

(1998) 08 PAT CK 0067
In the Patna High Court
Case No : A.F.A.D. No. 85 of 1980 (R)

Haren Mahatha and Others	Vs	APPELLANT
Chanubala Debya and Others		RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 31

Citation : (1999) 3 BLJR 1657

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—This second appeal is directed against the Judgment and decree dated 13-3-80 (decree signed on 3-4-80), by reason of which the learned lower appellate Court reversed the Judgment and decree of the trial Court which was passed in Title Suit No. 75/ 77.

2. It appears that during pendency of the appeal pro forma defendant-respondent No. 3, Asutosh Roy died and the substitution petition for substituting his heirs and legal representatives was rejected on 1-2-88 merely on the ground that a copy of the said petition was not served on the other-side. Subsequently, another substitution petition was filed but by order dated 30-7-88, the same was also dismissed on the ground that similar application having been dismissed, the second application of that type is not maintainable. Under these circumstances when the question arose as to whether the whole appeal has become incompetent, by order dated 8-8-88, this Court observed that the competency matter be considered at the time of hearing of this appeal.

3. Mr. Sahani, learned Counsel appearing on behalf of the appellants, has submitted that the plaintiffs-respondents only claimed relief against the appellant Nos. 1 to 5, who were defendant Nos. 1 to 5 before the trial Court and this Asutosh Roy was a party defendant merely on the ground that he was one of the

signatories of the sale-deeds. According to him, Asutosh Roy did not contest the suit by filing any written statement or getting himself examined by either of the parties and as such, in absence of any substitution of his heirs and legal representatives, the entire appeal cannot await.

4. Mr. Rajnandan Sahay, learned Counsel appearing on behalf of the respondents, has fairly conceded to the said proposition of law. In such view of the matter, in my view, this appeal can be disposed of even in absence of the heirs and legal representatives of said Asutosh Roy.

5. The plaintiffs filed the title suit for cancellation of a registered deed of sale-dated 16-8-77 executed by the plaintiffs No. 1, Chanubala Debya @ Chapubala Debya in favour of defendant Nos. 1 to 5 in respect of lands described in Schedule-A of the plaint and a prayer for permanent injunction was also made along with other consequential reliefs. According to the plaintiff, for repayment of loan of 5 mounds of paddy to the principal-defendant, she was hard-pressed and subsequently being asked, she sold Nakti Tanr land measuring 15 decimals described in Schedule-B for the said loan of Rs. 300/-. This amount was the price of 10 mounds of paddy including interest to which the plaintiff agreed. The deed was executed on 16-8-77 but, according to the plaintiff, the contents of the deed was neither read over nor explained to her. When the defendant Nos. 4 and 5 cut the crops on 18-11-77 from a portion of Schedule-A land, a theft case was instituted by one Babulal Rajwar, Bhagidar of the plaintiffs. On 19-11-77, however, she was informed by some of the defendants that they had purchased Schedule-A land, which gave rise to suspicion of the plaintiff. On coming to Chas registration office, she could learn that the principal defendants, in collusion with one Asutosh Roy, had fraudulently obtained a sale-deed incorporating Schedule-A land instead of Schedule-B land. Further case is that the plaintiff agreed to sell this Schedule-B land to the principal defendants on consideration of Rs. 2,999 and never agreed to sell Schedule-A land, which is Bahal land having market value of about Rs. 6,000. Further case is that in order to meet their need and expenses, she agreed to sell 17 decimals of land from plot No. 1726 known as Dara Bahal for Rs. 5,999 to pro forma defendants and executed an agreement for sale. Subsequently on 15-10-77, she executed a registered sale-deed in favour of the pro forma defendants in respect of the said land and this sale-deed included the standing crops which were grown by the plaintiffs through their Bhagidar, Babulal Rajwar. On this score, the plaintiff pleaded that the sale-deed dated 16-8-77 was a result of fraud perpetuated with her by the principal defendants. The contesting defendant Nos. 1 to 5, however, taken a stand in the written statement that the story of advancing loan by the defendants to the plaintiff was a concocted one rather it was the plaintiff who executed the sale-deed in favour of the defendants on 16-8-77 with respect to Schedule-A land. The sale-deed was read over and explained to the plaintiff No. 1 by the scribe and after fully understood the contents of the same, she put her LTI on the said document. Further case is that in order to frustrate the effect of the registered sale-deed dated 16-8-77, the subsequent agreement of sale as well as sale-deed

