
(2012) 03 PAT CK 0081

In the Patna High Court

Case No : Second Appeal No. 450 of 1988

Sri Yogendra Prasad, Mahesh Prasad @ Mahendra Prasad, Sri
Suman Prasad and Usha Devi

APPELLANT

Vs

Samrendra Nath Gupta, Smt. Juli Devi, Smt. Maya Devi and
Veena Devi

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 03 PAT CK 0081

Final Decision : Dismissed

Judgement

Vijayendra Nath, J.—Heard Mr. S.K.Verma, the learned senior counsel appearing on behalf of the appellants and Mr.S.S.Dwivedi, the learned senior counsel appearing on behalf of respondent No. 1.

2. This appeal has been filed against the judgment and decree dated 04.06.1988 passed by Additional District & Sessions Judge, Patna at Barh in T.A.No. 82/86 affirming the judgment and decree dated 21.04.1986 passed by Additional Sub Judge II, Barh in T.S.No. 17/80 by which the suit has been decreed.

3. The plaintiff has filed the suit for declaration of title over the suit properties and for grant of injunction against the defendants from interfering in possession of the plaintiff. The background facts, culled out from the rival cases of the parties, are as follows:

The suit property including the house therein, admittedly belonged to the father of the plaintiff and consists of an area of 5 katha, 1 dhur, 8 dhurki of plot nos.120 & 122. The plaintiff's case is that his father was a doctor having good private practice besides being a Railway doctor and he acquired the suit land and constructed a house over the same. The plaintiff lived in the said house with his father and sister Sati Rani Gupta (defendant No. 6) but later on the plaintiff started living outside in connection with his service. As the father of the plaintiff grew old, the defendant nos. 1 & 2 were appointed to look after him and attend to his requirements. However, gradually the defendants gained the confidence of

the father of the plaintiff and taking advantage of their fiduciary relationship with him, they fraudulently brought into existence a sale deed on 19.08.1967 in favour of Bachi Devi, wife of defendant No. 1, purporting to have been executed by the father of the plaintiff with regard to 10 decimals of land comprised in plot No. 120 and also manufactured a gift deed purporting the same to have been executed by the father of the plaintiff in favour of his daughter Sati Rani Gupta(defendant No. 6) with respect to the land in plot No. 122. The plaintiff asserted that since after the death of his father, he had been in exclusive possession of the suit land and the house standing thereupon and the defendant never came in possession over the suit properties. It is also the case of the plaintiff that his father was above 90 years of age in the year 1967 and had become substantially weak both physically and mentally. The plaintiff has stated that he came to know about the sale deed and gift deed in favour of the defendants only during the criminal proceeding which was started against the defendants at the instance of the plaintiff for committing trespass and theft in the suit premises in the year 1980.

The defendant nos.1 to 5(defendant 1st set) however, have pleaded that both the deeds were executed by the father of the plaintiff consciously and he also accepted the consideration money from the defendants for sale. It is the case of the defendants that they constructed the house after the sale and later on Sati Rani Gupta (defendant No. 6) also sold the property which she obtained by way of gift, to the defendants for consideration and since then the defendants are in possession of the entire suit property.

The defendant No. 6 Sati Rani Gupta, in her written statement, put the blame entirely upon the defendant nos. 1 and 2 for fraudulently fabricating the sale deed and the gift deed. She stated that the defendant nos.1 and 2 on false pretext obtained the signature of her father on the two deeds but the real nature of the deeds did not come to the knowledge of the defendant No. 6 or her father. She further stated that she became aware of the nature of the deeds and the fraud of the defendants only in the year 1972. However, she denied to be in collusion with the defendants in preparation of the deeds in question and supported the case of the plaintiff.

4. The trial court came to the finding that the deeds of sale and gift were not valid and genuine documents and were not binding on the plaintiff who had got right, title and possession over the suit properties. It was also held that the suit was not barred by limitation. The appellate court also concurred with the findings of the trial court and held that the deeds of sale and gift were not genuine documents and were never operative and the plaintiff had been coming in possession over the suit house after the death of his father. The appellate court has also come to the finding that the plaintiff got the knowledge of the deeds in the year 1980 and therefore, the suit was not barred by limitation and accordingly, the appeal was dismissed. This appeal was admitted for hearing on 10.04.1989 on the following substantial question of law:

(i) Whether the finding recorded by the court of appeal below that the sale deed in question was not genuine and the same was fraudulently obtained is sustainable in law as before recording the said finding, the appellate court being the final court of fact, has not taken into consideration, the oral evidence adduced on behalf of the defendants and misread the document of title?

