

Lakhan Yadav and ors. Vs. Most. Raj Kala Devi and ors.

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Court : Patna

Decided On : Jan-06-1997

Judge : Dharampal Sinha, J.

Appeal No. : Appeal From Appellate Decree No. 10 of 1978

Appellant : Lakhan Yadav and ors.

Respondent : Most. Raj Kala Devi and ors.

Disposition : Appeal Dismissed

Judgement :

Dharampal Sinha, J.

1. This second appeal is directed against the judgment and decree passed by Sri S.N. Sinha, 1st Additional District Judge, Darbhanga on 7.12.1977 in Tide Appeal No. 127 of 1974/7 of 1977 affirming the judgment and decree of the Trial Court passed on 19.9.1974 in Title Suit No. 276 of 1968/2 of 1974.

2. The appellants herein were defendants 1st party against whom Respondent 1st party in the appeal (who were the plaintiffs) had instituted the suit for declaration of title and recovery of possession besides mesne profits in respect of the properties involved in the suit. With regard to the land in suit Jadu Rai, respondent 3rd party (defendant 3rd party before the trial court) had executed two sale-deeds--one

dated 14.9.1965 (Ext. I/A) in favour of the plaintiffs-respondents 1st party and another sale-deed dated 7.2.1996 (Ext. A2) in favour of the appellants but in the benami name of the Damodar Rai, Respondent-defendant 2nd party.

3. At the time of admission of this second appeal the substantial question of law involved in this second appeal was formulated as follows:

The substantial question of law Involved in this appeal is as to whether the finding that there was no fraud on registration has been recorded in accordance with law.

4. In the context of the formulation of the point for consideration in this second appeal and in view of the fact that the learned Counsel for both the sides have confined their arguments only with regard to this question, it is not necessary to refer the details of other facts of the case, and only facts relevant for consideration of the question raised in this appeal need to be stated: Jadu Rai admittedly was the previous owner of the property involved in the suit as both the contesting parties claim to have purchased the land in suit, The plaintiffs-respondents 1st party through their purchase from Jadu Rai under the sale deed (Ext. I/A) made their claim of title over the suit property. It seems that Jadu Rai had executed four documents in all relating to suit property. He executed a contract for sale in favour of the appellants which is dated 24.4.1965, and that has been brought on the record as Ex. D/I. On 14.9.1965 Jadu Rai executed a sale deed in favour of Respondent 1st party, which has been brought on the record as Ext. I/A. On 21.12.1965 the said Jadu Rai executed a cancellation deed (Ext. C/I) cancelling the sale deed (Ext. I/A) dated 14.9.1965. On 7.2.1966 Jadu Rai executed a sale deed in favour of the appellants but in the name of Damodar Rai, respondent-defendant 2nd party, and that sale deed has been brought on the record as Ext. A-2. In the suit reliefs had been sought only with regard to 2 Bighas 5 Kathas and 15 1/4 Dhurs land situated in village Chamarjana alias Dudhia Mahal, which fell under the Sub-Registry Office of Kamtaul Subdivision in the District of Darbhanga. A perusal of the sale deed (Ext. I/A) on the basis of which the plaintiffrespondents 1st party had made a claim of title and possession over the land involved in the suit, discloses that besides the land involved in th suit there was a mention of 5 Dhurs land of plot No. 28 Khata No. 71 of village Mashrakhpur Bankipur, which

admittedly lay within the territorial jurisdiction of Registration Office of Samastipur and apparently that small area of 5 Dhurs of land was also purported to be sold by Jadu Rai to the purchasers.

5. In the written statement filed by Jadu Rai a plea had been taken in paragraph 43 that the 5 Dhurs land of plot No. 28 khata No. 71 had been nominally included in the sale deed, and during the course of evidence Jadu Rai had stated that he had no intention to sell that 5 Dhurs land of plot No. 28, 6. 7. 936 Masakhpur Bankipur. On this aspect the Learned Trial Court as also the Learned Appellate Court came to the finding that there was no fraud on the Law of Registration because of inclusion of that 5 Dhurs land situated in village Masrakhpur Bankipur.

6. Learned Counsel for the appellants has strongly contended that the finding of both the Learned Trial Court and the first appellate court in this regard is erroneous in law and against the ratio of various decisions of the Privy Council. He has relied on the decisions reported in A.I.R. 1934 P.C. 157, Collector of Gorakhpur v. Ram Sundar Mai and Ors. A.I.R. 1936 P.C. 91, (Sri. Raja) Innganti Venkatarama Rao v. (Sri Raja) Sobhanadri Appa Rao Bahadur Gam and Ors. in course of his argument. He has emphasised during the course of argument that the subject-matter of the sale deed would indicate that a large area of 2 Bighas 5 Kathas 15 1/4 Dhurs was situated within the territorial jurisdiction of the Registration Office of Kamtaul and this nominal small area of 5 Dhurs land of village Masrakhpur Bankipur, which lay within the territorial jurisdiction of Samastipur Registration Office, had been included only for the purpose of conferring jurisdiction to the Sub-Registrar of the Samastipur and this amounted to fraud on the Law of Registration as contained in Section 28 of the Inc-on Registration Act. He has also submitted in this regard that Jadu Rai during the course of his evidence had categorically stated that he was not intending to sell the land of village Mashrakhpur Bankipur and there was no cross-examination of that witness on this point, and so it should have been held that there was fraud of registration in execution of the sale deed (Ext. I/A) under which the respondent 1st party had asserted their title and this document is legally ineffective because of the fraud on the Law of Registration.