dated 15-10-77 has been brought into existence by the plaintiffs in connivance with the pro-forma defendants.

6. On the basis of the pleadings of the parties, the learned trial Court framed the following issues:

1. Has the plaintiff got any cause of action for the present suit ?
2. Is the suit as framed maintainable ?
3. Is the suit barred by law of limitation, estoppel, waiver and acquiescence ?
4. Is the suit bad for defect of parties ?
5. Is the sale-deed dated 16-8-77 purported to have been executed by the plaintiffs in favour of the defendants 1 to 5 in respect of Schedule-A lands legal and valid? Was the same read over to the plaintiffs and she executed it? Are the plaintiffs entitled for a decree for a declaration that the sale-deed 16-8-77 is void and illegal?

6. To what other relief or reliefs are the plaintiffs entitled?

7. The learned trial Court, after scrutinising the evidences on record both oral and documentary, dismissed the suit by holding that the plaintiffs have failed to prove that sale-deed dated 16-8-77 was executed by practising fraud on the executant. The trial Court further found and held that the said sale-deed executed in favour of Haren Mahatha and other defendants is legal and valid as the same was read over and explained to the plaintiffs, who executed the same after fully understanding the contents thereof. In deciding maintainability of the suit, the trial Court further found that the suit being declaratory in nature comes within the ambit of Section 31 of the Specific Relief Act, and in view of the admission of the plaintiff that they have sold their interest in plot No. 1726 and nothing remains with her, the plaintiff, in the circumstances, was not entitled for a declaration as sought for. However, these findings of the trial Court did not find favour with the lower appellate Court, who reversed the findings and set aside the Judgment and decree of the trial Court. The Court of appeal below was of the opinion that the plaintiff No. 1, being a Pardanasin woman, it was upon the defendants to prove that before executing the deed of sale, the contents of the deed were read over and explained to the plaintiff No. 1 and on being satisfied she put her LTI. Similarly, the Court came to a conclusion that there was no independent person who had read over the contents of the deed to her. Mainly observing that the plaintiff No. 1 was an illiterate and Pardanasin lady, the lower appellate Court has held that the impugned sale-deed was a product of fraud and forgery.

8. While admitting this appeal, the following substantial question of law was formulated by this Court:

Whether onus to prove that no fraud was practised lay upon the defendants-appellants in case where execution of sale-deed (Ext.-A) was admitted?

9. Mr. Rajnandan Sahay, learned Counsel appearing on behalf of the plaintiffs-principal defendants, has strongly contended that the lower appellate Court has committed a grave error of law in reversing the Judgment of the trial Court merely by discussing the evidences of D.Ws. and not that of the plaintiffs' witnesses. According to him, the lower appellate Court ought to have considered the evidences on record, more particularly the evidences of the P.W. 1, the plaintiff herself and D.W. 6, the scribe of the impugned deed, according to him, when admittedly Asutosh Roy, being a relative of the plaintiff, was present at the time of execution of the deed, who not only read the contents of the deed himself but also explained the same to the plaintiff. Referring to Ext. B, learned Counsel further submits that this Asutosh Roy having specifically written on the back of the deed that he was putting his signature on behalf of the executant, the lower appellate Court could not have reversed the findings. After this declaration, the plaintiff put her LTI and as such, the trial Court was correct in holding that the plaintiff with full understanding put her LTI on the deed. Mr. Sahay further submits that in view of plaintiffs own statement that after selling the land of Dara Bahar to Jhabu Lal, pro forma defendant, she had no interest in respect of the said land and thus, she could not have claimed a declaration in view of the provisions of Section 31 of the Specific Relief Act.

