
(2002) 07 JH CK 0038
In the Jharkhand High Court
Case No : LPA No. 302 of 1997 (R)

Guhi Ram Mahto and Others

APPELLANT

Vs

Mohan Mahto and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (2002) 50 BLJR 2189

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Debi Prasad, L.K. Lal and Praveen Kr, for the Appellant; N.N. Tiwary and N.K. Tiwary, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 20th May, 1997, whereby the learned single Judge dismissed the First Appeal being F.A. No. 54/1983 (R) filed by the appellants and affirmed the judgment and decree passed by Additional Sub-Judge, Ranchi in Title Suit No. 109/1979.

2. The original plaintiffs Smt. Radhi Mahatwain and Smt. Ban Mahatwain, who were respondents in the appeal filed Title Suit No. 109/1979 for decree of cancellation of sale deed dated 23.3.1979 executed by them in favour of the original defendants in respect of half share in the land as per details in Schedule A of the plaint. Plaintiff's case was that the suit land were recorded in the name of Most. Sabi wife of Lohra Mahto and Govind Mahto having half share each. Lohra Mahto and Govind Mahto were sons of Haradhan. Lohra died leaving behind his widow Sabi and two daughters, Radhi and Sahachari and Sahachari also died leaving behind her only daughter Bari. Radhi and Bari were the plaintiffs. Similarly, brother of Lohra, namely, Govind Mahto died leaving behind his three sons, defendants Nos. 1 to 3 and two daughters, defendant Nos. 5 and 6. Defendant No. 4 was the daughter of Govind Mahto. It was alleged that Most.

Sabi died in the year 1961 and she was the absolute owner in respect of half share of the lands and after her death her two daughters, Radhi and Sahachari got half share and possession over the lands. Similarly, the half share of the land belonging to other defendants i.e. the heirs of Govind Mahto.

3. Plaintiffs' further case was that the parties were cultivating the suit lands jointly but they were living separately for their convenience and there had never been any partition. As the plaintiffs were feeling inconvenience in cultivation of the lands and the defendants were their co-sharers and in order to maintain good relation on the request of the defendants the plaintiffs agreed to sale their half share in the entire suit lands to the defendant Nos. 1 to 3 for a consideration of Rs. 15,000/-. It was alleged that both the parties came for execution of sale deed on 23.3.1979 at Ranchi in the registration office but before the execution of the sale deed, the plaintiffs demanded payment of consideration money. Since the defendants had no money at that time, it was agreed that plaintiff shall execute a sale deed and the defendants shall execute a separate agreement for payment of consideration money later on i.e. within three months and if they will fail to pay the consideration money, the deed will stand cancelled and the plaintiffs would retain their title and possession of their share till consideration amount is paid. Accordingly, separate agreement was executed and thereafter, sale deed was registered in favour of the defendant Nos. 1 to 3. Plaintiffs' case therefore was that since consideration amount was not paid within three months despite repeated demands, the sale deed dated 23.3.1979 is void for want of consideration and the defendants have not acquired any title thereunder and possession continued with the plaintiffs.

4. Defendants Nos. 1 and 2 though filed separate written statement but contested the suit jointly denying and disputing the allegation made by the plaintiffs in the plaint. It was stated that the suit was filed by the plaintiffs at the instance of the defendant No. 3. Their further case is that bulk of consideration amount was paid prior to the registration of sale deed and the balance amount was paid to the plaintiffs on the date of registration. The defendant Nos. 1 and 2 denied that any agreement for payment of consideration was executed by them on 23.3.1979. The case of the defendants is that as a matter of fact these defendants put their signatures on plain paper for mutation of their names and that paper might have been converted into an agreement. Defendant No. 3 who is one of the purchaser under the deed filed his written statement but admitted the case of the plaintiffs. He has admitted in his written statement that consideration money was not paid on the date of execution of sale deed rather separate agreement was executed whereby the defendants including himself agreed to pay consideration money within three months failing which the sale deed would be cancelled.

