs/respondents is that the plaintiffs acquired the land mentioned in Schedule-I of the plaint through a registered sale deed dated 06.08.1959 executed by Amir Mian in favour of original plaintiff, Ram Prasad Sah and he came in possession of the same as title holder since the date of the purchase of the land mentioned in Schedule-I. It is pleaded that the original plaintiff further acquired 3 katha 12 dhurs land of C.S. Plot No. 242 and 245 through sale deed dated 28.10.1959 executed by Shah Azizul Ramham in his favour and he came in possession over the same as title holder since the date of purchase. The original plaintiff has paid the consideration money of both the sale deeds from his earning and



also obtained original sale deeds and kept the same in his custody. Unfortunately, fire broke in the house of the plaintiff in which both the sale deeds along with other papers were burnt to ashes. It is further pleaded that during the revisional survey operation, the survey khata was recorded as revisional survey Plot Nos. 311, 312, 314 & 316 in the name of the original plaintiff, but as the land was near river of Budhi Gandak, his name was not mutated in the Anchal. He came to know by the rumour that the defendant 2nd party has executed a sale deed in respect of the disputed land and the husband of the defendant 2nd party got entered his name in the revisional survey. He obtained the certified copy of the 3 sale deeds dated 20.08.1986 and the certified copy of the Badar No. 28 from the Revisional Survey Office on 05.04.1989 and he came to know that husband of the defendant 2nd party has fraudulently got entered his name and he had no knowledge about this said forged, so, he could not take any steps against the said order of Badar No. 28. He has not put his thumb impression in the margin of the said order and order has been fraudulently obtained. It is further contended that all the three sale deeds dated 20.08.1986 with regard to the disputed land mentioned in the Schedule-I of the plaint are without permission from the consolidation authority and as



such, they are void. He has also filed a revision case bearing Revision No. 1613 of 1986 before the Director, Patna against the aforesaid alleged Badar No. 28 which is still pending. The plaintiffs, by way of amendment, has also pleaded that he has been dispossessed from Schedule-II land of the plaint by constructing six rooms / shops by the defendant 1st party and also prayed for recovery of possession of the same.

6. On summon, the defendant 1st party appeared and filed his written statement stating therein that the sale deeds dated 06.08.1959 and 28.10.1959 executed in favour of original plaintiff Ram Prasad Sah are Benami Transaction. In fact, Ramcharitar Sah purchased the said land in the Benami name of Ram Prasad Sah, who was his brother-in-law (*Bahnoi*) and the consideration money of these sale deeds were paid by Ramcharitar Sah from his own funds and aforesaid Ramcharitar Sah came in possession over the land of the aforesaid sale deeds and he also obtained both the sale deeds from the officer and kept the same in his custody. It is vehemently denied that the consideration money of the aforesaid sale deeds were paid by Ram Prasad Sah (Original plaintiff) and he came in possession of the same or he received the aforesaid sale deeds from the registered office.



7. Further case of the defendant is that after the death of Ramcharitar Sah, his wife Most. Yasoda Devi (defendant 2nd party) came in possession of the aforesaid land under the sale deeds and documents too. It is false to say that the aforesaid sale deeds were burnt to ashes in the fire broke. The original plaintiff has also admitted that the aforesaid lands were purchased in his name by Ramcharitar Sah, husband of defendant no. 2 Yasoda Devi after paying the consideration money before the Consolidation Officer and he has also put his thumb impression in presence of Upendra Choudhary in the margin of the order sheet before the Consolidation Officer. Accordingly, the name of the Ramcharitar Sah was mutated over the aforesaid lands of the both sale deeds. The original plaintiff did not admit the payment of consideration money by Ramcharitar Sah before Consolidation Officer and put his thumb impression in the margin of order sheet in presence of witness, namely, Upendra Choudhary. Most. Yasoda Devi, defendant 2nd party was in need of some money and executed three sale deeds dated 20.08.1986 in favour of defendant 1st party Sharda Devi for Rs. 31,000/- in respect of the land measuring 7 katha 2 dhurs of plot nos. 242, 244, 245, 246. The details of the land has been mentioned in Schedule-1 of the written statement and also



handed over the aforesaid original sale deeds dated 06.08.1959 and 28.10.1959 executed in the name of Ram Prasad Sah. She has further pleaded that the transaction of the land purchased by her is not properly written in the aforesaid three sale deeds and as such, on her request, three sale deeds of rectification dated 12.04.1989 were executed by Yasado Devi, defendant 2nd set, upon which she has been coming in possession of the purchased land and constructed a house and shops in the said purchased land and the shops are being let out to the tenants.

8. On the other hand, the defendant 2nd set (vendor of the defendant 1st set) neither appeared before the trial court nor filed any written statement.

