

(1945) 12 PAT CK 0004
In the Patna High Court

Pirtam Singh and Others

APPELLANT

Vs

Jagannath Sarawgi and Others

RESPONDENT

Date of Decision : 07-12-1945

Acts Referred:

Citation : AIR 1947 Patna 1

Hon'ble Judges : Fazl Ali, C.J;Manohar Lall, J

Bench : Full Bench

Judgement

Fazl Ali C.J.

1. The only point which arises in this appeal relates to the construction of a sale-deed executed by the husband of defendant No. 2 in favour of the plaintiff on 23rd December 1938. It appears that on the date of the execution of the deed only a part of the consideration money was paid. The deed was registered on the 6th January 1939 and after the exchange of some correspondence between the plaintiff and the husband of defendant No. 2 as to the payment of the balance of the consideration the latter executed another sale deed in favour of defendant No. 3 on 20th February 1939. After that the plaintiff brought a suit for a declaration of his title under the sale deed of 23rd December 1938, and for possession of the lands which were the subject of that deed.

2. The suit was resisted by the defendants and they alleged that the intention of the parties was that the sale deed should come into operation only on the payment of the entire consideration money, and as the entire consideration money was not paid, the title did not pass to the plaintiffs.

3. In the first two Courts one of the questions raised was as to what was the extent of the land sold in favour of the plaintiffs and the lower appellate Court ultimately held that this land was 1.16 acres and granted a decree to the plaintiffs in respect of that area. This decree has been upheld by the learned single Judge of this Court and hence this appeal under the Letters Patent.

4. As I have already stated, the question which arises in this case can be

determined only with reference to the sale deed executed in favour of the plaintiffs. The learned single Judge has held that upon the language of that deed the title passed to the plaintiff upon its execution. In my opinion that view is correct. It is stated in the sale deed among other things that

whatever interest the executant had, had passed by transfer to the claimant from this day forward and that he and his heirs shall not in future be competent to lay any claim whatsoever to the vended property or any part thereof and should they do so, the same shall be deemed to be null and void.

5. In my opinion these words clearly support the conclusion arrived at by the learned single Judge. Before him reliance was placed on behalf of the defendants upon another part of the document which contained the following recital:

As per recitals made above on receipt of Rs. 1000 the entire consideration money covered by this deed I have of my own accord and free will executed this deed of absolute sale, so that it may be of use when required.

6. It was contended that though there is a recital to the effect that the entire consideration had already been paid, yet in fact only a part of the consideration had been paid and therefore it should be inferred that the title was not intended to pass until the entire consideration was paid. This argument was negatived and the learned Judge pointed out that even if it was held that the deed was ambiguous, a certain agreement which was admittedly entered into between the parties would show that the title was intended to pass upon the execution of the sale deed. In my opinion the learned single Judge has taken the correct view in this case and I would dismiss this appeal with costs.

Manohar Lall, J.

7. I agree.