5. The trial Court framed various issues and recorded his findings on all the issues. The trial Court held that the title of the lands in suit had not passed to the contesting defendants after execution of the sale deed dated 23.3.1979

because no consideration was paid rather separate agreement was executed agreeing inter alia that if the consideration money was not paid within three months of the execution of sale deed, the deed will be void and cancelled. The trial Court further recorded a finding on the question of possession in favour of the plaintiffs. Aggrieved by the said judgment of the trial Court, the contested defendant Nos. 1 and 2 filed aforementioned First Appeal being F.A. No. 54/83(R). Learned single Judge after appreciating entire evidence both oral and documentary and various decisions, recorded a finding that by a separate agreement the parties had agreed that the title will pass only on payment of full consideration money. For better appreciation, paragraphs 14 and 15 of the judgment passed by the learned single Judge is worth to be quoted herein below :

"No doubt it is the case of the appellants that major portion of consideration money i.e. Rs. 13,000/- was paid prior to execution and similar evidence was given by DW 12 Ghasi Ram Mahto who is the son of the defendant No. 1 and DW 13 Samrai Mahto who is one of the appellant that Rs. 13,000/- was paid to the plaintiffs prior to execution of the deed and for that the plaintiffs also gave receipt to the defendant No. 3, Lilmohan one of the purchaser who destroyed the receipt and Rs. 2,000/- the balance money was paid to the plaintiffs on the date of execution and then the plaintiffs handed over registration receipt and immediately, the purchaser obtained original sale deed in question from the registration office. It is also their evidence that Ext. 5 the so-called agreement to pay consideration amount within three months was not executed by them rather they put their signaturers in a plain paper and handed over the same to one of the purchaser i.e. defendant No. 3 Lilmohan and that has been subsequently converted into an agreement paper. Such evidence of these witnesses and also that of DW 5 Ram Nath that subsequently Ext. 5 was brought into existence is not to be accepted for the reason that on perusal of Ext. 5 itself it is clear that the appellants and Lilmohan had not put their signatures in a plain paper for the purpose of mutation rather the appellants also put their signatures on a revenue stamp and mentioned clearly that they are making agreement to pay Rs. 15,000/- later on.

Further more one of the purchasers i.e. defendant No. 3 has also filed a separate written statement and is also his evidence and has figured as DW 1 that actually there was agreement that the title will be passed only on payment of consideration money and on the date of execution consideration money could not be paid so he along with two others purchasers i.e. appellants executed an agreement i.e. Ext. 5 and agreed to pay the consideration amount of Ext. B within three months but that has not been paid DW 1 and the defendant No. 1 is one of the purchaser and beneficiary through Ext. B and as such his own statement against his own interest is definitely material and to be taken into consideration which clearly undertakes that there was agreement between the parties and it was the evidence of the parties that the title will be passed only on payment of consideration money and that has not been paid even after three months as per agreement i.e. Ext. 5. Moreover, it is the case and evidence of the

defendants that Rs. 13,000/- of the sale deed was paid earlier to execution and Rs. 2000/- was paid to the plaintiffs on the date of execution of the deed. The evidence of the defendants that the receipt granted for Rs. 13,000/- was destroyed by the defendant No. 3 is not to be accepted for the reason that such important evidence of payment of consideration may be destroyed by them without any reason. No doubt on behalf of appellants some sale deeds were brought on the record to show that some lands were sold only for payment of consideration of Ext. B but on this point there is no specific evidence to prove the payment of consideration and if at all consideration was paid there was no need for executing the deed of agreement i.e. Ext. 5."

6. Learned single Judge further observed :

"So from the discussions made above and from the evidence on the record this fact is well proved that it was the intention of the parties that only after the payment of consideration money of the deed i.e. Ext. B the title will pass to the purchasers i.e. the appellants and the defendant No. 3 and there was agreement between the parties on the date of execution of the deed that the purchasers i.e. the appellants and defendant No. 3 will pay the consideration money of the deed within three months from the date of execution and then they will acquire title and will come in possession of the purchased lands failing which the deed will be void and cancelled. From the deed itself it can be said that it was the intention of the parties that the purchasers will acquire title only on payment of consideration amount and admittedly this fact has been proved that the consideration amount has not been paid within the period of agreement i.e. within three months from the date of execution of the deed."