9. The learned trial court after considering the pleadings, the evidence adduced by the parties and materials on record has held that from the sale deed dated 06.08.1959 executed by Amir Miya in favour of Ram Prasad Sah (original plaintiff) and sale deed dated 28.10.1959 executed by Sah Azizul Ramham in favour of Ram Prasad Sah (Ext.-3 and Ext. 3/a respectively) it is clear that after paying consideration money by Ram Prasad Sah, the aforesaid two sale deeds were executed in favour of Ram Prasad Sah and possession was given over the said lands. Therefore, the plea of Benami Transaction



(Prohibition) Act, 1988 (In short, the Act of 1988) will not be available to challenge the sale deed on the basis of Benami Transaction after 09.05.1988. The present suit has been filed in the year 1989 by the original plaintiff, Ram Prasad Sah much after coming into force of the Act of 1988. Hence, the plea of defence regarding Benami Transaction by the defendant/appellant is hit by Section 4 of the Act of 1988. It is further pleaded that Chakbandi Khatiyani (Ext.-1) and Ext.- C & C/1, the raiyati Khatiyani of Khata No. 466/257, 465/246 respectively show that initially, the name of Ram Prasad Sah (original plaintiff) was written and after the cutting, the name of the Ramcharitar Sah was entered in both the Khatiyani entry. It is also mentioned that Ext.-H is notice Form-10 issued against Ramcharitar Sah for inviting objection in respect of the Plot Nos. 316, 312, 311 and 314. It is apparent from the record that initial stage of Chakbandi proceeding before publishing the draft khatiyani is only for the purpose of preliminary preparation for publishing records of right and the entry in draft khatiyani cannot be admissible, as such, entry has got no finality and even final records of right cannot be published if a suit becomes pending between the parties regarding the rights and in that way, there remain no scope to hold the same an admissible for the entry



given as a relevant to the entry in the public record. After considering the facts and circumstances of the case, it was held that the sale deed dated 06.08.1959 and 28.10.1959 were executed by Amir Mian and Sah Azizul Rahman respectively in favour of original plaintiff, Ram Prasad Sah and on that basis, he was in possession of the said purchased land. On that basis, Ramcharitar Sah has no right, title or possession over the suit land. After the death of Ramcharitar Sah, his wife has no right, title of the suit land and the widow of Ramcharitar Sah has no right to execute three sale deeds dated 20.08.1986. Moreover, the sale deed executed on 20.08.1986, during consolidation proceeding, is void under Section 32 of the The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (In short, 'the Act of 1956') and further held that during the pendency of the suit, the defendant constructed 6 rooms and 4 rooms without roof and declared that all three sale deeds dated 20.08.1986 executed by Yasoda Devi in favour of Sharda Devi is illegal and void and the plaintiff is entitled for recovery of possession.

10. Being aggrieved by the judgment and decree dated 23.02.2000 passed in Title Suit No. 96 of 1989 by the learned Sub Judge-III, Samastipur, the defendant/appellant preferred



Title Appeal No. 19 of 2000 / 53 of 2017.

11. After hearing of the parties and considering the materials on record, the learned First Appellate Court affirmed the judgment and decree of the learned trial court and dismissed the appeal *vide* judgment and decree dated 31.03.2017. Against the aforesaid judgment and decree of the learned First Appellate Court, the instant Second Appeal has been filed.

12. From the submission of the learned counsel for the appellant and upon perusal of materials on record including the judgment of the learned courts below, it appears that the learned court of appeal below, which is final court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to clear findings that it is admitted fact that the sale deed dated 06.08.1959 (Ext.-3) was executed by Amir Mian in favour of Ram Prasad Sah in respect of 8 katha 5 dhurs land, in respect of Plot No. 244, 245 under Khata No. 256 and Plot No. 246 under Khata No. 268, out of aforesaid amalgamated plots. Ext. 3/a, the sale deed dated 28.10.1959 was executed by Sah Azizul Rahman in favour of Ram Prasad Sah in respect of 3 Kahta 12 Dhurs land. The recital in the both sale deeds show that consideration money of the aforesaid sale deeds for the aforesaid land was paid by vendee Ram Prasad Sah and



