

(2012) 07 PAT CK 0023
In the Patna High Court
Case No : Second Appeal No. 320 of 2010

Sri Ram Lal Mandal and Others	Vs	APPELLANT
Sri Satya Narayan Mandal and Others		RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : AIR 2012 Patna 189 : (2013) 1 PLJR 701

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Abbas Haider, for the Appellant;

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—Heard the learned counsel, Mr. Abbash Haider and the learned counsel, Mr. Chaudhary Shyam Nandan on behalf of the respondent. This second appeal has been filed by the plaintiffs-respondents-appellants against the judgment and decree dated 6.4.2010 passed by Sri Ganga Sharan Ram Tripathi, Addl. District Judge, Fast Track Court No. 1, Araria in Title Appeal No. 24 of 1993 allowing the appeal and thereby reversing the judgment of the trial Court passed by Subordinate Judge-I, Araria in Title Suit No. 54 of 1985 dated 3.4.1993.

2. The plaintiff-appellant filed title suit No. 54 of 1985 for declaration that the 4 cancellation deeds executed and registered on 22nd March, 1985 with respect to 4 sale deeds dated 16th March, 1985 and subsequent sale deeds in favour of defendant Nos. 2 and 3 and 6 to 11 are illegal, collusive and inoperative and are of no consequence and not binding on the plaintiff. Further, the plaintiff prayed for declaration of title and confirmation of possession and in the alternative for recovery of possession.

3. The plaintiff's claimed the aforesaid relief alleging that the suit land belong to defendant 1st party. He sold the suit property by executing 4 sale deeds with respect to 36 decimals land in each sale deed for sum of Rs. 6,000/- each total

Rs. 24,000/-. One sale deed was executed in favor of plaintiff No. 1 and the other sale deeds were executed in favour of plaintiff Nos. 2 to 4 in the names of their wives who are plaintiff Nos. 5 to 7. It was agreed that plaintiff will pay Rs. 6,000/- at the time of registration and remaining amount will be paid by the plaintiffs at their residence and defendant will handover chirkut i.e., receipt of registration of sale deed. Accordingly, the plaintiff paid Rs. 6,000/- to the defendant 1st party on 16.3.85 but the chirkut was not given to him on one pretext or the other. On 18th March, 1985 the plaintiff paid the remaining amount of Rs. 18,000/- to the defendant 1st party and demanded chirkut of all the 4 sale deeds but the defendant 1st party avoided again. Lastly, on 23rd March, 1985, the defendant 1st party refused to handover the chirkut and then plaintiff came to know that the defendant 1st party has cancelled the sale deeds by executing 4 cancellation deeds and further sold the suit property in favour of the defendant-2nd party by executing registered sale deed on 22nd March, 1985. According to the plaintiffs, the said sale deed is without consideration.

4. The defendants appeared and contested the suit alleging that the plaintiff never paid the remaining consideration amount of Rs. 18,000/- and, therefore, title did not pass. The defendants approached the plaintiff several times and demanded the remaining consideration money but the plaintiff went on putting of the matter therefore, the defendant 1st party who was in dire need of money cancelled the sale deeds and sold the property to the defendant 2nd party.

5. After trial, the trial Court came to the conclusion that the plaintiff has not paid Rs. 18,000/- consideration amount but held that on payment of Rs. 18,000/- i.e., remaining consideration amount to the defendant No. 1, title will pass to the plaintiff and, therefore, with that direction, the suit was decreed. The defendant filed appeal. The appellate Court held that since the consideration amount of Rs. 18,000/- which was with respect to 3 sale deeds have not been paid, no title passed regarding the property covered by the 3 sale deeds. The appellate Court also held that so far one sale deed is concerned, Rs. 6,000/- entire consideration amount has been paid, therefore, title passed. Accordingly, the appellate Court allowed the appeal and modified the trial Court Judgment and Decree.

6. The learned counsel for the appellant submitted that it was agreed between the parties that only one sale deed will be executed for the entire 1.44 acres of land but because the stamps were not available, therefore, 4 sale deeds were executed. The plaintiff has already paid the rest of the consideration amount of Rs. 18,000/- as per decree of the trial Court. The learned counsel further submitted that according to the provision as contained in Section 54 of the Transfer of Property Act, title passed as soon as deed of sale was registered. The learned counsel further submitted that unilaterally the defendant 1st party could not have cancelled sale deeds which were legal, valid and for consideration because on the execution and registration of the sale deed in favour of the plaintiffs, title had already been passed to the plaintiffs and on the date of cancellation, the defendant 1st party had no title or concern with the property.