5. In view of the liberty granted to the appellants to raise any other substantial question of law at the time of hearing, the learned senior counsel for the appellants proposed additional substantial questions of law with the prayer that this appeal be heard on those substantial questions of law alone, submitting that the substantial question of law earlier framed was not being pressed.

6. After hearing the learned senior counsel for the appellants, the following substantial questions of law have also been formulated:

(i) Whether the suit is not barred by law of limitation when the full sister (defendant No. 6), who is a co-sharer in the suit property, had admittedly knowledge of the sale deed Ext.-C in 1972 itself, in view of statement in Ext.G/1 (order of 145 Cr.P.C.) and written statement of defendant No. 6, in terms of Section 18 of the Evidence Act, and the finding on the issue of limitation is vitiated for non-consideration of these documents?

(ii) Whether when the suit of one of the co-sharers having become barred by limitation for the relief against a deed, can the other co-sharer maintain a suit for the same relief when that relief is indivisible in nature?

7. The submission of the learned senior counsel for the appellant is that the suit is barred by limitation as provided in Article 58 of the Limitation Act and this issue of limitation has been wrongly decided by both the courts below ignoring the material evidence on record. It has been urged that admittedly, Sati Rani Gupta (defendant No. 6) was the sister of the plaintiff and was residing with the father of the plaintiff in the suit house and in a proceeding u/s 144 Cr.P.C., subsequently converted to 145 Cr.P.C. proceeding in the year 1972, she had filed her show cause contesting the claim of the defendant 1st set on the basis of the sale deed. It has been further pointed out that in her written statement in this suit also, she had accepted to have got the knowledge of the sale deed in the year 1972 itself. It has been contended that the defendant No. 6, in her written statement, has disowned the gift deed in question in her favour, by herself questioning its validity alleging the same to be the fraudulent creation of the defendant nos. 1 & 2, and has entirely supported the case of the plaintiff. On this basis, it has been submitted that the defendant No. 6 was a person jointly interested in the suit properties alongwith the plaintiff and the statement made by her with regard to the knowledge of the sale deed earlier in 1972 is an admission which is imputable to the plaintiff u/s 18(1) of Evidence Act and thus, the suit filed in the year 1980 would clearly be barred by limitation under Article 58 of the Limitation Act. It has further been contended that even otherwise also, in view of the statement of defendant No. 6 as above mentioned, as a suit filed

by her against the sale deed in question would be barred by limitation, the plaintiff, having joint interest with the defendant No. 6, also now cannot maintain the suit for the same relief.

8. Per contra, the learned senior counsel, appearing on behalf of respondent No. 1, has submitted that there has been no statement in the written statement of the defendant No. 6 qualifying to be admission as purported to have been made out by the appellants. It has been further submitted that the plaintiff was not a party to the 145 Cr.P.C. proceeding and the defendant No. 6 had been made party in her individual capacity and therefore, her statement will not be binding on the plaintiff. It has been emphasized that some stray statement cannot be said to be knowledge of a fact unless all the particulars and details of the said fact are said to have been stated. The submission has also been made that the previous statement of a defendant in an earlier proceeding can be used as admission against him but not against the other defendants much less a plaintiff. It has been contended that the suit had been filed well within the period of limitation from the date when the plaintiff got the knowledge of the fraudulent sale deed and gift deed and both the courts below have rightly decided this issue in favour of the plaintiff. Lastly, it has been argued that both the courts below have concurrently found that the sale deed and the gift deed have been fraudulently brought into existence and which finding of fact is binding in this second appeal and as such there is no substance in this appeal.