he was put in possession over the aforesaid purchased land. Most. Yasoda Devi, was widow of Ramcharitar Sah, who was defendant 2nd party in the aforesaid Title Suit. Her name was deleted on 21.05.1993 due to his death. The aforesaid suit was filed in the year 1989, but she did not turn up before the court nor filed any written statement, stating therein that her husband was purchaser of the aforesaid land under the sale deeds Ext. 3 & Ext. 3/a and he paid the consideration money of the aforesaid deed and he was put in possession of the same. On the contrary, the name of the Ram Prasad Sah was written as purchaser (vendee) who paid consideration money and he was put in possession of the land as title holder. It is further observed that there is no recital in the alleged sale deed executed by Most. Yasoda Devi in favour of defendant/appellant Sharda Devi on 20.08.1986 (Ext. A/1, A/2 & A/3) that Ramcharitar Sah paid consideration money of the aforesaid deeds (Ext. 3 & 3/a) and came in possession of the land purchased in the name of Ram Prasad Sah as Benamidar. D.W. 16, Sharda Devi (Defendant No. 1) in her cross-examination stated that the sale deed dated 06.08.1959 (Ext. 3) and sale deed dated 28.10.1959 (Ext. 3/a) were not in her knowledge. She has also stated in her cross-examination that she has no knowledge about the aforesaid land



being ploughed by Yasoda Devi or not because she is a domestic lady and she did not know that her villagers are in possession of what land. The plaintiffs in their evidence supported the case and denied the alleged thumb impression of his father, Ram Prasad Sah in the margin of order sheet (Ext. B) before the Consolidation Officer. It is also stated that Sharda Devi constructed aforesaid three rooms in the year 1990 in one month. After considering the materials and evidence adduced by the parties, the learned First Appellate Court held that vendor of the defendant Sharda Devi did not file any written statement nor she or her husband's relations came to depose in the case saying that Ram Prasad Sah (original plaintiff) was Benamidar of Ramcharitar Sah and it was Ramcharitar Sah, who paid the consideration money of the aforesaid sale deeds (Ext. 3 & Ext. 3/a). It is also held that there is clear recital in the aforesaid sale deed (Ext.3 & 3/a) that vendee Ram Prasad Sah paid consideration money to the aforesaid vendors and vendee Ram Prasad Sah was put in possession of the land sold in the name of original plaintiff, Ram Prasad Sah and accordingly, held that Ram Prasad Sah was the real purchaser of the disputed land covered by sale deed (Ext. 3 & 3/a) and not Ramcharitar Sah, husband of defendant 2nd party, namely, Yasoda Devi. Hence,



the aforesaid transaction was not Benami Transaction.

13. So far question as to whether the suit is hit by the Act of 1988 is concerned, the learned First Appellate Court held that there is no statement of Ramcharitar Sah or his wife before the trial court in connection with Benami Transaction. The plea of Benami Transaction is with regard to two sale deeds dated 06.08.1959 & 28.10.1959 which were purchased by Ramcharitar Sah in the name of his brother-in-law (*Bahnoi*), Ram Prasad Sah and the consideration money of both sale deeds (Ext. 3 & 3/a) was paid by him and he came in possession of the land purchased. There is no recital regarding the aforesaid Benami Transaction in the aforesaid sale deeds executed in the name of defendant/appellant. The suit was filed after coming into force of the Act of 1988. Therefore, the plea of Benami Transaction is hit by Section 4 of the Act of 1988. It is apparent from the record that the Yasoda Devi died issueless and defendant no. 1/ appellant, transferee of the Yasoda Devi of aforesaid sale deeds of the disputed land executed without permission of consolidation authority which is illegal and void. Ext. D does not bear the signature of any officer whereas, Ext. 4 shows that the learned Collector, Samastipur passed an order declaring the aforesaid sale deed void in violence of Section 32



of the Act of 1956 for want of permission under the Act of 1956. It has been held that the plaintiff, Ram Prasad Sah was real purchaser of the disputed land in whose name, the sale deed Ext. 3 & 3/a stands and present plaintiff/respondents are the heirs of the said Ram Prasad Sah. Therefore, the plaintiff/respondents are entitled to decree of the vacant possession of the suit land detailed in Schedule-II. The claim of adverse possession of the defendant/appellant is by virtue of sale deed executed in the year 1986. The suit was filed in the year 1989. Therefore, no question of adverse possession of the defendant/appellant arises in the present case. Consequently, the judgment and decree of the trial court has been affirmed by the learned First Appellate Court.

14. Both the courts below concurrently held that the sale deeds were executed by Amir Mian and Sah Azizul Rahman (Ext. 3 & 3/a) in favour of the original plaintiff, Ram Prasad Sah. In the recital of both the sale deeds it is mentioned that consideration money of the aforesaid sale deeds was paid by the vendee Ram Prasad Sah, who was put in possession of the aforesaid purchased land and three sale deeds executed by the wife of Ramcharitar Sah during the pendency of Consolidation proceeding without permission of the consolidation authority as



provided under Section 6(1) of the Act of 1956 and the Collector under Section 32 of the Act of 1956 has declared the sale deed as void under Section 32 of the Act of 1956.

15. Considering the aforesaid facts and circumstances of the case and findings of both the courts below, I am not inclined to interfere with the concurrent findings of the court below. There is no question of law inasmuch as no substantial questions of law involved in this case.

16. Thus, the instant Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

17. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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