

(1994) 07 OHC CK 0027
In the Orissa High Court
Case No : First Appeal No. 63 of 1978

Durgamani Behera and Others

APPELLANT

Vs

Ghasiram Mohanta and Others

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14(1)
Transfer of Property Act, 1882 — Section 54

Citation : (1994) 78 CLT 689 : (1994) 2 OLR 467

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : G. Rath, for the Appellant; S.C. Samantray, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mohanty, J.—Defendants 1, 3, 5 and 7 are in appeal against the decision of Subordinate Judge, Rairangpur, decreeing plaintiffs' suit for title in respect of 18 manas and 6 gunths of lands and directing delivery of possession of the same.

2. Nityananda and Shyama Charan were step-brothers. Nityananda died leaving behind his son defendant No. 8. Shyama Charan died leaving behind his son Bhagirathi. Bhagirathi died leaving behind his widow defendant No. 1 and issues defendants 2 to 7. The suit lands belonged to Nityananda. On 7-2-1949 he executed and registered a sale deed (Ext. B) in respect of the above lands in favour of Shyama Charan. Then on 24-4-1964 Shyama Charan executed and registered a sale deed (Ext. 1) in respect of the said lands in favour of the two plaintiffs. Then Nityananda brought Title Suit No, 15 of 1965 against Shyama Charan and the present plaintiffs, praying for title and possession in respect of the suit lands. On 6-2-1967, the suit was dismissed. Thereafter on 28-7-1967, Shyama Charan executed and registered a deed of cancellation (Ext. C) cancelling the earlier sale deed Ext. 1. Then Shyama Charan died and thereafter, the present plaintiffs brought the suit against the heirs of Shyama Charan and Nityananda praying for declaration of their title in respect of the suit lands on the

basis of Ext. 1 taking the ground that the deed of cancellation was neither legal nor valid in law.

3. According to the plaintiffs, Shyama Charan after purchase of the suit lands under Ext. B and while possessing the same, sold them in favour of the plaintiffs for a consideration of Rs. 6,000/ under Ext. 1f and delivered possession of the same to them. Then after disposal of Title Suit No. 15 of 1965, Shyama Charan demanded Rs. 2,000/- from plaintiff No. 1 towards the expenses incurred by him in defending Title Suit No. 15 of 1965 and as the latter did not agree, he disturbed plaintiffs' possession, This gave rise to a proceeding u/s 145 of the# Code of Criminal Procedure, which was ultimately decided in favour of Shyama Charan on 23-6-1967. Thereafter on 28-7-1967 Shyama Charan registered the deed of cancellation, Ext. C. On such allegations, the plaintiffs brought the suit praying for declaration of their title to the suit lands and recovery of possession of the same.

4. Defendants 1, 3, 5 and 7 filed a joint written statement and contested the suit at the trial. They contended that in the year 1964 Shyama Charan wanted to sell the suit lands. Plaintiff No. 1 came forward to purchase the same, but as he had no money, he proposed to pay the consideration after harvest of 1964 crop and take possession of the suit lands thereafter. Accordingly, the sale deed Ext. 1 was executed and registered. They further contended that after dismissal of Title Suit No. 15 of 1965, Shayma Charan demanded payment of consideration and as plaintiffs avoided to pay the same. former executed and registered the deed of cancellation, Ext. C. It is thus, contended that the plaintiffs have not acquired any title or possession under the impugned sale deed.

5. Defendant No. 8 filed a separate written statement denying the title of the plaintiffs to the suit lands.

6. The learned trial Court came to find that after payment of consideration, the plaintiffs became the owners of the suit lands. This finding is attacked in this appeal.

7. Mr. Rath for the appellants argued that mere execution and registration of the sale deed Ext. 1 did not convey title in favour of plaintiffs since according to the terms of the document, passing of title was dependent on passing of consideration and in fact consideration never passed. Mr. Samantray on behalf of the plaintiffs respondents on the other hand submitted that under the suit document, passing of title was not dependent on consideration and at any rate after the suit deed consideration having passed, the plaintiffs acquired indefeasible title to the suit lands.

