
(1997) 09 PAT CK 0046

In the Patna High Court

Case No : Appeal from Original Decree No. 127 of 1981

Ramashiray Singh @ Ramashray Prasad Singh and Others

APPELLANT

Vs

Gangotry Prasad Singh and Others

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : (1998) 1 BLJR 405

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—One Bachai Singh of village Khalispur, District Samastipur had two sons, Banwari Singh and Shyambihari Singh. Banwari Singh left behind two sons, Siya Singh, defendant No. 1 and Ram Subhag Singh, who died leaving behind his widow, Lalita Devi, two sons, Ram Ashray Singh and Hari Shankar Singh and a daughter, Vaidehi Devi, the defendants 2 to 5. Shyambihari Singh died issueless leaving behind his widow, Mostt. Mahtab Kuer.

2. The plaintiff-respondent No. 1 claimed that the two sons of Buchai Singh were separate and on 3.11.1973, Mostt. Mahtab Devi executed a Mahdanama (Ext. 3) in his favour of sale 2 bighas 9 kathas and 11 dhurs land detailed therein for a consideration of Rs. 20,000.00. He paid Rs. 15,000.00 as advance and the balance amount of Rs. 5000.00 was to be paid at the item of execution of the sale deed in the first week of January, 1974. She was required to sell the land to raise fund for performing Ekadashi Udyapan and Chaturdashi Nistar Yagya as well as pilgrimage to Varanashi, Ayodhya, Brindavan etc. The agreement for sale was scribed by Satyanarain Singh (P.W. 15) and after being acquainted with the contents thereof, Mostt. Mahtab Devi put her L.T.I., and executed the said deed in the pen of Deonandan Singh (P.W. 9) and two witnesses, Ram Udgar Singh (P.W. 13) and one Kailash Singh.

3. The plaintiff further pleaded that after performing the aforesaid Upapan and Nistar Yagya, she left for pilgrimage and after she came back in January, 1974, she was offered the balance amount and was requested to execute the sale deed, but she avoided. The plaintiff served as Advocate's notice dated 24.1.1974 (Ext. 1) on her demanding performance of contract, which was replied by her on 30.1.1974. In reply she repudiated the aforesaid contract altogether and stated that on 10.12.1973, she had already gifted 1 bigha 3 katha land out of the suit land to the defendant No. 5 vide Ext. B and the rest of the suit land were gifted to defendants 2 to 4. She died on 27.4.1974 and her estate was succeeded by the defendant No. 1. The defendants too did not receive the balance consideration amount and refused to execute sale deed in terms of the contract (Ext. 3). Hence the suit was filed.

4. The plaintiff was all along ready to perform his part of contract, but Mostt. Mahtab Devi, in her life time and the defendants after her death dishonestly and illegally refused to take the balance amount and execute the sale deed.

5. The defendant Nos. 2 and 5 filed separate written statements. According to them Mostt. Mahtab Devi neither intended to perform nor performed Udyapan or Nistar Yagya as alleged nor ever went on pilgrimage to any where, nor negotiated to sell the suit lands to the plaintiff, nor executed any Mahdanma after receiving a sum of Rs. 15,000.00 in advance out of the total Rs. 20,000.00 consideration amount therefor. She was living with the defendants, who used to look after her cultivation work. On 10.12.1973 she gifted her lands and put the defendants in physical possession thereof. The plaintiff neither had/has any concern therewith nor ever came in possession thereof. During the suit on 19.8.1978 the defendants 2 and 3 sold five kathas of the suit land to one Abdul Manna (D.W. 9) vide Ext. A.

6. P.Ws. 1, 2, 3, 8, 10, 11 and 23 deposed about performance of Ekadashi Pdayapan and Chaturdashi Nistar by Mostt. Mahtab Devi. Further P.Ws. 2, 7, 8, 10, 11 and 27, the plaintiff himself stated that Mostt. Mahtab Devi had gone on pilgrimage. On the other hand, D.Ws. 1, 3, 5, 7, 8, 10, 11, 12 and 13 deposed in negative to the effect that neither she performed Udyapan/Nistar nor went on pilgrimage.

