

(2023) 08 OHC CK 0046

In the Orissa High Court

Case No : Regular Second Appeal Nos. 346, 347 Of 2014

Sushilarani Mishra

APPELLANT

Vs

Nityananda Panda (Dead) Substituted By L.Rs And Others

RESPONDENT

Date of Decision : 09-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 100
Registration Act, 1908 — Section 58(1)(c), 60, 60(2)

Citation : (2023) 08 OHC CK 0046

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Pradipta Kumar Mohanty, D.N. Mohapatra, J. Mohanty, P.K. Nayak, S.N. Dash, A. Dash, Sumit Kumar Mohanty, P. Jena, Bibekananda Bhuyan, S.S.Mohapatra, S. Sahoo, S.S. Bhuyan, Satyabrata Mohanty, S.S.Mohapatra, A. Biswal, R.N. Swain, P.K. Pasayat

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. Both these appeals are directed against the common judgment passed by learned District Judge, Puri on 06.05.2014 followed by decree in RFA No. 99 of 2009 and RFA No. 100 of 2009 confirming the judgment and decree passed by learned Addl. Civil Judge (Sr. Division), Puri on 31.07.2009 and 14.08.2009 respectively in T.S. No.4/53 of 2007/2001 and judgment and decree dated 31.07.2009 and 14.08.2009 respectively in C.S. No. 15/434 of 2007/2003.

2. Both the second appeals have been preferred by Smt. Sushilarani Mishra, who was the plaintiff in T.S. No. 4/53 of 2007/2001 and defendant No.11 in C.S. No. 15/434 of 2007/2003. For convenience and to avoid confusion, the parties are referred to as per their respective names.

3. These appeals have been admitted on the following substantial questions of law.

"II) Whether the R.S.D., vide Ext.1, is to be presumed to be genuine document or not in view of the registration made before the Sub-Registrar as per the entry made therein by payment of consideration money to the vendor as per section 58(1)(c) and section 60(2) of the Registration Act?

IV) Whether, the attesting witness- Shri Purna Chandra Pradhan to the sale deed being dead and the circumstances of non-examination of the identifier and the attesting witness being duly explained, the non-examination of the same renders the R.S.D., the registered instrument, totally void or not?

V) Whether the R.S.D., Ext.1 being a registered instrument, the circumstances of non-examination of the scribe, identifier and the attesting witnesses being explained, for mere non-examination of the same, the said sale deed will render to be a sham transaction or not?

4. The facts of the case, in a nutshell are as follows; The appellant, Sushilarani Mishra, as plaintiff filed T.S. No. 4/53 of 2007/2001 for declaration of her right, title, interest over the suit Schedule-B property while Brajaraj Mishra, since deceased and substituted by his L.Rs., filed C.S. No. 15/434 of 2007/2003 for partition of both Schedule-A & B properties.

The case of Sushilarani Mishra is that schedule-B property originally belonged to one Jambeswar Panda, who sold the same to Harihar Mishra. Harihar died in the year 1991 leaving behind his son Gangadhar and daughter Sabitri as his successors. Gangadhar died a bachelor in the year 1994 and therefore, the entire property became the absolute property of Sabitri. In order to meet her legal necessity, Sabitri sold the suit property to Sushilarani through registered sale deed bearing No.4735 dated 15.12.2000 and delivered possession thereof. Since then Sushilarani is residing in that house with her family members, paying rent to the State and Municipality. However, out of inadvertence ROR was published in the name of original owner Jameswar Panda, taking advantage of which the defendants claimed their right over the property. Hence, she filed the suit.

On the other hand, the case of Brajaraj Mishra is that Schedule-A property is the self acquired property of one Harekrushna Mishra, who died in the year 1964 leaving behind his widow, Sabitri Mishra, two sons, namely Brajaraj, Lingaraj and three daughters, namely Santilata, Manorama and Urmila. Upon death of Harekrushna, Schedule -A property devolved upon his widow, sons and daughters. Harekrushna has constructed his residential house. In so far as Schedule-B property, it is claimed that the same belongs to Harihar Mishra (father of Sabitri) over which he had constructed a house. After his death, the Schedule-B property devolved upon Sabitri, and Sushilarani Mishra and the defendants are jointly entitled to succeed to the same. One of the sons of Harekrushna, namely, Lingaraj, who is the husband of Sushilarani managed to obtain a sale deed from their mother, Sabitri in favour of his wife Sushilarani by practicing fraud. Said sale deed was never acted upon and was a sham transaction without any consideration and delivery of possession.