7. Mr. Debi Prasad, learned senior counsel appearing for the appellants assailed the impugned judgment passed by the trial Court and affirmed by the learned single Judge as being illegal and against the settled principle of law laid down by the Supreme Court and different High Courts. Learned counsel firstly submitted that the contents of the sale deed is very clear and there is no ambiguity with regard to payment of consideration amount. According to learned counsel unless terms of the sale deed is ambiguous is no evidence of any kind is permissible u/s 92 of the Evidence Act. Learned counsel relied upon the decision of the Supreme Court in the case of Bishundeo Narain Rai and Ors. v. Anmol Devi and Ors. (1987) 7 SCC 498. Mr Debi Prasad, then submitted that so far payment of consideration amount is concerned, it shall be gathered from the terms of the sale deed. In the sale deed, payment of consideration was clearly mentioned and therefore title to the land already passed unto the defendant/appellant even assuming that payment of consideration was deferred. Learned counsel then submitted that both the Courts have not at all considered Ext. C by which appellants transferred some of the lands in favour of the plaintiffs. Learned counsel fully relied upon the decisions of the Patna High Court in the case of Radhamohan Thakur and Others Vs. Bipin Behari Mitra and Another, , in the case of Arjun Singh and Others Vs. Tara Das Ghosh and Others, .

8. On the other hand Mr. N.N. Tiwary, learned counsel appearing for the plaintiffs/respondents submitted that both the Courts have recorded concurrent finding of fact that consideration money did not pass and there was separate agreement for payment of consideration within three months failing which the sale deed should be void and cancelled. Both the Courts have also recorded a finding that the possession of the land was not delivered to the defendants. According to the learned counsel therefore concurrent finding of fact cannot be disturbed by Letters Patent Court. Mr. Tiwary then submitted that defendant No. 3 who is one of the beneficiary (purchaser) in the sale deed has admitted about nonpayment of consideration and execution of separate agreement. Learned counsel contended that mere mention of passing of consideration in the sale deed is not decisive and parties may lead evidence to show that consideration money was not paid. Learned counsel relied upon the decision of the Patna High Court in the case of Panchoo Sahu Vs. Janki Mandar and Others, , in the case of Ram Chandra Singh and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, .

9. Before appreciating the rival submission of the counsels appearing for the parties, I would first like to state here that the law is well settled that the ownership, title and interest in the property passes to the transferee on the date of execution and registration of sale deed, unless a different intention is either expressed or necessarily implied which has to be proved by the parties ascertaining that the title has not passed on registration of the sale deed. It is equally well settled that such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject to the provisions of Section 92 of the Evidence Act. In the case of Pirtam Singh and Others Vs. Jagannath Sarawgi and Others, their lordships considering a similar question observed :

"Upon a consideration of these authorities, it seems clear that the question whether title under a sale deed passes upon its execution and registration or is postponed until payment of the entire consideration depends on the intention of the parties which must be gathered from the sale deed itself; but where the terms of the sale deed are not clear and decisive, the surrounding circumstances and conduct of the parties may be looked into."

10. In the case of Ram Chandra Singh and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, a similar question arose for consideration as to whether title passed from vendor to the vendee, it was observed :

"It is now well settled that the question as to whether the title from the vendor to the vendee passed on execution of registration of documents for non-payment of consideration money entirely depends upon the intention of the parties. Such intention of the parties has to be gathered from the various factors. Only because in the sale deed dated 22.11.1965 executed by Mst. Mania to Mst. Samia it was mentioned that the consideration money has passed to the vendor from the vendee, the same is not decisive. It was open to the court concerned to take into consideration the various factors and circumstances existing at the time

for the purpose of determining the intention of the parties."

11. Various decisions of the Patna High Court *Panchoo Sahu v. Janki Mandar* AIR 1952 Pat 262; *Shiva Narayan Sah and Others Vs. Baidya Nath Prasad Tiwary and Others*, ; *Umeshwar Prasad Sinha Vs. Dwarika Prasad*, , have been cited by the Bar but there is no need to discuss all those decisions as the same have been discussed by the Supreme Court recently in the case of *Bishundeo Narain Rai (Dead)By Lrs. and Others Vs. Anmol Devi and Others*, Their lordships after considering the judgments referred to herein above has observed :