9. There is no dispute that the suit properties belonged to late Dr. Surendra Nath Gupta who was the father of the plaintiff as well as the defendant nos.6 & 7. From the relief prayed in the plaint, it appears that the plaintiff has assailed the title of the defendant nos. 1 to 6 on the basis of their respective deeds and has prayed for declaration of his title and possession over the suit properties on the basis of his inheritance. The plaintiff has averred in the plaint that the defendant nos.1 and 2 by taking advantage of their position and exercising undue influence over the father of the plaintiff brought into existence a sham sale deed dated 19.08.1967 in favour of the wife of defendant No. 1 and it has also been averred that the defendant No. 6, who is the sister of the plaintiff, had also been brought into collusion by the defendant nos.1 and 2 in order to cover up their misdeeds and fraud, with regard to fictitious and fabricated sale deed and thus the deed of gift dated 19.08.1967 in favour of defendant No. 6 was also fabricated. It is the specific case of the plaintiff that he came to know of the sale deed and gift deed on 31.01.1980 when the defendant nos. 1 to 5 created disturbance and committed criminal trespass and theft in the suit house.

10. The averments made by the plaintiff in the plaint clearly show that the allegations against the defendant No. 6 have also been made and the deed of gift dated 19.08.1967 in favour of defendant No. 6 has also been assailed as a fraudulent document with specific details of the fraud with regard to the said deed also. The portion of paragraph No. 17 of the plaint clearly contained the allegation against the defendant No. 6 also which is as follows:

...It was, if at all executed by plaintiff's father, was done under influence of undue influence and coercion and deception and fraud by defendant nos. 1 and 2 and defendant No. 6 in collusion with one another...". In the written statement the defendant nos. 1 to 5 have asserted the validity of their sale deed as well as the gift deed in favour of defendant No. 6, with further statement that the defendant No. 6 had agreed to sell the property received by her by way of gift to them for Rs. 800/- which she also received but did not execute the sale deed. However, in her written statement, the defendant No. 6 had accepted the execution of two deeds by the father but alleged that the sale deed and gift deed in question are fraudulent creation of the defendant 1st set without her knowledge or her father's knowledge who put the signature on the two deeds unaware that the same were the sale deed and gift deed in question. She had further accepted that she got the knowledge of the documents in the year 1972 but there is complete silence on her part in the written statement regarding any action taken by her thereafter challenging the two deeds i.e. sale deed and gift deed. The defendant No. 6 has also not stated that after getting the knowledge in the year 1972, she informed the plaintiff or her sister about the deeds. Although she had supported the case of the plaintiff in her written statement, but there is no material on record to show that she had ever renounced the gift deed earlier to the filing of her written statement.

11. In view of the pleadings of the parties the issues were framed by the trial court and the issue No. 4 was- "Are the deeds of sale and gift dated 19.08.1967 brought into existence by the defendants, genuine, valid, for consideration and binding on the plaintiff". The parties went to trial on the aforesaid issue also alongwith other issues and led their evidence accordingly. The defendant No. 6 was not examined as witness in the suit. It also does not appear that in view of the statement made by the defendant No. 6 in her written statement with regard to the invalidity of the gift deed disowning it altogether, the plaintiff had taken any step for amendment in the plaint or for the decree with regard to the gift deed on the basis of the admission by defendant No. 6, rather the plaintiff proceeded to get the suit tried on the aforesaid issue also on the basis of the statement made in the plaint and the evidence led by him. Thus, the averments made in the plaint and the reliefs sought therein do not suggest that there was no conflict of interest in between the plaintiff and the defendant No. 6 in relation to the suit property on the date of filing of the suit.

12. For the application of Section 18(1) of the Evidence Act, it is fundamental that the admission of a person, which is sought to be tendered against another person, must have been made by the person in his character as a person having joint interest in the subject matter of the suit with the person against whom the said evidence is to be used. This aspect has been specifically emphasized by a bench of this Court in the matter of Mt. Ramjhari Kuer and Others Vs. Deyanand Singh and Others, in the following manner:

....The principle is that when several persons are jointly interested in the subject

matter of the suit, an admission of any one of these persons is receivable not only against himself but also against the other defendants, whether they be all jointly suing or sued, provided that the admission relates to the subject matter in dispute and is made by the defendant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirement of the identity in legal interest between the joint owners is of fundamental importance.

Reiterating this legal position, another bench of this Court has also expressed its view in the case of *Ambika Devi and Others Vs. Balmakund Pandey and Others*, as follows:

...Where several persons are jointly interested in the subject matter of the suit, the general rule is that the admission of any one of these persons is receivable against himself and fellows, whether they be all jointly suing or sued or whether an action be brought in favour of or against one or more of them separately, provided the admissions relate to the subject matter in dispute, and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered..