Thus, both Schedule –A and B properties are the joint family properties of the parties, which are liable to be partitioned. As Lingaraj and Sushilarani did not agree for mutual partition, Brajaraj filed the suit for partition.

5. Basing on the rival pleadings, the trial Court framed six issues in T.S. No. 4/53 of 2007/2001 and five issues in C.S. No. 15/434 of 2007/2003. Several witnesses were examined by both the parties and documentary evidence was also adduced by them. After considering the evidence on record, the trial Court held that the sale deed executed in favour of Sushilarani is void and accordingly dismissed the suit filed by her. The trial Court held that the Schedule–A and B properties are the joint family properties of the parties and therefore, the suit filed by Brajaraj was decreed directing the parties to amicably partition the properties among them allotting appropriate shares to each.

6. Both the judgments were carried in appeal by Sushilarani Mishra. Learned District Judge considered the grounds raised in appeal and examined the evidence on record vis-à-vis the findings of the trial Court. It was found that the sale deed was executed when the vendor, Sabitri was old and ailing and was under the care and custody of Sushilarani and her husband, who were in a position to dominate and take advantage of her. Secondly, the place of registration of the sale deed was not clearly proved. Thirdly, the attesting witnesses were arranged by the scribe of the deed who were not known to the vendor. Fourthly, there was no evidence of any consideration amount being paid to the vendor by the vendee. Fifthly, the evidence on record revealed that Sushilarani Mishra was not in possession of the suit house. It was thus held that the vendor had not validly executed the sale deed in favour of Sushilarani Mishra nor delivered possession thereof. The First Appellate Court thus confirmed the judgment of the trial Court and dismissed the appeals.

7. Heard Mr. P.K. Mohanty, learned Senior Counsel with Mr. D.N. Mohapatra, learned counsel for the appellant; Mr. Sumit Kumar Mohanty, learned counsel appearing for Respondent Nos. 1(a) and 1(b) in RSA No. 346 of 2014; Mr. S. Mohanty, learned counsel appearing for Respondent Nos. 2(b) to 2(d) in RSA No. 346 of 2014 and Respondent Nos. 2(a) to 2(c) in RSA No. 347 of 2014; and Mr. Bibekananda Bhuyan, learned counsel appearing for Respondents Nos. 2(e) to 2(h) in RSA No. 346 of 2014 & Respondent Nos.7 to R-10 in RSA No. 347 of 2014.

8. Assailing the impugned judgments, Mr. Mohanty would argue that both the courts below committed manifest error in holding the registered sale deed executed by Sabitri in favour of Sushilarani as not genuine ignoring the fact of its registration before the Sub-Registrar by payment of consideration money to the vendor. This, according to Mr. Mohanty runs contrary to the provisions contained in Section-58(1)(c) and Section 60(2) of the Registration Act. Mr. Mohanty further argues that one of the attesting witnesses to the sale deed being dead and reasonable explanation being offered for non-examination of the other witness, the courts below could not have taken it as a ground to treat the document as void. Similarly, non-examination of the scribe identifier and the

attesting witnesses being adequately explained, the same would not render the sale transaction void.

9. Mr. B. Bhuyan, learned counsel leading the arguments on behalf of all the respondents submits that firstly, this Court would ordinarily be slow to disturb a concurrent finding of fact rendered by the trial Court and confirmed by the Appellate Court. Mr. Bhuyan further argues that mere registration of a document cannot give any sanctity if evidence shows that it is a sham transaction. Further, there is ample evidence on record to show that the document was executed under suspicious circumstances, for which the burden of proving the same was on the beneficiary thereof. The vendee, however, miserably failed to discharge such burden by adducing cogent evidence. Therefore, Mr. Bhuyan argues that the findings of the Courts below do not warrant any interference.

10. In order to clear the deck at the outset, it is noted that there is no dispute between the parties as regards the nature and status of the Schedule –A property, which is the joint family property of the parties and hence, liable for partition. The dispute is therefore, confined only to Schedule-B property. It is undisputed that said property originally belonged to one Jambeswar Panda, who sold it to Harihar Mishra, who died leaving behind Gangadhar and Sabitri. Sabitri happens to be the widow of one Harekrushna Mishra, who had two sons and three daughters, namely Lingaraj, Brajaraj, Santilata, Urmila and Manorama. Sushilarani is the wife of Lingaraj, the eldest son of Harekrushna and Sabitri. There is ample evidence on record by way of admission of P.W.-4 that Sabitri was suffering from Parkinson's disease from 1997 to 2003, i.e. till her death. She was aged about 75 years at the time of execution of the sale deed dated 15.12.2000 in favour of her elder daughter-in-law, Sushilarani purportedly to meet her legal expenses. Both the Courts below have disbelieved such fact and have considered the sale transaction to have been conducted under suspicious circumstances. It is otherwise borne from the evidence on record that at the time of execution of the RSD, Sabitri was under the care of Lingaraj and Sushilarani. The First Appellate Court therefore held, and according to this Court rightly so, that both were in a position to take advantage of her. The courts below have also elaborately discussed the evidence to find other material discrepancies, such as place of registration, status of the attesting witnesses, lack of evidence regarding payment of consideration and most importantly, the fact that the vendee Sushilarani was not in possession of the suit house. The appellant has not been able to demonstrate before this Court as to how such findings are incorrect or perverse. After independently examining the record, this Court is persuaded to concur with the factual findings rendered by both the courts below and therefore, finds no substantial question of law involved so as to interfere.