Therefore, the cancellation itself are illegal. Further, the sale deeds executed in favour of the defendant 2nd party will not confer title on them because on the date of execution and registration of the sale deed in favour of the said defendant, the defendant 1st party had no title as such did not convey any title but the learned lower appellate Court has wrongly not considered these aspects of the matter and dismissed the plaintiff's suit. In view of the above submission of the learned counsel according to him the substantial question of law arises for consideration is as to whether on the execution and registration of the sale deed, title passed on the plaintiffs even though part consideration was paid but subsequently the consideration was paid as directed by the trial Court.

7. On the other hand, the learned counsel for the respondent submitted that the trial Court as well as appellate Court both found that Rs. 18,000/- consideration amount was deposited in the Court by Challan. The learned counsel further submitted that Rs. 24,000/- was the consideration amount agreed to be paid by the plaintiffs but only Rs. 6,000/- was paid and in spite of repeated demand by the defendant 1st party, the rest amount was not paid and, therefore, defendant 1st party who was in need of money had no option but to cancel the sale deeds and transfer the same in favour of defendant Nos. 2 and 3 to raise funds. According to the learned counsel on mere registration of the sale deed, title will not pass if the intention of the parties is to the effect that title will pass only after payment of full consideration amount and in this case the conduct shows that the intention of the parties was that title will pass only after payment of full consideration amount. In such view of the matter, the substantial question raised by the learned counsel for the appellant is not at all substantial question of law.

8. From perusal of the lower appellate Court judgment, it appears that after considering the materials available on record, the lower appellate Court has categorically recorded that Rs. 18,000/- was not paid, it is admitted by the appellant that chirkut i.e., receipt of registered sale deed and registered sale deed was not in possession of the plaintiff. Both the Courts below recorded a finding that the plaintiffs are not in possession of the suit property.

9. In the case of Janak Dulari Devi and Another Vs. Kapildeo Rai and Another, , the Apex Court considering the case of similar nature held that:--

as per practice of ta khubzul badlain prevalent in Bihar (that is, title to the property passing to the purchaser only when there is exchange of equivalents), where a sale deed recites that the entire sale consideration has been paid and possession has been delivered, but the registration receipt is retained by the vendor and possession of the property is also retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the registration receipt is obtained by the purchaser in exchange. In such cases, on the sale deed being executed and registered, the registration receipt (which is issued by the Sub-Registrar) authorizing the holder thereof to receive the registered sale deed on completion

of the registration formalities, is received and retained by the vendor and is not given to the purchaser. The vendor who holds the registration receipt will either receive the registered document and keep the original sale deed in his custody or may keep the registration receipt without exchanging it for the registered document from the Sub-Registrar, till payment of consideration is made. When the purchaser pays the price (that is, the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession. If the payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration receipt/registered document, as the case may be, which is in his custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale.

The effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the, time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is, ta khubzul badlain.

The practice of ta khubzul badlain (of title passing on exchange of equivalents) is prevalent only in Bihar. Normally, the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The practice of ta khubzul badlain in Bihar recognizes that a duly executed sale deed will not operate as a transfer in praesenti but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents, that is, registration receipt and the sale consideration, if the intention of the parties was that title would pass only on payment of entire sale consideration.

10. As has been stated above in the present case from the facts and circumstances of the case, admittedly, the vendor did not hand over the registration receipt nor hand over possession of the property and the case of the plaintiff that entire amount has been paid has been found to be false, therefore, in my opinion, the lower appellate Court has rightly found that title did not pass on the plaintiff.

11. So far unilateral cancellation of the sale deeds are concerned, it can very well be said that when title did not pass to the plaintiff, they cannot be allowed to say or challenge the legality or otherwise of the cancellation deed. Even if it is held that cancellation itself are illegal then also title will not pass on them. In view of my above discussion and the law laid down by the Apex Court, in my opinion, the points raised by the learned counsel for the appellant has already been answered by the Apex Court. Therefore, the substantial question of law as alleged by the appellant is not at all a substantial question of law as the same has already been

settled by the Apex Court. Therefore, I find no substantial question of law involved in this second appeal and accordingly, this second appeal is dismissed.