13. It is clear, thus, that the use of admission of one against the other can be justified only when the said admission has been made at the time when both of them were having joint interest in the subject matter of the suit. From the facts of this case as described above, it is manifest that the status of having joint interest between the plaintiff and defendant No. 6 in the subject matter of the suit was not existing on the date of the filing of the suit or even on the date when the written statement of the defendant No. 6 was filed as on all those relevant dates, the registered gift deed in favour of the defendant No. 6 with regard to the part of the suit property was existing and the legal effect of which had not been nullified by any instrument or a decree of a court. In reality, the joint interest between the plaintiff and the defendant No. 6 in the subject matter of the suit property was under eclipse by the gift deed in question and there was apparent conflict of interest between them. Therefore, it is difficult to accept the contention of the learned senior counsel that the date on which the defendant No. 6 filed her written statement, containing the statement sought to be used by way of admission, she was a person who had an identical interest in the subject matter of the suit with the plaintiff. The distinction between community of interest and joint identical interest must have to be maintained while applying the provision of Section 18(1) of Evidence Act. An apparent joint interest between the two persons is quite an insufficient foundation for receiving the admission by one against the other when their such interest in the subject matter of the suit is still under consideration by the Court. The impact of the statement made by the defendant No. 6 in her written statement, on the outcome of the suit, would not be at all material for the purpose of attracting the provision of Section 18(1) of the Evidence Act. After the decree of the suit granting the reliefs as prayed by the plaintiff, the defendant No. 6 might become

a co-heir of her father's estate with the plaintiff having joint interest therein but she was definitely having no such status on the date of filing of the suit or on the date of filing of her written statement and till the final decision of the suit alongwith the issue as above mentioned. Thus there is no force in the submission on behalf of the appellant that the statement of the defendant No. 6 can be used against the plaintiff as admission in view of Section 18(1) of the Evidence Act. Further, the claim of the defendant No. 6 against the sale deed of the defendant 1st set might have become barred by limitation as she did not choose to challenge the same within the period of limitation from the date of knowledge but on that basis the plaintiff also cannot be precluded from claiming the relief against the sale deed particularly in view of the averments made in the plaint disclosing conflict of interest in between the plaintiff and defendant No. 6 with regard to the suit property. In the facts and circumstances as discussed above, the statement of the defendant No. 6 regarding earlier knowledge of the deeds in question, cannot be used to the peril of the plaintiff.

14. Both the courts below have elaborately considered the evidence led by the parties and on that basis have concurrently found that the plaintiff had no knowledge of the sale deed and gift deed in question prior to the year 1980. On this basis, it has been held by both the courts below that the suit filed by the plaintiff in the year 1980 itself was not barred by limitation. It does not appear from the judgments of both the courts below that the appellants have ever raised the issue of bar of limitation of the suit by tendering the statement of knowledge of the deeds in the year 1972 by defendant No. 6 in her written statement, as admission against the plaintiff by virtue of the provision of Section 18(1) of the Evidence Act. This question has been for the first time raised in this second appeal but no reason has been assigned what prevented the appellants from raising the same in the courts below. Moreover it was the specific case of the appellants in the courts below that the gift deed in question was a valid, legal and genuine document conferring title upon the defendant No. 6 over the gifted property (part of the suit property) which had later been purchased by the appellants from defendant No. 6 after paying the consideration amount. Now at the second appellate stage, the appellants cannot be allowed to resile from their case and submit that the defendant No. 6, even in the face of the gift deed, had the joint identical interest in the suit property with the plaintiff and her statement in her written statement can be used as admission against the plaintiff in view of Section 18(1) of the Evidence Act. This submission is clearly against the pleading of the appellants and cannot be accepted.

15. As stated above, both the courts below have concurrently held that the deeds of sale and gift in question are not genuine documents and are tainted with fraud. It has also been found that the plaintiff has been in possession over the suit land after the death of his father and after holding the suit to be not barred by limitation, the title of the plaintiff over the suit properties has been declared granting the further reliefs as prayed.

16. For the foregoing reasons and discussions, both the substantial questions of law are decided against the appellants. In the result, the second appeal is dismissed and the judgment and decree passed by the learned courts below are affirmed. In the facts of the case, there would be no order as to costs.