

(2007) 05 PAT CK 0115
In the Patna High Court
Case No : LPA No. 526 of 1998

Bajnath Prasad and Others

APPELLANT

Vs

Badrul Hasan

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Citation : (2007) 3 PLJR 549

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Ratnesh Kr. Singh and Naresh Kr. Sinha, for the Appellant;
Chittaranjan Sinha and Sanjeet Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Heard Learned Counsel for the parties. Substituted appellants are heirs and legal representatives of the original appellant, Kailash Prasad. The sole respondent filed the suit seeking partition of the property in question. In the suit it was contended that by a registered sale deed dated 28th July, 1967, the plaintiff has purchased 14 annas share in the property in question, it was stated that the remaining two annas share in the property was purchased by the defendant. It was pleaded that on failure to amicably partition the property, the plaintiff has filed the suit. In the written statement the defendant contended that he is the 16 annas owner of the suit property by purchase effected by registered sale deed dated 28th July, 1967. It was stated in the written statement that before the sale deed was executed an agreement for sale was made with the vendor and the defendant and after expiry of the time to complete the transaction, by yet another agreement the time to complete the transaction was extended. It was stated that the plaintiff was known to the defendant and, in fact, the defendant has sold his house to the plaintiff and that taking advantage of the simplicity of the defendant, the plaintiff has got his name inserted in the sale deed.

2. At the trial, amongst others, two important issues were raised, i.e., did the

plaintiff purchase 14 annas share in the suit properly, and did the defendant acquire 16 annas share in the suit property. In order to prove that the plaintiff has purchased 14 annas share in the suit property, a registered sale deed executed by the vendor on 28th July, 1967 and registered on 29th July, 1967 was tendered by the plaintiff. The defendant though tendered in evidence the agreements, but could not bring on record any sale deed either dated 28th July, 1967, or executed on any other date suggesting sale of 16 annas of the suit property in favour of the defendant. The registered sale deed dated 28th July, 1967, as tendered in evidence by the plaintiff was accepted by the defendant. The signature of the vendor contained in the said sale deed was not disputed by the defendant. He purported to lead evidence to suggest that instead of the name of the plaintiff as 14 annas purchaser of the property in question in the said deed, the name of the defendant ought to have been inserted therein as the purchaser of 16 annas share. It was contended that the stamp papers upon which the sale deed was written were purchased in the name of the defendant. It was contended that the original agreement for sale was entered solely by the defendant. It was contended that the plaintiff did not have adequate means to finance the subject purchase. It was contended that the scribe upon whom the defendant had faith, who was instrumental in writing the agreement for sale having died, another scribe was brought in by the plaintiff to write the subject sale deed, and after purchase of the property the defendant was in exclusive possession of the entire property, created tenancy, constructed a small Mandir and paid rates and taxes to the Municipality. It was thus contended that the said state of affairs would amply demonstrate that instead of the name of the plaintiff as 14 annas owner of the property in question, in the said sale deed it ought to have been recorded that the defendant is the 16 annas share holder of the property in question.

3. The fact remains that whereas the sale was effected on 28th July, 1967, the suit was instituted on 19th November, 1971 and in February, 1972 summons was served upon the defendant. A copy of the sale deed was not annexed to the plaint. While leading evidence, the defendant did not bring on record that after receipt of the summons, he made searches in the Registry Office and then came to learn that in the deed, by which the property was to be conveyed to the defendant alone, it was shown unjustly that 14 annas share of the property is being transferred to the plaintiff.

4. In the written statement no challenge was thrown to the sale deed upon which the plaintiff was seeking to rely upon. During the pendency of the suit, no suit was instituted by the defendant seeking rectification of the subject sale deed.

5. A document speaks for itself. By oral evidence, the terms of a document cannot be altered, though it can be established that the document is a product of fraud. It was well within the competence of the defendant, after having had come to know that wrongly the name of the plaintiff has been entered in the document, to institute a suit for delivery up or for rectification thereof or he could

file a counter claim in relation thereto. Without doing that the defendant was not entitled to contend in the suit instituted on the basis of the said document that by reason of the said document, the defendant has received the entire property in question.

6. The fact remains that for more than four years the defendant took no interest in mutating his name as the owner of the property in question. This was because for all these years he did not have the document by which he is said to have acquired the property. On the other hand the plaintiff during the financial year 1987-88 applied for mutation, but consideration of the application got delayed inasmuch as fire engulfed all the records of the Corporation. Evidence to that effect have been brought on record. The property now stands mutated in the joint names of the plaintiff and the defendant.

7. It may be possible that the defendant did not seriously object at the time of mutation by the Corporation but the fact remains that effective steps for mutation took place after the suit was instituted. Even at that stage, despite having had filed written statement on 16th September, 1972, the defendant did not take any interest to protect his interest in the mutation matter by either seeking a protective order from the suit court or by taking some other action.

8. In view of such conduct on the part of the defendant, the trial court decreed the suit and the first appellate court refused to interfere with the same.

9. Before us in the present appeal the substituted heirs contended that having regard to the facts and circumstances, as brought on record and as mentioned above, the Court can infer that the property was purchased by the defendant alone. It was submitted that the defendant has also made constructions on the property in question.

10. The sale deed containing the signature of the vendor shows that 14 annas of the property was sold to the plaintiff and the remaining two annas to the defendant. It has not come on record of the trial court that the vendor died when evidence of the witnesses was going on before the trial court. The vendor who could, however, throw some light was not called or summoned to give evidence. The conduct after the sale, when the parties are known to each other and when the defendant after having sold his house to the plaintiff admittedly remained there for years and that being the relationship in between the plaintiff and the defendant, the permission granted to the defendant to remain in the suit property in its entirety and the defendant using the property in the manner best suited to him is no evidence to suggest that by misrepresentation the plaintiff induced the defendant to entrust him the job of writing down the deed and then to have the same registered in a manner contrary to such representation, which was sought to be canvassed in course of argument before us without, however, there being no pleading in support thereof in the written statement. For the reasons as above, we find no scope to interfere with the order under appeal. The appeal fails and the same is dismissed.