11. As regards the effect of Section-58, particularly sub-Section (1), Clause-(c) thereof it has been argued that the endorsement of the Sub-Registrar in the document (RSD) regarding payment of the consideration amount is valid proof of the document. For immediate reference, the relevant provision is quoted

hereinbelow.

58. Particulars to be endorsed on documents admitted to registration.—(I) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.”

12. As already stated, Mr. Bhuyan has opposed such contention by arguing that such endorsement without any evidence being adduced to show that the consideration amount was actually paid before the Sub-Registrar cannot confer any sanctity to the document, which has otherwise been proved to reflect a sham transaction. This Court, after examining the provisions as referred above and the evidence on record is inclined to accept the contentions of Mr. Bhuyan that mere endorsement by the Sub-Registrar cannot override the evidence on record that the sale was a sham transaction.

13. Mr. Mohanty has also referred to Section 60 of the Registration Act, which is quoted hereinbelow.

“60. Certificate of registration.—

(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in section 59 have occurred as therein mentioned.”

It is argued that once the document is registered with the required certificate being endorsed by the Registering Officer, the same acquires legal sanctity. Mr. Bhuyan has reiterated his earlier objection that mere endorsement of registration cannot validate an otherwise invalid transaction. This Court is also of the same view particularly, having regard to the evidence to show that the document was executed under suspicious circumstances.

14. It is further seen that both the Courts below have referred to the celebrated judgment of the Apex Court in the case of *MST Kharbuja Kuer v. Jangbahadur Rai*, reported in AIR 1963 SC 1203, wherein it was held that when the document has been executed by an old, sick or pardahnashin lady, the burden to establish that she executed the same after proper understanding the consequences of such execution rests on the person who relies on it. Similar is the view taken by the Apex Court in the case of *Sethani v. Bhana* reported in 1993 Supp (4) SCC 639, wherein it was held as follows;

"4. We have heard learned counsel for the parties. The facts are so glaring, still the onus to prove the issue has been over-emphasised. It is true that the initial onus to prove undue influence was on the plaintiff-appellant, but the onus, in the facts and circumstances of the case, was easily discharged. It is the respondent who had obtained the sale deed in his favour way back on April 1, 1963 by a registered sale deed, which saw the light at a late stage of the trial. From the certified copy thereof it was evident that no consideration passed at the time of the sale. Nobody from the registration office was examined to explain the sale. No evidence was led by the respondent to discharge the onus that the sale deed was executed under no undue influence, even though the vendor was old, blind, illiterate and a tribal woman totally at the mercy of the respondent, with whom she was living till her death. The parties were so situated that Bhana-respondent was in a position to dominate the will of Putlibai and was in a position to obtain an unfair advantage over her. It is also in evidence that Putlibai was dependent on the respondent. The trial court had given cogent reasons to come to the finding that the sale deed was vitiated on account of the condition in which Putlibai was put due to her relationship with Bhana-respondent, as well as the manner and nature of the transaction. The High Court, in our view, erroneously took the view that the plaintiff-appellant was unable to discharge the onus that the transaction was as a result of undue influence. There was no cogent reason to come to that view and more so to upset the well-reasoned finding recorded by the trial court. Therefore, opting for the view of the trial court, we reverse the finding that the sale deed was executed by the mother of the appellant under undue influence of the respondent who took advantage of the helplessness of the old widow of his brother. The advantage thus obtained by him must thus be returned."

15. These principles have been well settled and given the factual scenario of the case as discussed above, this Court can only be in respectful agreement with the dictum of the Apex Court in the cited cases.

16. For the foregoing reasons therefore, this Court finds no infirmity much less illegality in the impugned judgments so as to be persuaded to interfere therewith.

17. Resultantly, both the appeals being devoid of merit are dismissed. Parties to bear their own costs.

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