
(1985) 08 PAT CK 0028
In the Patna High Court
Case No : S.A. No. 212 of 1975

Mst. Chandrakalo Kuer

APPELLANT

Vs

Bishwanath Singh and Others

RESPONDENT

Date of Decision : 19-08-1985

Acts Referred:

Citation : (1986) 34 BLJR 319

Hon'ble Judges : S.S. Sandhawalia, C.J;S. Ali Ahmad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—This second appeal by the Plaintiff arises out of a suit filed by her for declaration that the sale deed dated 6-9-1961 alleged to have been executed by her in favour of defendant No. 1 in respect of 20 decimals of Plot No 1096 Khata No. 172 of village Agaiwon is fraudulent, void and without consideration and that no title under it was conveyed to the defendant. Another prayer made was for confirmation of possession or in the alternative for recovery of possession and for permanently restraining the defendant from interfering with the possession of the plaintiff over the suit land and from withdrawing the sale deed from the registration office.

2. The relevant fact for the disposal of this appeal is that the plaintiff had 20 decimals of land and on 4-9-1961 she executed a deed of Rehan in respect of the aforesaid land in favour of Sheodheyen Singh for Rs. 1500/- Since Sheodheyen Singh did not have licence under the Money Lenders Act, he asked the plaintiff to execute a sale deed with respect to the land. The plaintiff did not agree this. Thereafter, he asked her to execute a sale deed in respect of other land. Upon his insistence, she agreed to execute a sale deed with respect to 5 kathas of land of Plot No. 4 appertaining to Khata No. 52 of village Agiaon for a consideration of Rs. 900/-. It was further agreed that on execution of the sale deed, the aforesaid Rehan deed, which had already been executed in his favour will be cancelled. Under the belief that she was executing the sale deed with respect to 5 kathas of

the aforesaid land she admitted the execution of the sale deed with respect to the suit land, but when it transpired that a fraud had been committed, the plaintiff went to the District Sub-registrar and told him that a fraud had been committed by the defendant. The result was that the sale deed was not registered. It is further said that defendant No. 1 thereafter filed an application for compulsory registration and an order was passed in his favour on 7-2-1963. Hence this suit.

3. The allegations were denied in the written statement filed by the defendant. It was said that no fraud was committed on the plaintiff and that she executed the sale deed after fully understanding its contents. The trial court decreed the suit holding that the plaintiff was subjected to fraud and that she put her thumb impression on the sale deed under the impression that she was executing the deed in respect of 5 kathas of land appertaining to plot No. 4. An appeal was preferred by the defendant which was allowed after reversing the findings recorded by the trial court. Thereafter, this second appeal has been filed.

4. The appeal was first listed before U.C. Sharma, J. (as he then was). An argument was advanced before him that the plaintiff-appellate was a Parnanas din lady and, as such, was entitled to special protection. On the finding the appellant is not a Pardanashin lady, but she is an old illiterate lady. It was argued that the law relating to a Parpanas hin lady should be extended to an ignorant and an illiterate woman also. Reliance in that connection was placed on the decision in the case of Chainta Dasya Vs. Bhalku Das, . Since there was no case on this point decided by the Patna High Court, the learned Single Judge referred it to a Court, the learned Single Judge referred it to a Divions Bench. The same point has been urged before us. In my view, the point really does not arise in this case. However, I would like only to refer to the decisions in the case of Srimati Sabitri Thakurain Vs. Mrs. F.A. Savi and Others, at page 330. and in the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, . A reading of these two decisions shows that in India Pardanashin ladies have been given a special protection in view of the social conditions of times they are presumed to have an imperfect knowlege of the world, as by the Pardah system they are practically excluded from social intercourse and communion with the outside world. In this background, it has been ruled that in case of documents taken from Pardanashin women the court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a Pardanashin to establish that the said document was entered into by her after clearly understanding the nature of transaction. It also appears from the aforesaid two decisions that the aforesaid rule should not be confused with other doctrine, such as, fraud, duress and actual undue influence which apply to all persons whether they be Pardanashin ladies or not. in such cases, the burden of proof will lie on the person who says that he/she was subjected to fraud, duress or actual undue influence. In this case as the findings stand, the plaintiff is not a Pardanashin lady. Therefore, she is not entitled to that protection. But 1 find

from a perusal of the judgment under appeal that findings have been recorded, after keeping the presumption in mind, that no fraud was practised upon the plaintiff and that she executed the sale deed in question on payment of full amount of consideration and after fully understanding the contents thereof. In that view of the matter, it is not open to the appellant to argue that the protection provided to the Pardanashin lady was not given to her. No other point has been urged. I see no merit in the appeal which is dismissed with costs.

S.S. Sandhawalia, C.J.

5. I agree.