
(2002) 11 JH CK 0050
In the Jharkhand High Court
Case No : A.F.O.D. No. 11 of 1985 (R)

Bhola Nath Mahto and Others	Vs	APPELLANT
Mahadeo Mahto and Others		RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, 96

Citation : (2003) 4 JCR 512

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : N.K. Prasad, Adv. and P.K. Prasad, for the Appellant; B.B. Sinha S.K. Dutta and S.U. Banerjee for respondent Nos. 1 to 4 and 6 to 14, for the Respondent

Judgement

Gurusharan Sharma, J.—Plaintiffs are appellants. Govind Mahto had two sons, namely. Bodhram Mahto and Ramdayal Mahto. Bodhram Mahto left behind a son Amrit Mahto and Ramdayal Mahto left behind a son Chetlal Mahto. Amrit Mahto and Chetlal Mahto died in 1945 and 1951 respectively. Amrit Mahto had two sons Dharmu Mahto and Sharmu Mahto, Dharmu Mahto died leaving behind widow. Sonamani, defendant No. 3 and Sharmu Mahto died issueless in 1976 Chetlal Mahto left behind his widow, Salo and five sons, namely, Mahadeo Mahto, Shankar Mahto. Bhadu Mahto, Juber Mahto and Sundar Mahto.

2. Descendants of Chetlal Mahto filed Title Suit No. 48 of 1978 for declaration of title and confirmation of possession over total 8.20 acres land, described in Schedule 1 to the plaint and also for declaration that Revisional survey entry vide Khata No. 110 regarding share of Sharmu Mahto in respect of the lands of Khata No. 110 was prima facie wrong and not binding on them and the sale deed. Exhibit B executed by the defendant No. 3 on 7.4.1978 in favour of defendants 1 and 2 was void, illegal, without consideration and was never acted upon.

3. According to the plaintiffs, after death of Dharmu Mahto his widow, Sonamani, defendant No. 3 transferred entire lands of her share to different persons,

including, Mosstt. Salo, wife of late Chetlal Mahto. Simultaneously, the plaintiffs 1 and 4 along with three sons of Mosstt. Salo had also executed a deed of Khorposh, Exhibit 3 in favour of defendant No. 3 to maintain her I ill she was alive.

4. Plaintiffs further case was that thereafter defendant No. 3 had no authority to transfer the aforesaid property again to defendants 2 and 3 in the year 1978, which she had already transferred in the year 1954.

5. Sharmu Mahto during his life time had sold Khata No. 88 lands, held by him. After death of Dharmu Mahto, his estate was inherited by his widow, the defendant No. 3 who sold the entire 3.45 acres of Khata No. 10 to the defendant No. 4 as well as to Mosstt. Salo. In the year 1978, the defendant No. 3 again sold those lands of Khata Nos. 10 sold by her earlier as also land of Khata No. 88 sold by Sharmu Mahto to the defendants 1 and 2.

6. A joint written statement was filed by the defendants 1 to 6, but only defendants 1 and 2 contested the suit. Subsequently, on 2.7.1980 a fresh written statement was filed by the defendant No. 3. She denied to have filed any written statement earlier jointly with the defendants 1, 2, and 4 to 6. She supported the plaintiffs' case and admitted to have executed sale deed (Exhibit 2/A) in favour of Mosstt. Salo in the year 1954 and denied to have executed any sale deed in the year 1978.

7. A copy of the written statement filed by the defendant No. 3 on 2.7.1980 was also served on the counsel for the parties earlier, but no body raised any objection to the said written statement and the trial Court also accepted it on the ground that the first written statement relating to defendant No. 3 was vague one.