10. Mr. A.K. Sahani, learned Counsel appearing on behalf of the plaintiff-Respondents, countering the argument of Mr. Sahay, has contended that in view of Sub-section (5) of Section 100, C.P.C., the appellants cannot be allowed to raise any other substantial question of law which was not formulated by this Court while admitting this Second appeal. Though learned Counsel concedes that liberty to raise such additional questions could have been given by the High Court at the time of hearing but in the facts and circumstances, no such point is available to the appellants. Relying on the decision in the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, , learned Counsel has further contended that in India, the Pardanasin lady should get some privilege and when such ladies are illiterate, execution of any form should be scrutinised by the Court of law in more liberal manner. According to him, the lower appellate Court has correctly found that the plaintiff, being an illiterate lady, should get the benefit of Pardanasin lady. Mr. Sahani has contended that when she executed the deed in respect of Nakti Tanr (Schedule-B), taking advantage of her illiteracy and in connivance with Asutosh Roy, the scribe, the principal defendant instead of Schedule-B land, inserted Schedule-A land which is more fertile and valuable than that of Nakti Tanr land. Under these circumstances, Mr. Sahani Submits that onus is on the defendants to prove that the impugned deed was executed by the plaintiff after thoroughly understanding the contents thereof.

11. The question, which is to be answered, is as to whether the plaintiff, Chapubala Debya was duped by the principal defendants along with others in executing the impugned deed in respect of the land of Dara Bahar.

12. The sale-deed (Ext.-A) is dated 11-8-77, which is in Bengali language. By

this deed, the plaintiff, Chapubala Debya sold 72 decimals of land in plot No. 1726 for consideration amount of Rs. 2,999/-. It appears from the deed itself that reason for disposing of the said land by the plaintiff was some financial problem for maintaining and giving education to the minors. One Mihir Kumar Mitra is the scribe, who put his signature on the deed. Similarly, Asutosh Roy, the brother-in-law (Debar) of the plaintiff is also one of the signatories of the deed. The recital in the last page of the deed by the scribe is that the contents of the deed were read over and explained to the executor. Further, it appears that the plaintiff put her LTI in presence of said Asutosh Roy, who has endorsed the said LTI by stating that Chapubala has given LTI in his presence.

13. Thus, from the above discussion, it is clear that the suit land was sold by the plaintiff for having some amount in order to provide maintenance and education to the minors. She gave her LTI in presence of Asutosh Roy, who is none but her near relative. The scribe Mitra has endorsed on the deed that the contents of the same were read over and explained to her. Thus, the case of the plaintiff in her plaint is that she took loan 5 mounds of paddy from the principal-defendants which was required to be re-paid of double-quantity and as she could not do it, the principal defendants were pressing hard for the payment of paddy. On being asked by them, she sold her Nakti Tanr land measuring 15 decimals as described in Schedule B for Rs. 300/-, which is the amount for said loan, in my view, cannot be believed. It appears that in order to find out cause of, action a fictitious story has been got up by the plaintiff.

14. The plaintiff, P.W. 1, has deposed that the contents of the deed was not read over to her and Haren Mahatha did not pay any amount to her. Though she has stated that the contents of all other deeds by which she disposed other properties were read over to her but contents of this particular deed, by which the said land was sold to the contesting defendants were not read over to her but has failed to explain as to why the contents of this particular deed were not read over and explained to her. She further admits that she asked the scribe of the deed to read over the contents to her by which she sold land of Jhabu and Biswanath. She deposed that Asutosh Roy and others were accompanied her to the registration office. In this connection, the next important witness is D.W. 6, Mihir Kumar Mitra, the scribe of the deed in question. According to him, he wrote the said-deed on being asked by the plaintiff. The contents of the deed were read over and after understanding the same, the plaintiff gave her LTI. Asutosh Roy gave his endorsement on behalf of the plaintiff. The plaintiff gave her plot number and khata number but did not disclose the name of land. She only mentioned about 72 decimals of land and asked him to prepare the deed. He also deposed that one of the relatives of the plaintiff, Chapubala Debya, was also a witness, who read over and explained the contents of the deed. In cross-examination, this witness has categorically stated that he, as scribe, gave the endorsement on those deeds, the contents of which were read over to the executor and the endorsement is not found on the deeds which were not read over. He denied the suggestion that the contents of the deed was not read over

