

(2018) 02 OHC CK 0031

In the Orissa High Court

Case No : 251 of 1990

Padmalochan Mohapatra

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Citation : (2018) 02 OHC CK 0031

Hon'ble Judges : A.K.Rath

Bench : Single Bench

Advocate : Surojit Mohanta, H.K. Behera

Judgement

1. This appeal is by the plaintiff. The suit was for declaration that the sale deed bearing no.3300 dated 20.07.1967 executed by the plaintiff in

favour of the defendant no.2 is void, delivery of possession, correction of R.O.R. and mesne profit.

2. The case of the plaintiff was that he was owner of a bus. He sustained a loss in business. Defendant nos.2 to 4 were money lenders. He took a

loan of Rs.3,000/- with interest @ 30% per annum from defendants 2 to 4. As per practice in the locality, the debtor used to execute the sale

deed and deliver possession of the land. He executed a nominal sale deed on 20.07.67 for security of the loan in favour of the defendant. No

consideration was paid. The market value of the suit property was more than Rs.12,000/- in the year 1967. The same is a mortgage deed. The

defendant nos.2 to 4 being in possession of the land for more than twelve years, the mortgage was discharged as per provisions of the Orissa

(Schedule Areas) Money Lending Regulation, 1976. The defendants recorded their names in the Settlement R.O.R. published in the year 1978.

With this factual scenario, he instituted the suit seeking the relief mentioned supra.

3. The defendant nos.2 to 4 entered contest and filed a written statement pleading, inter alia, that they did not carry on money lending business.

The plaintiff sold the property to them for legal necessity. There was partition of the properties between the defendants. The land had been

separately recorded in their names in the Settlement R.O.R. They are in possession of the land.

4. Stemming on the pleadings of the parties, learned trial court struck five issues. Parties led evidence, both oral and documentary, to substantiate

their cases. Learned trial court came to hold that the deed dated 20.7.1967 vide Ext.A executed by the plaintiff in favour of defendant no.2 is a

sale deed. Held so, it dismissed the suit. The unsuccessful plaintiff challenged the judgment and decree before the learned District Judge,

Mayurbhanj, Baripada in T.S. No. 06 of 1987, which was eventually dismissed.

5. The appeal was admitted on the following substantial question of law:-
""Whether there is out and outsale as claimed by the plaintiff ?

6. Mr. Surojit Mohanta, learned Advocate for the appellant submits that the specific stand of the plaintiff is that the deed in question vide Ext.1 was

executed in favour of the creditor who would enjoy the mortgage property till the satisfaction of the loan amount with interest thereon after which,

the sale deed would be returned. Ext.1 is mortgage by conditional sale. Learned appellate court has failed to consider the evidence of P.W.2.

P.W.2 deposed that it was agreed upon between the parties that after payment of principal loan amount with interest, defendant nos.2 to 4 would

return the suit land and document. The findings of both the courts below are perverse. He further submits that the learned courts below have failed

to consider the report dated 14.07.76 vide Ext.6 submitted by the S.D.O., Baripada to the Collector, Mayurbhanj stating therein that the

impugned deed is a mortgage deed.

7. Per contra, Mr. H.K. Behera, learned Advocate on behalf of Mr. S.D. Das, learned Senior Advocate for the respondent nos. 2 to 4 submits

that the Ext.1 is an out and out sale.

8. In Gadadhar Mohanty vs. Gangadhar Mohanty and others, 1972 (I) CWR 504, this Court held:-

8. xxx xxx xxx No doubt, there seems to be some divergence of opinion in construing Sec.92, but the matter seems to have been settled by the pronouncement of the Privy Council in the decision reported in A.I.R. 1936 P.C. 70 (Tyagaraja-v-Vedathanni). Among others, the following principles can be deduced from the observations in the aforementioned decision and they are (1) oral evidence is admissible to show that a signed document was not to operate as it purports to be until a specified condition is fulfilled and (2) oral evidence is admissible to prove that the document was never intended to operate as one which it purports to be but was brought about into existence solely with the object of creating evidence of some other matter. In the course of the judgment, their Lordships further observed that even if proviso (1) did not exist, there is nothing either in Sec.91 or 92 to exclude oral evidence to show that there was no agreement between the parties, and therefore, no valid contract as per the terms embodied therein. In this case, execution of Ext.A purporting to be a sale deed is admitted, but plaintiff asserted that parties had agreed at the time of execution of Ext.A that it was not to operate as a sale in accordance with the terms contained therein, but was intended only to operate as something else, i.e. as a security for the loan. In other words, it was intended to be evidence of a matter different from what its terms purport to contain. On the authority of the principles laid down in the aforementioned Privy Council decision, in my opinion, such oral evidence is admissible not for the purpose of varying, contradicting or subtracting from the terms of the contract, but only to show that the document was created for some other purpose. The terms of the document are not sought to be relied upon to prove that it was intended to serve as a security. On the other hand, the oral evidence has been adduced to show that the transaction evidenced by Ext.A. was not intended to be a real transaction of sale which it purports to be, but was intended only as evidencing a security for the loan. This principle has been followed in two decisions of this Court-one reported in I.L.R. 1966, Cuttack, 236 and a recent judgment in S.A. No. 486 of 1965 disposed of on 16.12.69. xxx xxx xxx.

9. In Umakanta Das and another v. Pradip Kumar Ray and others, 61 (1986) CLT 480, this Court held that if the term in the sale deed is not ambiguous, then any external aid to find out the true intention of the parties cannot be availed of and the narration in the document would be the

sole determining feature.

10. On a bare perusal of the deed dated 20.07.1967 vide Ext.1, it is evident that the same was executed by Padmalochan Mohapatra-plaintiff in

favour of Kartika Chandra Patra-defendant no.2 for a consideration of Rs.3,000/-. Recitals of the deed show that the plaintiff had received the

consideration amount. Possession of land was duly delivered to defendant nos.2 to 4. Both the courts below concurrently held that Ext.1 is an out

and out sale. There is no perversity on the findings of the courts below. The substantial question of law is answered accordingly.

11. In the wake of the aforesaid, the appeal sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to

costs.