8. Unfortunately, defendant No. 3 died on 28.8.1980 and her name was expunged on 22.11.1980. After her death, the written statement filed on 2.7.1980 was admitted in evidence and was marked Exhibit 4. ,

9. According to the contesting defendants, Amrit Mahto and Ramdayal Mahto had already separated prior to the cadastral survey and as such there was no partition in the year 1930 as alleged by plaintiffs. The defendant No. 3 exclusively dealt with the property of her share and had no connection with Sharmu Mahto. On 25.2.1954 the defendant no. 3 transferred 2.77 acres land of Khata No. 10, but she continued in physical possession thereof including other lands of village Laplolo and Usara. Defendants' further case was that in the Revisional Survey, Sharmu Mahto played fraud upon her and got only his name entered in respect of land, of Khata No. 110 of village Laplolo, but still she continued in possession thereof. After death of Sharmu Mahto in the year 1976, his estate also devolved upon her (defendant No. 3) and consequently she transferred those lands in 1978.

10. The trial Court held that sale deed dated 7.4.1978, Exhibit B was void and

illegal document and the plaintiffs had right, title and interest over the suit lands, detailed in Schedule T to the plaint. Possession of the plaintiffs was also confirmed. It was further held that Revisional Survey entry in respect of the share of Sharmu Mahto with regard to Khata No. 110 lands was not binding on the plaintiffs.

11. Mr. N.K. Prasad, Senior Counsel for defendants, who have preferred the present Appeal submitted that Sonamani, defendant No. 3 being a pre-1957 widow had only limited interest in the suit lands and was, therefore, not entitled to transfer the aforesaid 2.77 acres lands in favour of Mosstt. Salo, the mother of plaintiffs 1 and 4 in the year 1954. The said transfer was invalid in the eye of law and, therefore, the plaintiffs' suit was fit to be dismissed.

12. So far the transfers of the year 1978 made by defendant No. 3 in favour of defendants 1 and 2 are concerned, Mr. Prasad submitted that once 1954 transfer goes, it is plaintiffs' onus to prove that 1978 transfers in favour of defendants 1 and 2 was bad on any other ground. As such the sale deed, exhibit B was wrongly declared to be void and not binding on the plaintiffs. Mr. Prasad further submitted that unless there was pleading in the plaint that 1954 transfer made by defendant No. 3 was for legal necessity and for the benefit of the family, such transfer cannot be recognized in law.

13. In the present case, there was neither such pleading nor evidence nor the trial Court went into this aspect of the matter and decided it. Trial Court also did not frame any issue whether transfer made by defendant No. 3 in 1954 was valid in law. It further appears that the parties did also not plead this question and hence the trial Court rightly did not frame such issue. However, in my view, since it is a First Appeal, the defendants/appellants are entitled to raise this question herein.

14. It is well settled that the defendant No. 3 being a limited owner, prior to coming into force of the Hindu succession Act, 1956, could have made transfer of the properties left by her late husband, only for legal necessity and for the benefit of the family. In the present case although there is no such pleading on record, but on perusal of the sale deed dated 25.12.1954, . Exhibit 2/A, I find that following clear recitals were made therein "YAH KI MANMOKIRA WASTE KHAS KHANEDARI JAYAJ WO JAKURI KE WO BHI DENE MAHAJANAN KE ERAJI MAJKEWALA APNA KHUSI WO KHOWAIS SE WO BADAL WAGIRAF MO. 1500/- (PANDRAH SAU RUPAIYA) JARSAMAN LE KE WADAST MOKIR ALEHUMAN KHARIDARAN AJ TARIKH SE BECHA WO WELAKALAMI KIYA." Further I find that the contesting defendants in their written statement admitted the said transfer to be valid and also for consideration. Hence, in my opinion, it cannot be said that 1954 transfer was made without any legal necessity as required in law,

15. In such circumstance, after the defendant No. 3 had already parted with her interest with the lands in question in the year 1954 itself, she had no authority to transfer it again in favour of the defendants 1 and 2. As such the sale deed dated

7.4.1978, Exhibit B was rightly held to be void, illegal and invalid by the trial Court.

16. For the aforesaid reasons, I do not find any reason to interfere with the impugned judgment and decree.

17. In the result, this appeal is dismissed, but without costs.