
(2004) 07 PAT CK 0097

In the Patna High Court

Case No : Civil Revision No. 1947 of 2003

Dr. A. Razzak and Others

APPELLANT

Vs

Bibi Rubi Naz and Others

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0097

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioners who are defendant Nos. 1 to 3 in title suit No. 282/1995 and also heard learned counsel for OP No. 1 who was plaintiff in the said suit which was filed for declaration of her title as purchaser by registered sale-deed dated 9.8.1994 and alternatively for partition and also for declaration that defendant Nos. 2 and 3 did not acquire title by way of purchases from defendant No. 4 in excess of his share and also for recovery of possession if dis-possessed during the pendency of the suit.

2. The petitioners are aggrieved by order dated 15.9.2003 passed in the aforesaid suit by the learned Sub-Judge VI, Purnea, who allowed misc. case No. 8/2003 and accepted the written statement filed by defendant No. 4 dated 23.6.2003 after rejecting the earlier written statement dated 11.9.2002 said to have been filed on his behalf.

3. Short facts of this case are that the suit was filed in the year 1995 whereafter in 1996 written statement was filed by defendant Nos. 1 to 3 (petitioners) and much thereafter on 11.9.2002 a written statement was filed on behalf of defendant No. 4 (OP No. 2), Later, on 23.6.2003, a second written statement was filed by defendant No. 4 (OP No. 2) alongwith a petition for rejecting the earlier written statement filed on 11.9.2002 and accepting the fresh written statement.

4. The aforesaid petition was numbered as misc. case No. 8/2003 in which defendant No. 4 (OP No. 2) claimed that on inspection of record on 20.6.2003 by his counsel Sri Shiv Shankar Prasad Pandey he found that a written statement

dated 11.9.2002 was already filed said to be on his behalf, although, he had not filed that written statement. He further alleged that defendant Nos. 1 and 3 (OP Nos. 1 and 3) fraudulently obtained his signatures on a plaint papers and Vakalatunama and converted it into a written statement and got it filed through their counsel Sri Kripa Shankar Jha and Mithilesh Thakur who were not engaged by defendant No. 4. It was also claimed that defendant nos. 1 and 3 (OP Nos. 1 and 3) got the said written statement filed on behalf of defendant No. 4 for their own benefits.

5. Defendant Nos. 1 to 3 (petitioners) appeared in the said case and filed their rejoinders on 14.7.2003 stating that the written statement of 2002 was filed at the instance of defendant No. 4 himself through the lawyer appointed by him. It was also stated that the written statement as well as the verification were signed by defendant, No. 4 himself and the said written statement was accepted by the learned Court below with cost of Rs. 600/-, but when issues were settled and evidence of the plaintiff started, the plaintiff brought defendant No. 4 in her collusion and got the subsequent written statement filed without permission of the Court which was also a clear violation of the provision of Order-VIII, Rule-9, CPC.

6. Two witnesses were examined by both the parties and three sets of documents were produced by each of them. AW 1 was defendant No. 4 himself and AW 2 was the Advocate Clerk through whom information slip was filed, whereas Ext. 1 was the information slip and Ext. 2 was the subsequent Vakalatnama of DW 4 and Ext. 3 was the signature of DW 4 of the first page of written statement of 2002.

7. On the other hand, OW No. 1 was Sri Mithilesh Thakur who was the lawyer who had filed the earlier written statement and OW No. 2 was the Notary, Public, through whom the verification of the earlier written statement was done, whereas Ext. A was the written statement of 2002, Ext. B was the Vakalatnama of defendant No. 4 with written statement of 2002 and Ext. C series were the signatures of defendant No. 4, Advocate Mithilesh Thakur and Notary, Public, over the earlier written statement.

8. The learned Court below by the impugned order dated 15.9.2003, allowed , misc. case No. 8/2003 and accepted the subsequent written statement after rejecting the earlier one upon arriving at the findings that, although, defendant No. 4 should have signed on every page of his written statement as per the prevalent practice in the Court below, but in the written statement of 2002, his signatures were found only on the first page, last page, index page with address and Vakalatnama and that too where tick marks were given earlier. He also found that the admitted practice in Purnea Civil Court was that the affidavits were prepared on the prescribed forms of Advocates Welfare Scheme but the affidavit/ verification in the written statement of 2002 was done over a plain paper. It was also found that, although, defendant Nos. 1 to 3 claimed that the written statement was filed on 11.9.2002 but at the end of the said written statement it

was clearly typed as August, 2002, and after cutting the same, another date 11.9.2002 was inserted without any initial. No such correction was even made in the copy given to the plaintiff. He also found that admittedly defendant No. 4 had never signed any haziri nor any such haziri was filed by Sri Mithilesh Thakur, Advocate, after the filing of earlier written statement of 2002. The learned Court below also found that if defendant No. 4 was present on 11.9.2002 he would have signed on every page of the written statement and the verification would have been on the proper form. Hence, the presence of tick marks near the signatures and the absence of signatures on most of the pages of the earlier written statement and also the cuttings and subsequent addition in the date of preparation of the written statement alongwith the affidavit/verification on plain paper clearly proved the claim of defendant No. 4. He also arrived at the conclusion that non-filing of the haziri by defendant No. 4 in 2002 clearly showed that he was not present on the date of filing of the written statement and his signatures were obtained much earlier on plaint papers which were subsequently converted into written statement and hence the earlier written statement of 2002 can not be accepted and, hence. Defendant No. 4 can not be deprived of filing his pleading according to his own free will.

