
(2003) 09 PAT CK 0005
In the Patna High Court
Case No : Second Appeal No. 465 of 1988

Nand Lal Rai and Another	Vs	APPELLANT
Ram Kali Devi and Others		RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Citation : (2003) 4 PLJR 602

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : H.P. Singh and Arbind Kumar, for the Appellant; Chittaranjan Sinha and Md. Fuiz Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This appeal has been preferred by above named Defendants of Title Suit No. 61/71 against the judgment and Decree passed in favour of the Plaintiff-Respondents in Title Appeal No. 18/21 of 1978/1982 passed by the Second Additional District Judge, Vaishali at Hajipur.

2. The original suit was filed by the Plaintiffs-Respondents against the Defendant 1st party who are now Respondents second party in this appeal for specific performance of the oral contract dated 10.5.1971 entered into between the Plaintiff and the Defendant second party orally for sale of the suit land for a consideration of Rs. 4,000/- and an amount of Rs. 500/- has been taken as advance. But soon after that agreement was arrived at, the Defendant 1st party i.e. Respondent Second party had sold away the suit land to the Defendant Second party who are now the Appellants, on 19.6.1971 by a registered sale-deed for a consideration of Rs. 13,000/-. According to the Plaintiff, such purchase by the Defendant Second party was with knowledge of the agreement of sale and also without consideration and as such they are not bonafide purchasers.

3. The suit was contested by the Defendant Second party alone. Although, there was little scope of the Defendant Second party to challenge the oral agreement

between the Plaintiff and the Defendant 1st party but that was being vehemently challenged. But one was oral evidence and also Ext. 5 the application by which the Defendant 1st party had prayed for permission of sale of the suit land to the Plaintiffs-Respondents before the Consolidation Authority was exhibited. On the basis of that oral evidence and the contents of Ext. 5 it was held by the trial court that there was oral agreement between the parties. In respect of the knowledge of the Defendant Second party by relying on the evidence of D.W. 8 who happens to be the son of the original Defendant Second party and also on D.W. 9 it was held that the Defendant Second party are the genuine purchasers for value with consideration without the knowledge of the oral agreement.

4. An appeal was filed before the Appellate court and at the time of hearing of the argument it was felt by the Presiding Officer of the Appellate court that the signature of Ext. 5 requires to be verified with the admitted signature of the Defendant 1st party through an expert and as such evidence was taken to that effect and then it was held by confirming the trial court's judgment that there was oral agreement between the Plaintiff and the Defendant 1st party regarding the sale of the property on 19.6.1971. Then, on the second point regarding the knowledge of the Defendant Second party and purchasing the property on consideration, it was held by the Appellate court that the consideration was passed between the Defendant First party and the Defendant Second party while executing the sale deed dated 19.6.1971, but then it was held that the lower court committed error in not considering the knowledge part and hence he had considered the oral evidence on record of P.Ws. 5, 10 and 11 who were present at the time of the oral agreement and who had deposed categorically that the Defendant Second party was present at the time of such oral agreement and their evidence could not be disallowed in any way whatsoever and hence held that "the Plaintiff's case has been proved and decree has been granted in favour of the Plaintiff by the impugned Appellate court's judgment.

5. In the Second appeal while admitting the appeal vide order dated 21.8.1989 the following substantial questions of law were framed:

whether the court of appeal below erred in law in dismissing the appeal without specifically setting aside the findings recorded by the trial court which were to the effect that the Appellant was a purchaser for value without notice of the agreement between the Plaintiff and Defendant 1st party?

In short, the substantial question of law is that whether the Appellate court's holding of knowledge of the Defendant Second party without considering the reasons given by the trial court in this respect is correct or not.

6. Some salient points are required to be noted in this matter. The Defendant Second party i.e. the Appellants in their written statements had nowhere stated that they had no knowledge about the agreement arrived at between the Plaintiff and the Defendant Second party. Only denial evidence has been recorded from the side of the Defendant Second party. But from the Plaintiff's side positive

evidence has been adduced by adducing evidence of P.Ws. 5, 10 and 11. They have categorically stated that Defendant Second party was present at the time of oral agreement being made between the Plaintiff and the Defendant 1st party. Very peculiarly, those evidences of P.Ws. 5, 10 and 11 had not been considered by the original court i.e. the trial court while considering the knowledge of the Defendant Second party. In that way, when knowledge of the Defendant Second party had not been considered in its proper perspective by discussing the evidence of the relevant witnesses on this point, the trial court definitely committed error and that has been categorically stated by the Appellate court in its impugned judgment. When an evidence on a vital point has not been considered by the First fact finding court, then definitely the First Appellate court who is the last fact finding court must consider that point as the evidence is already available on record.

7. Before this Court the learned Counsel for the Appellants tried to take me to the admissibility of evidence etc. regarding the oral agreement. But both the courts below have concurrently found on the evidence on record and the Appellate court by himself bringing some more evidence as additional evidence without being prejudiced or being objected to, from the side of the Defendants-Appellants, then there is no scope of the Second Appellate Court to enter into such concurrent findings of the courts below. But regarding the knowledge there is finding of reversal. Without discussing the evidence already on record the trial court has held that the Defendant Second party is a bonafide purchaser for value without knowledge. Regarding the purchase by the Defendant Second party with consideration has been found by the Appellate court also but regarding the knowledge reversal had to be made on consideration of the overwhelming evidence of P.Ws. 5, 10 and 11.

8. The Appellate court has done its duty cast on it in correcting the errors made by the trial court and in that way it can not be said that the Appellate court has not met with the reasonings given by the trial court in arriving at a reversal finding. The evidence of P.Ws. 5, 10 and 11 regarding the presence of the Defendant Second party at the time of oral agreement could not be dis-lodged by in cross-examination from the side of the Defendant Second party i.e. the Appellants and the Appellate court definitely did not commit any error in reversing the trial court's judgment as the same was done only as correcting measure by the Appellate court which is the final fact finding court.

9. From the discussions made above, I do not find that the Appellate court has committed any error in reversing the finding of the trial court in respect of the knowledge and hence the decree granted in favour of the Plaintiffs-Respondents can not be said to be illegal in any way whatsoever. Thus, I do not find any force in this Second Appeal and the same is dismissed. But in the circumstances of the case, there will be no order as to costs.