"Apropos the question noted above, a reference to Section 54 of the Transfer of Property Act will be apposite, while defining "sale", Section 54 sets out how sale is made. Sale is defined to mean a transfer of ownership in exchange for price paid or promised or part-paid or part-promised; it says, inter alia, in case of tangible immovable property of the value of Rs. 100 and upward or in case of a reversion or other tangible things, sale can be made only by a registered instrument. Section 8 of the Transfer of Property Act declares that on a transfer of property, all the interests capable of passing in the property and in the legal incidence thereof, pass on such a transfer unless a different intention is expressed or necessarily implied. A combined reading of Section 8 and Section 54 of the Transfer of Property Act suggests that though on execution and registration of a sale deed, the ownership and all interests in the property pass to the transferee, yet that would be on the terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of a sale deed, the ownership title and all interest in the property pass to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that title has not passed on registration of the sale deed. Such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject, of course, to the provisions of Section 92 of the Evidence Act, 1872." 12. It was further observed : "These averments unmistakably indicate conveying of title to the property absolutely for consideration as outlined; by virtue of the sale, the purchasers were put in possession of the property conveyed, became entitled to the custody of the sale deed and other documents and enjoyment of the property. These factors satisfy all the requirements of absolute said. No recital in Exhibit C is brought to our notice to indicate any contra intention. What is, however, argued is that out of the consideration, a sum of Rs. 3235 remained unpaid; that the mortgage loan under "Sudhbhama Bond dated 29.7.1946" was not discharged and that the registration receipt was retained by the vendors so it is manifest that the intention of the parties was that the title would not pass to the purchaser on execution and registration of Exhibit C. We are not impressed by this submission. It appears that in the State of Bihar, a practice is prevalent that when the whole or part of a sale consideration is due or any other obligation is undertaken by the vendee, then on execution and registration of the sale deed by the vendor, title to the property, the subject matter of the sale, does not pass "ta khubzul

badlain", that is until there is "exchange of equivalent" and in such a case registration receipt is retained by the vendor, which on payment of consideration due or on fulfilment of the obligation by the vendee is endorsed in his favour or if the sale deed has already been received by the vendor, then the sale deed is delivered to the vendee. Even so, this only shows that such agreements are common in that part of the country but it is essentially a matter of intention of the parties which has to be gathered from the document itself but if the document is ambiguous, then from the attending circumstances, subject to the provisions of Section 92 of the Evidence Act."

13. Coming back to the instant case, as noticed above, it was the specific case of the plaintiffs vendors who are non-else but the sisters of the vendee that the date when sale deed was executed and registered a separate agreement was entered into between the parties whereby the vendees agreed for payment of consideration money in the sale deed within three months and if they will fail to pay the consideration money the deed will stand cancelled and the plaintiff would retain their title and possession in respect of their share in the property. The interesting part of this case is that one of the vendee who is defendant No. 3 by filing a separate written statement has admitted that consideration amount shown in the sale deed was not actually paid rather by a separate agreement it was agreed to be paid within the stipulated time. The plaintiffs have proved the separate agreement. Defendant Nos. 1 and 2 although admitted their signature in the said agreement but stated that the signature was obtained in the blank piece of paper. Learned trial Court on the basis of evidence and admission of one of the defendants has recorded a finding that the plaintiffs by written agreement agreed to pay consideration amount within a specified time and there was a stipulation that in the event of nonpayment of consideration amount title and possession will not pass to the vendee. The trial Court further recorded a finding on the question of possession in favour of the plaintiffs.

14. Learned single Judge after re-appraisal of the entire evidence has affirmed the finding of fact recorded by the trial Court about the execution of the agreement. There is no material or evidence to take a different view on the question of existence of the agreement executed by the vendee agreeing to pay consideration amount. In my considered opinion, therefore, on the face of the written agreement executed on the date of execution and registration of sale deed and the admission made by one of the vendee (defendant No. 3) both the Courts have rightly come to the conclusion that title to the property did not pass on the execution and registration of sale deed and possession was not delivered to the vendees.

15. It is true that on execution and registration of sale deed the ownership and interest in the property pass to the transferee unless a different intention either expressed or necessarily implied which has to be proved by the parties ascertaining that title has not passed on the registration of the sale deed. Such intention can be gathered from the contents of the sale deed or by other

attending circumstances. In case where transferee or one of the transferee admits that consideration money was not paid on the date of execution and registration of the sale deed and that was condition precedent for passing of title in the property and further that when such condition reduced into writing is proved by the plaintiffs then it can be safely held that title has not passed on execution and registration of sale deed.

16. Taking into consideration the facts and evidences on record and the finding of fact recorded by the two Courts and the law discussed herein above, I do not find any reason to differ with the finding recorded by the learned single Judge.

17. For the reasons aforesaid, there is no merit in this appeal, which is accordingly dismissed.

Hari Shankar Prasad, J.

I agree.