7. So far as the execution of the agreement for sale (Ext. 3) was concerned, in reply to the plaintiff's notice (Ext. 1) Mostt. Mahtab Devi, who was then alive, denied it. In the suit P.Ws. 1, 8, 9, 11, 13, 15, 25, 26 and 27 were examined in support of the negotiation for sale and execution of Madhanama therefor. The contesting defendants examined D.W. 16, a private expert, who had compared the L.T.I., of Mostt. Mahtab Devi on the Ext. 3 with her L.T.I., on the deed of gift (Ext. B), but since the said deed of gift was not an admitted document and so the report (Ext. C) was of no help. P.W. 25, a government expert of C.I.D. of the State proved the report (Ext. 5) of five experts and the Director of Finger Prints Bureau. This report was made on comparison of the L.T.I., on Ext. 3 with her admitted L.T.I., in the T.I. register of the registration office taken in connection

with execution and registration of a Bharna deed, dated 18.10.1972 in favour of one Bateshwar Rai. It was done with the permission of the Court, The said report shows that L.T.I., on Ext. 3 was of Mostt. Mahtab Devi.

8. On the point of possession of the suit land the plaintiff examined P.Ws. 6, 8, 9, 12, 13, 19, 20, 21 and 22, besides himself as P.W. 27 and D.Ws 8, 9, 11 and 13 were examined by the contesting defendants, besides one of the defendants (defendant No. 2) himself as D.W. 14.

9. In order to substantiate valuation of the suit land as given in Ext. 3 the plaintiff brought on record Ext. 4 series, the sale deeds in respect of the lands sold in the vicinity and examined P.Ws. 12, 13, 16, 21 and 22. The suit lands were Dhanhar and were prone to floods.

10. Mr. Sheodayal Singh, counsel for the appellants submitted that the burden of proof was upon the plaintiff to prove that Mostt. Mahtab Devi, who was a pardanashim lady had entered into the agreement (Ext. 3) after clearly understanding the nature of the transaction. It was required to be established by the plaintiff that it was not only her physical act but also her mental etc. Such burden was not fully discharged only by proving that the document was explained to her and that she understood it but also by other evidence, direct and circumstantial, which are lacking in the present case. None of the plaintiff's witnesses stated that Mostt. Mahtab Devi had affixed her L.T.I., on Ext, 3 in his presence and since possession was said to have been delivered to the plaintiff, registration of such agreement u/s 54 of the Transfer of Property Act was must. There is no evidence on record that she understood the contents of the alleged agreement and then put her L.T.I., thereon. Execution of Ext. 3 was therefore not properly proved and only contents part thereof was marked as Exhibit.

11. On the other hand, Mr. Binod Kumar Singh, counsel for the respondent No. 1 submitted that there was no pleading that Mostt. Mahtab Devi was an illeterate or a pardanashin lady. According to the contesting defendants she was a simple lady. It has also not been pleaded that she executed Ext. 3 without being explained the contents thereof to her and/or without understanding the contents. Execution of Bharna deed by her in October, 1973 established that she was in need of fund. It was further submitted that the evidence of P.W. 9 para 4: P.W. 13, para 5 and P.W. 15 para 10 show that the contesting defendants, in whose favour deeds of gifts were executed, had knowledge of the Mahadnama in question.

12. After hearing the parties at length and perusing the pleadings and evidence both oral and documentary of the parties I find that the plaintiff successfully proved that Mostt. Mahtab Devi required fund and on finalisation of negotiation with the plaintiff, she had executed agreement for sale (Ext. 3) in his favour. The plaintiff was always ready and willing to perform his part of the contract. In reply to the plaintiff's notice (Ext. 1) Mostt, Mahtab Devi appears to have denied execution of Mahdanama under undue pressure of the defendants.

13. I further find that the finger print expert found that the L.T.I., on Ext. 3 tallied with the L.T.I., on the T.I. register affixed by the said Mostt. Mahtab Devi in connection with execution of admitted Bharna deed dated 18.10.1973. There is no reason to disbelieve this report and in view of this report Ext. 5, the denial of execution of Mahdanama Ext. 3 by Mostt. Mahtab Devi and the contesting defendants become redundant.

14. The plaintiff, in my opinion, succeeded improving that valuation of the suit land as given in Ext. 3 was in accordance with the market rate and she was in need of money at the relevant time. Only about two months earlier she had executed a Bharna deed in favour of one Baleshwar Rai to raise money for her purposes.

15. It cannot be ruled out that she was an old and infirm widow and was living with the defendants 1 to 3 inspite of having executed a deed of agreement for sale in favour of the plaintiff, she might have been compelled to execute a deed of gift in favour of the defendants 1 to 5. But without going into this aspect of the matter in this appeal wherein I have to decide only the genuineness of Ext. 3 and performance of the contract agreed to therein, in view of the aforesaid circumstances, I find that the defendants concerned are liable to perform their part in respect of the agreement for sale, Ext. 3.

16. The impugned judgment and decree under appeal are confirmed. In the result, the appeal fails and is dismissed but without costs.