8. Law is well-settled that intention of the parties as to passing of title is to be gathered from the document of sale itself, unless its terms are ambiguous. Now therefore, the terms in the suit document Ext. 1, may be looked into. It is recited therein that the vendor was in peaceful possession of the lands in question, but as they were at a distance from their residence, they felt inconvenience in

cultivating the same and therefore proposed to sell them. The vendees (plaintiffs) wanted to purchase and as they paid the market price of Rs, 6, 000/- receiving the same the vendors executed the document of sale and made the vendees owner of the lands. It is thus a case where recital regarding passing of title in favour of the plaintiffs from the date of execution of the document comes later than the recital regarding passing of consideration. Further it is clearly recited that the sale is made in exchange for the price paid and after payment of the entire consideration, document is executed and the vendees are made owners of the suit lands. The intention of the parties being quite clear and unambiguous as revealed from the terms of the document they alone can be, looked into and no extraneous evidence is admissible. From the recitals the only inference can be that passing of title was dependent on payment of consideration. Therefore if the recital about payment of consideration is found to be not true, then it can be legitimately held that title did not pass by mere execution and registration of the sale deed. In other words, the sale deed. Ext. 1 can only be construed as meaning that the parties intended that on passing of consideration, title would pass to the plaintiffs. Therefore, the submission on behalf of the respondent that under the suit sale deed, title passed independent of passing of consideration cannot be sustained.

9. Now the question arises, if actually consideration passed at or before execution of the document of sale. Plaintiff No. 1 was examined as PW 11 in the suit. He has categorically admitted in his evidence that on the date of registration of the sale deed, no consideration money was paid. The sale deed was both executed and registered on the same day, i.e. on 24-4-1964. Therefore, title did not pass on said date Further it is significant to note here that in the plaint there is no whisper as to the date and time of payment of consideration of Rs. 6,000/- in relation to the sale under Ext. 1. Of course, plaintiff No. 1 in his evidence has stated that seven days after the registration, a part consideration of Rs 2,000/- was paid to Shyama Charan at his house in presence of PWs 6, 7 and others, and further seven days thereafter, Rs. 4,000/- more was paid to him at his house in presence of PWs 7, 10 and others.

10. Custody of the suit document being a piece of circumstance which can throw light in the matter of payment of consideration the question relating to same may now be examined.

11. Mr. Rath for the appellants relying on the provisions contained in Order 7, Rule 14 (1) of the Code of Civil Procedure argued that the suit sale deed having not been presented with the plaint as required under the aforesaid provision, the inference would be that the same was not in possession or power of the plaintiffs. Aforesaid Rule 14 deals with two classes of documents. Sub-rule (1) deals with documents sued upon and Sub-rule (2) deals with documents relied on as evidence in support of plaintiff's claim. Sub-rule (1) requires that documents sued upon shall be produced when the plaint is presented. Sub-rule (2) provides that documents relied on in support of plaintiff's claim shall be

entered in a list to be added or annexed to the plaint. It is thus seen that the Rule makes a distinction between the two classes of documents. Document sued upon" is to be understood as meaning the basic document in the suit under which the defendant is sought to be made liable. The object in insisting presentation of such document along with the plaint is obviously to eliminate claim under such document in another litigation by somebody else who presenting the same along with" the plaint might claim to have acquired right thereunder. Therefore, presentation of document such upon, i.e. the basic document, along with the plaint is mandatory. Instances of such suits are suits on promissory notes, books of accounts and the like. A suit for declaration of title and recovery of possession in respect of certain property which a plaintiff claimed to have purchased from defendant cannot come under such class, In such a suit the document of sale serves as a corroborating evidence in support of the claim made in the plaint and cannot be branded as a document sued upon. Consequently non-filing of the suit sale deed along with the plaint cannot be adversely commented upon.