9. The learned counsel for the petitioners contended that, although, there were pleadings of fraud but no opportunity was given to the petitioners-defendant Nos. 1 to 3 to contest the same as defendant No. 4 neither mentioned as to what compelled him to inspect the records of the case on 20.6.2003, nor be stated that on which date the fraud was committed and who were the witnesses of the said fraud. He further contended that the fraud had to be proved beyond all reasonable doubts even in suits and criminal trials and specific details have to be given if any one is charged with fraud. In this regard he referred to the provision of Order-VI, Rule-4, CPC as well as the case laws reported in *Union of India (UOI) Vs. Chaturbhai M. Patel and Co.*, , AIR 1962 Patna 384, *Union of India v. Motilal Kamalia and Ors.*, AIR 1941 Privy Council 93, *A.L.N. Narayanan Chettyar and Anr. v. Official Assignee High Court Rangoon and Anr.* and AIR 1937 Privy Council 146, *Bharat Dharma Syndicate Ltd. v. Harish Chandra*. The learned counsel for the petitioners further contended that the learned Court below has discussed the petitioners' defendant Nos. 1 to 3 witnesses but did not discuss the witnesses of defendant No. 4 (OP No. 2), although, onus was squarely on defendant No. 4 to prove the charges levelled by him against the petitioners. In support of his contention he has relied upon the case of *Union of India v. Motilal Kamalia and Ors.*, supra. It was also submitted on behalf of the petitioners that defendant No. 4 had admitted his signatures on the earlier written statement and Vakalatnama of 2002 to be genuine and hence it was all the more necessary for him to prove the allegations that the said signed papers were fraudulently converted into written statement. He also contended that in similar circumstances in a suit alleging fraud but not showing how. the lower Court had dismissed the suit which was found to be a correct decision by this Court in the case of *Binod Bihari Mishra v. Ram Lakhan Dusadh and Ors.*, reported in 1989 (1)

BLJ 457. The learned counsel for the petitioners also claimed that in the first written statement, defendant No. 4 had admitted the claim of defendant Nos. 1 to 3 (petitioners) but in the subsequent one he denied the same. Hence, according to him, this amounted to amendment meant to displace the admission in the earlier written statement which should not have been legally allowed in view of the case law reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., . He further argued that the first written statement was filed by defendant No. 4 according to his own free will but later on 2003 he was gained over by the plaintiff which resulted in the filing of the i subsequent written statement with frivolous allegations.

10. On the other hand, the learned counsel for the opposite party No. 1 . argued that this is not the case of amendment rather this was a case where the earlier written statement was filed on behalf of defendant No. 4 without his knowledge, consent or information and hence defendant No. 4 had every right to file his written statement stating in detail the entire pleadings, according to his case. He further contended that the learned Court below has fully considered all aspects of the matter and after considering the materials and evidence on record he had arrived at the right conclusion that neither the date of preparation of the earlier written statement was specific nor there was any material to show that defendant No. 4 had ever appeared in person either on the date of filing of the written statement or subsequent thereto as no haziri was filed by the previous counsel nor any haziri signed by defendant No. 4 was ever filed in Court. He also produced a decision of this Court dated 7.5.2004 passed in civil revision No. 221/2003 in which the filing of the subsequent written statement was accepted to be valid. But in my view, this decision would not be applicable to the facts and circumstances of this case as it was in respect of a different aspect with divaricated set of facts.

11. After hearing the arguments of the learned counsel of both the parties and after perusing the materials on record, I find that the learned Court below has considered the matter in detail and has thus arrived at the findings of facts which in my view are not illegal or perverse. It may be noted that the matter of accepting one written statement and rejecting the other is an interlocutory matter and in such matters there is no requirement for proceeding as if it was trial of a criminal case or a civil suit. So far the particulars of fraud is concerned, the details have been sufficiently stated by defendant No. 4 and proved by sufficient materials which have been fully considered by the learned Court below in paragraph-5 of the impugned order and hence, the decisions cited by the learned counsel for the petitioners, in my view, are not applicable in the instant matter, which is only with respect to accepting a written statement and rejecting the other. It is not a case where any charge has been levelled against the petitioners for which a criminal trial or civil proceeding is going on to decide the forgery committed by any party and to punish or take action against them.

12. The facts and circumstances mentioned above clearly show that the earlier

written statement was, to say the least, not at all reliable one and hence it was quite proper for the learned Court below to reject the same and accept the subsequent written statement filed by defendant No. 4. I find no illegality or jurisdictional error in the impugned order and accordingly this civil revision is dismissed.