to the plaintiff. On 6-10-77, on being requested, this witness also wrote a deed by which the plaintiff sold some land to Biswanath Sharma.

15. Learned Counsel for party fairly submit that the evidences of no other witness are much important for deciding the issue.

16. From the aforesaid analysis of the evidence on record, in my view, the findings of the Court of appeal below cannot be sustained in law inasmuch as it has given undue importance on the fact that the plaintiff, Chapubala Debya, being an illiterate, is to be given some benefit/The finding of the lower appellate Court that the deed of sale was executed by an illiterate woman without taking an independent advice, in my view, is contrary to the evidence on record. Admittedly, Asutosh Roy was the Debar of the plaintiff, who not only accompanied her to the registration office but also endorsed the LTI of the executant. This Asutosh Roy is one of the signatories to the deed. Mihir Kumar Mitra, the scribe, has also deposed that this Asutosh Roy read over the contents of the deed to the plaintiff and after fully understanding, she put her LTI. The lower appellate Court has lost sight of this important fact. Apart from that, according to the plaintiff herself, she had dealt with her property by disposing some of them through various sale-deeds. This shows that even if the plaintiff, Chapubala Debya was an illiterate lady but definitely cannot be said to be a pardanasin lady and the lower appellate Court has wrongly placed reliance on the decision of the Calcutta High Court reported in Sonia Parshini Vs. Sheikh Moula Baksha, .

17. I have already noticed above that the plaintiff sold the land in question to the principal defendants as she was in need of some money for maintaining and educating the minors, but in the plaint, surprisingly enough, she has tried to make out complete a different case which, in the facts and circumstances, cannot be believed. The presumption of the lower appellate Court that being illiterate the plaintiff No. 1 did not possess the ability to understand the contents of the impugned sale-deed (Ext.-A), in my view, is speculative. From the conduct of the plaintiff, as aforesaid, it is clear that though she was an illiterate lady but definitely was not lacking ability to understand. From the findings of the lower appellate Court, it is crystal clear that it has given much emphasis to the evidence of other witnesses on behalf of the defendants but has failed to discuss the evidence of P.Ws. In my view, if the Court of appeal below would have only scrutinised the Ext. A, the impugned sale-deed and the evidence of P.W. 1 and D.W. 6, he might have not reversed the finding of the trial Court.

18. Though it is a settled law that even in a Judgment of reversal, the finding of facts arrived at by the lower appellate Court cannot be interfered with easily in Second Appeal but, in my view, the High Court in Second Appeal can definitely scrutinise the findings of the lower appellate Court if it satisfied that the Court of appeal below has misdirected itself in appreciating the evidence.

19. Having considered the pros and cons of the entire case, in my view, the

Judgment and decree of the learned Court of appeal below cannot be sustained. The reasonings given by the trial Court in dismissing the sit is more reasonable than that of the findings of the lower appellate Court,

20. In the result, this appeal is allowed and the Judgment and decree dated 18-3-80 (decree signed on 3-4-80) passed by the Ist Additional District Judge, Dhanbad in Title Appeal No. 115/78 is set aside and that of the Judgment and decree dated 27-4-78 passed by the Munsif, Baghmara, Dhanbad in Title Suit No. 75/77 is confirmed. No order as to costs.