12. PW 11 has claimed that on payment of Rs. 4, 000/-, has demanded the registered sale deed when Shyama Charan told him that the same was with the Moharir. According to him he then requested Shyama Charan to give authority to take the suit Kabala from the Moharir, but Shyama Charan refused. He thereupon requested Shyama Charan to grant a separate receipt in token of receipt of consideration to which also Shyama Charan declined. He, however, claimed that 8 to 10 days after payment of full consideration, possession was delivered and 20 to 25 days thereafter PW 11 went to the house of Shyama Charan and he then gave the safe deed Ext. 1. During cross-examination he admitted that in earlier suit (title Suit No. 15 of 1965) it is Shyama Charan who filed the suit Kaha a and it is he who got return of the same after disposal of the suit. Learned counsel for plaintiffs -respondents tried to explain such filing and taking return by submitting that both Shyama .Charan and present plaintiffs were arrayed as defendants in the earlier suit and as they took the same plea, plaintiffs had handed over the Kabala to Shyama Charan and that is how he filed and took return of the same. On a reference to Ext. 5, the judgment in the earlier suit, it of course reveals that in that case both Shyama Charan and the present plaintiffs took the same plea while disputing the claim of Nityananda. But the fact remains that Shyama Charan and the present plaintiffs filed separate written statements and contested the suit engaging separate Advocates. In that suit Shyama Charan was mainly resisting the claim of Nityananda and if really by then the present plaintiffs had already become owners and were possessing the suit lands, then there can be no earthly reason as to why plaintiffs would part with the sale dead to Shyama Charan to be filed by him in Court. In the facts of the case it is not unlikely that after disposal of the earlier suit, plaintiffs managed to obtain the Kabala Ext. 1 from the office of the two Advocates who are father and son, who separately appeared for the two defendants in that suit. In the aforesaid facts and circumstances, it cannot be believed that In fact Shyama Charan delivered the

suit kabala to the plaintiffs. This finding belies the story of payment of consideration.

13. PWs 6, 7 and 10 have tried to corroborate plaintiff No. 1 on the point. It may be noted here that PW 6 is the maternal uncle and PW 7 an agnatic relation of the plaintiffs. Furthermore, the father of the plaintiffs is the maternal uncle-in-law of PW 10. In the light of discussions in the foregoing paragraphs, the oral testimony of PWs 6, 7 and 10 as regards passing of consideration cannot be accepted.

14. Learned counsel for the respondents during his arguments referred to the admissions of Shyama Charan in his written statement (Ext 4) and deposition ("Ext. 6) in earlier suit (Title Suit No. 15 of 1965). ..Reference was also made to the observation contained in the judgment of the trial Court. Thus in the written statement Shyama Charan had stated that as his only son died leaving behind three sons, two of whom were minors, he felt it difficult to smoothly manage the property under personal cultivation and therefore, thought it prudent to sell away the suit lands on a consideration of Rs. 6,000/- to the knowledge of the plaintiffs of that family. In the deposition Shyama Charan has stated that in 1964 he sold the suit lands to Ghasiram and Kunja Bihari (the present plaintiffs) for Rs. 6,000/-. In the light of the facts and circumstances of the case, I am of the view that the aforesaid statements in the written statement and deposition can only be construed as meaning that Shyama Charan executed and registered a sale deed in respect of the suit lands. Shyama Charan in the aforesaid two documents has not stated anything as to passing of consideration under the sale deed. In such premises, the observation in the judgment Ext. 5 that the sale under Ext.1 must be held to be a bona fide sale and for consideration can be of no significance, particularly when in the earlier suit, the issue as to valid transfer of title by Shyama Charan in favour of the present plaintiffs was strictly not in issue for effective decision of that suit. Consequently I am of the view that the argument by learned counsel for respondents for drawing the reference from above facts that Shyama Charan divested his title to the suit lands "under the impugned sale deed is not acceptable.

15. In the light of the discussions in the foregoing paragraphs, the irresistible conclusion is that consideration for the sale under Ext, 1 has not been paid and therefore, title to the suit lands did not pass thereunder in favour of the plaintiffs. The plaintiff's suit for title must therefore fail, in the result, the appeal is allowed and the impugned judgment and decree are set aside. The appellants shall be entitled to costs of the suit and this appeal from the contesting defendants. Hearing fee is assessed at Rs. 200.