

(2003) 09 PAT CK 0087

In the Patna High Court

Case No : Appeal From the Appellate Decree No. 204 of 1989

Prabhu Nath Sah @ Prabhu Nath Prasad and Others

APPELLANT

Vs

Siya Ram Sah and Another

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100(6), 103
Specific Relief Act, 1963 — Section 16

Citation : (2003) 3 BLJR 2104 : (2004) 2 PLJR 129

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

Bench : Single Bench

Advocate : Kalyan Kumar Ghosh and Prithiviraj Gupta, for the Appellant;
Yogendra Pd. Sinha, for Respondent No.1 and Rakesh Ambastha, for the
Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This appeal has been preferred by the defendants of Title Suit No. 86 of 1973 against the judgment and decree passed by the Munsif, East Court, Sitamarhi, in the abovementioned Title Suit and also being confirmed by the 1st Additional District Judge, Sitamarhi, in Title Appeal No. 7/23 of 1985/88.

2. The suit was a simple suit for specific performance of contract on the basis of a Mahadanama dated 18-3-1973 which was an unregistered one being executed by defendant No. 1 in favour of the original plaintiff Ram Chandra Prasad. They were brothers. It is the case of the plaintiff that as the defendant No. 1 his brother became indebted for payment on the basis of a hand note and on other expenses for treatment towards ailment, he made a proposal to sell the suit land to the original plaintiff for a sum of Rs. 3,500/- out of which payments have been made towards the consideration amount from the side of the plaintiff Rs. 2,041/- and it was promised that on payment of balance amount the sale-deed would be executed in favour of the plaintiff. But when the plaintiff made a demand for execution of the sale-deed in his favour by taking balance amount then it could

be found that the defendant-1st set has surreptitiously sold the lands to defendants-2nd set who are the appellants in the case. It is the case of the plaintiff that such sale-deed is without any consideration and a transaction as the defendants-2nd set were in full knowledge of the Mahadanama being executed in favour of the plaintiff and the defendants-1st set. In such a position the plaintiff had no other alternative but to file the present suit for getting part performance from the defendants and also for possession and mesne profits.

3. The defendants-2nd set-appellant had only contested the suit. They have challenged the Mahadanama itself to be a forged and fabricated document and an antedated one only to defraud the defendants-2nd set who are the purchasers of the suit property. Both parties adduced evidence in large numbers. Regarding payment of indebted hand note story has also been put from the side of the plaintiff. Regarding the knowledge of the defendants also there appeared from the evidence of the defendant himself that he was in the know of the Mahadanama itself. The suit was thus decreed.

4. On appeal being preferred by the defendants-appellants the decree granted by the trial Court has been affirmed on reappreciating the evidence and the materials on record. While admitting this appeal a Bench of this Court vide order dated 5-9-1990 had formulated the following substantial questions of law:--

(1) Whether when the plaintiffs never offered to pay the balance consideration money in Court before the decree, the Court should have held that the suit for specific performance or contract was not maintainable ?

(2) Whether the Courts below were right in holding that the Mahadanama is a spurious document executed by one brother in favour of another brother to defraud defendant No. 2 ?

(3) Whether the Courts below were right in holding that the defendants were not bonafide purchasers for value without notice of the alleged deed of Mahadanama in favour of the plaintiffs ?

(4) Whether the finding of the learned lower appellate Court to the effect that the two registered sale-deeds were without any consideration was correct specially when the vendor himself had admitted receiving the consideration money?

5. Mr. Kalyan Ghosh, learned advocate appearing for and on behalf of the appellants has strenuously argued that the learned appellate Court had not considered the evidence of the individual witnesses particularly cross-examination while believing the witnesses of the plaintiffs and disbelieving the witnesses of the defendants and for that reason he filed more grounds for substantial questions of law.

6. I do not find any scope to allow such prayer as contemplated u/s 100(6) and Section 103 of the Code of Civil Procedure. On closed scrutiny of the judgments of the Courts below it could be found that both the Courts below have

independently scrutinise the evidence of both the parties and then came to the concurrent findings. In that way, this Court being the Court of law, there is no scope to re-appreciate the evidence unless it could be shown specifically that there is any perversity in the decision in not considering any particular portion of evidence but unfortunately nothing could be shown although the evidence of the witnesses have been read before this Court by the learned counsel for the appellant. In support of the contention of the learned counsel for the appellants he has referred to some observation of the Apex Court as reported in 1973(SC) 1367 (Union of India v. Harnam Singh) wherein it was held that if it is clearly established that genuine bonafide mistake is there then the Court can reappreciate it although there is no scope so. I have already mentioned that evidences have been read before this Court and it could not be shown that any perverse decision has been arrived at or any bonafide mistake has been committed by any of the Courts below in appreciating the evidence of both the parties.

7. The first substantial question of law claimed practically have got no force in view of the fact that there is no necessity of the plaintiff to offer money at the time of filing of the suit rather he has to give a declaration as required u/s 16(c) of the Specific Relief Act regarding his willingness and readiness for part performance. It appears that in the plaint at the very first instance such sort of statement was not there but by amendment such statement was allowed to be incorporated in the plaint on payment of cost from the side of the plaintiff. In that way, that question of law becomes redundant.

8. The second substantial question of law is totally on factual aspect. When there is concurrent findings by both the Courts below regarding the genuinity of the Mahadanama and when the Mahadanama could not be proved to be a spurious document from the side of the contesting defendants, there was no scope for holding such a fact against the plaintiffs rather on consideration of the evidence and the background on which the Mahadanama was executed, it could be well established that defendant No. 1 was in genuine need of money which necessitated him to execute the Mahadanama for the purpose of selling his land to come out from his indebtedness and also for treatment of his ailment. In that way, the second substantial question of law framed is based on factual aspect alone. There is no scope to enter into such concurrent findings of the Courts below. The third question of law framed is also totally a fact oriented question. It was held that original defendant-appellant was in the knowledge of the Mahadanama and then he had purchased the property and in that way, he cannot be said to be bonafide purchaser for value without notice and this factual aspect had been examined and held in favour of the plaintiff by the Courts below.

9. The fourth question of law is also a fact oriented one. Only because mentioning of payment of consideration money in the two documents by which purchase has been made from the side of the appellants it cannot be said that consideration money had already been passed rather the Courts below had held

that in this respect defendant No. 1 can be the best person to be adduced as an witness for the purpose of proof that he had received consideration amount.

10. When on factual aspect on which practically the substantial questions of law have been framed, although in my view, these are not purely substantial questions of law rather fact oriented question but still then on close scrutiny of the judgments of the Courts below and also on consideration of the materials on record, I find that the appellants have got no case and hence, this appeal is dismissed with costs.