

(1918) 02 PAT CK 0009

In the Patna High Court

Musammat Ramdei and Others

APPELLANT

Vs

Chandrabali Bibi and Others
 Ram Kishun Joshi and
Others Vs Musammat Ramdei and Others

RESPONDENT

Date of Decision : 14-02-1918

Acts Referred:

Citation : 44 Ind. Cas. 399

Hon'ble Judges : Roe, J;Jwala Prasad, J

Bench : Division Bench

Judgement

1. The facts of these cases have been fully and clearly stated in the judgment of the learned Subordinate Judge. It is sufficient for the purposes of the appeals to reproduce only a part of the narrative given in his judgment. The appellants in Appeal No. 141 are Musammat Ram Dei and her lessees, proprietors of the Motipur concern. The respondent is Chandra Bali Bibi, who derives her interest from a deed of sale executed in her favour by Jeona Bahu, Ram Kishen Joshi and others are the appellants in Appeal No. 163. Musammat Ram Dei is the widow of Radha Kishen. Radha Kishen was the son of Bal Kishen. On the death of Bal Kishen there was a dispute regarding the succession, and this, so far as Musammat Jeona Bahu the widow and Radha Kishen the son were concerned, was settled in 1889 by an agreement by which four annas of the villages in dispute was given to her absolutely and three annas given to her as life-estate. A payment in cash was also to be made by Radha Kishen. Before this payment in cash was made Radha Kishen died. A new agreement was then executed in 1890 between Ram Dei and Jeona Bahu, whereby the payment which was to have been made by Radha Kishen was abandoned and the widows took to themselves each an absolute interest in four annas of the property in dispute. On the death of Jeona Bahu, Ram Dei claimed to be the heir at law under the Mayukha School. The Joshis claimed to be her heirs under a Will executed by her. Under the former claim Ram Dei executed a mokarran patta of the eight annas of the villages in dispute in favour of the Motipur concern. Chandra Bali's kobala is limited to a four-annas share of the villages in dispute. The remaining four annas

is claimed by the Joshis. The whole eight annas is in the possession of the Motipur concern. Chandra Bali and the Joshis, therefore, instituted separate suits each in respect of the four-annas share alleged to be theirs.

2. The issues framed in the Court below were eleven in number. The contest in this Court centres round two issues only. Firstly, whether the ekrarnama or agreement made between Ram Dei and Jeona Bahu was intended to be an operative transaction or was a mere device to defeat the claim of third parties and not intended to be operative. Secondly, whether by reason of a substantial flaw in registration the deed of sale executed by Jeona Bahu in favour of Chandra Bali is void as against the party in actual possession. The learned Subordinate Judge decided that the agreement made in Ram Dei's favour was intended to be operative and conveyed a title in four annas of the property. He also decided that there was no flaw in the registration of the deed in favour of Chandra Bali. He, therefore, declared her entitled to the remaining four annas of the property. Ram Dei and the Motipur concern, therefore, appeal against that part of the decree which maintains Chandra Bali's title, and the Joshis appeal against that part of the decree which maintains Ram Dei's title.

3. On the first point the burden of proof in cases such as this is on the litigant who alleges that a document to which he put his signature in token of resigning an interest does not contain a correct statement of the facts and of the intentions of the parties. The same rule applies to a representative-in-interest of a signatory to such a document. The first link in the chain of evidence on such a question of fact is a set of circumstances showing that the transferor had a motive for making an ostensible abandonment of a part of his rights without consideration. The next link is a relationship between the parties to the document, and the probability that a fictitious transfer should be made in favour of the ostensible transferee. It is certain that the quarrel between Radha Kishen and Jeona Bahu was a real quarrel. There is no reasonable probability that a wholly fictitious agreement was made between Radha Kishen and Jeona Bahu. It is not reasonable to suppose that the widow of Radha Kishen would on his death have abandoned all benefits that might be derived by her from this agreement. Nor is it reasonably probable that Jeona Bahu would have put into the hands of the widow of one who had formerly been her enemy, who herself might at any time again be her enemy, a weapon which could be used against her. There could be no reason for any deliberate cloud upon the title of Jeona Bahu to the property affected by the agreement, for at that time Jeona was undoubtedly in possession of the whole of that property and her title has never since been contested. On the outstanding probabilities of the case it is unlikely that this agreement was fictitious. There is, moreover, a very considerable body of evidence to show that Jeona Bahu intended it to be operative. As the learned Subordinate Judge has pointed out, there is no reason to doubt that Jeona Bahu herself both in 1901 and in 1902, eleven and twelve years after the agreement, made statements on oath admitting Ram Dei's title in this property. She also wrote letters which he believed to be genuine, to Ram Dei again admitting her title in 1904 and 1905.

The arguments adduced on behalf of the Joshis to support the theory that the agreement was not a genuine agreement have in them little substance when weighed against the general probabilities and these direct admissions. We are of opinion that Suit No. 278 was rightly dismissed and dismiss Appeal No. 163 with costs.

4. The ground upon which it is urged that there was a flaw in the proceedings in the registration of Chandra Bali's document is that it was registered at Benares, and contains in the schedule of properties conveyed a garden in Benares which was not at the time of the execution of the document the property of the transferor. The learned Subordinate Judge does not seem to us to have considered the issue whether as a fact this garden house was in Jeona Bahu's possession at the time of the registration. He finds only that the existence of the garden has been clearly proved and that it was at one time in Jeona Bahu's possession. He considers this finding to be sufficient to ensure the jurisdiction of the office at Benares to register the document. We agree with the finding that the garden was in existence at the time of the registration. We agree also that it was at one time a part of the property of Jeona Bahu, but from the evidence of the witness called by Chandra Bali to prove specifically the possession of Jeona Bahu at the time of registration there can be no doubt that before that registration the properties had passed out of the possession of Jeona Bahu. Damodar Bhardoaji, witness No. 12 for the plaintiffs says that all Bal Kishen's properties in Benares were sold off before he attained discretion. His age is now 42.

5. We do not understand the decision in *Harendra Lal Roy Chowdhuri v. Hari Dasi* 26 Debi 23 Ind. Cas. 687 : 19 C.L.J. 484 : 18 C.W.N. 817 : 1 L.W. 1050 : 16 Bom. L.R. 400 : 12 A.L.J. 774 : (1914) M.W.N. 462 : 16 M.L.T. 6 : 27 M.L.J. 80 : 41 C. 972 (P.C.) to be authority for the proposition that a flaw in the vendor's title in the only part of the property in the jurisdiction of the Benares office would be a bar to its registration there. The decision was based on the finding that the only property purporting to give the Registrar jurisdiction had no existence at all. The decision in *Broja Gopal Mukherjee v. Abinash Chandra Biswas* 5 Ind. Cas. 127 : 14 C.W.N. 532 is direct authority for the proposition that in the absence of fraud on the part of the transferee, and collusion between transferor and transferee, the mere fact that the transferor had no title would not be a bar to the Registrar's jurisdiction. With this decision we are in agreement. There is nothing to indicate any fraud on the part of Chandra Bali, or collusion between her and Jeona Bahu to deceive the Registrar. We therefore, hold that Suit No. 276 was rightly decreed and that Appeal No. 141 should be dismissed with costs.