7. On the other hand learned Counsel for the respondent 1st party has contended that the argument of the learned Counsel for the appellants is misconceived in the facts and circumstances of the case and decisions reported in A.I.R. 1934 P.C. 157 or A.I.R. 1936 P.C. 91 cannot be of any avail to the appellants because the ratio of those decisions would not apply to the facts of this case. learned Counsel for the respondent has next contended that the appellants had not made out any case in their pleadings or during the course of the trial that fraud was played because of inclusion of small nominal area of 5 Dhurs for the purpose of conferring jurisdiction to the Samastipur Registrar Office, and so they cannot be allowed to argue this point only because Jadu Rai had taken a half-hearted stand in this regard in his pleading and evidence, when Jadu Rai is not the appellant in this case nor was he appellant in the first appeal. A further strong contention of the learned Counsel for the respondent is that in view of the provision of Order VI, Rule 4 of the Code of Civil Procedure, which requires that if a party alleges fraud, inter alia, that party must specifically state in its pleading the facts constituting fraud and in this case since the appellants had not pleaded in their written statement that in any fraud was committed in the matter of registration of the sale deed (Ext. I/A) /they could not be allowed to raise this argument. Reliance has been placed by the learned Counsel for the respondent on the decision reported in : AIR1965 Pat279 ,Julumdhari Rai and Ors. v. Debi Rai and Ors. and 1997(45)(2)] according to his submission the ratio of the decision reported in : AIR1965 Pat279 would apply to the facts and circumstances of the case.

8. I have carefully considered the arguments of the learned Counsel for both the sides and have gone through the decisions cited by the Learned Counsel during the course of argument.

9. In the instant case there is no doubt that the appellants have not taken any stand in the pleading or evidence that any fraud was played by the plaintiffs and by Jadu Rai in getting the sale deed registered at Samastipur Sub-Registry Office by including 5 Dhurs land of Khata No. 71. plot No. 28 of village Mashrakhpur Bankipur.

10. To be sure defendant-respondent 3rd party Jadu Rai, had also filed written statement in the suit; and paragraph 13 of his written statement would indicate that he had taken a stand in this regard that 5 Dhurs land of village Mashrakhpur Bankipur had been nominally included in the sale deed and in his evidence no doubt he has said that that 5 Dhurs of land was not intended to be sold by him nor did he receive any consideration money with regard to the same. Since Jadu Rai is not the appellant, I do not think that the appellants in this appeal can raise this question in absence of their own pleadings or evidence. In my considered view the appellants may base their argument on the basis of their own pleading and evidence or on the basis of pleading and evidence of their adversary with whom they had been contesting, but not on the basis of pleading and evidence of another party who did not prefer appeal and against whom no relief had been sought, even though that party, in some respect, had supported the case of the appellant in the trial court, but did not chose to prefer appeal when finding was given by the Court against the stand taken by him.

11. As already notice, Jadu Rai seems to have executed several documents--some in favour of the appellants and one in favour of respondent 1st party. He had executed a contract for sale, which is dated 24.4.65 in favour of the appellants, which is Ext. D/I; then he had executed the sale deed in favour of the plaintiffs-respondent 1st party, Ext. I/A, on 14.9.1965. He also executed another sale deed on 7.2.1966 (Ext. A-2) in favour of the appellants. It may be mentioned here that in the sale deed (Ext. A-2) also small area of 4.3/4 Dhurs land of the same Khata No. 71, plot No. 28 of village Mashrakhpur Bankipur, 5 Dhurs of which had been included in the sale deed, Ext. I/A, stands included.

12. In the written statement Jadu Rai had not stated that the part of land of plot No. 28 Khata No. 71 of village Mashrakhpur Bankipur, that had been included in the sale deeds, did not belong to him. He only stated that it was nominally included therein, and in his evidence he stated that he had no intention to sell. Such statement by a witness, who had already executed two sale deeds including in both some part of plot No. 28, Khata No. 71 of village Mashrakhpur Bankipur in my opinion cannot be given much weight.

13. The two decisions of the Privy Council reported in 1934 P.C. 157 and 1936 P.C. 91, which have been relied upon by the learned Counsel for the appellants, in my opinion, cannot be of any help to the appellants in the facts and circumstances of the case. A perusal of the first of these decisions of the 14. 15. Privy Council would show that when only part share in small terrace that was inaccessible to the purchaser (as it was landlocked because adjacent land on all sides belonged to other persons) was included in the concerned sale deed, and it was held that the same was included only for the purpose of evading the provision of Section 28 of the Registration Act. In the other case when a sale deed was found to have included a strip of land, which did not belong to the seller, and was included only for the purpose of conferring jurisdiction to a different Registration Officer, it was held that there was fraud on Law of Registration because it was held that the parties had no intention to sell or purchase that strip of land.

14. In the instant case, in the written statement it was not said even by Jadu Rai that the land mentioned in the sale deed appertaining to village Mashrakhpur Bankipur did not belong to him. After selling that portion of the land, which apparently appear from the fact of its inclusion in the sale deed, if he said in his written statement that it was only nominally included or in his evidence that he had no intention to sell the same, I do not think that any value can be given to such statement. Significantly though Jadu Rai had executed a deed of cancellation also, which has been brought on the record as Ext. C/I. but in this cancellation deed the only ground taken for cancellation was non-payment of consideration money and there was no mention about any fraud of registration in the cancellation deed. So obviously the stand of Jadu Rai about nominal inclusion of the 5 Dhurs of land was an after thought.

15. Learned Counsel for the respondent has contended, and in my opinion rightly, that if any party wants to take stand about any fraud having been committed there should be specific mention in his pleading about the facts of fraud. Since the appellants in their pleadings did not mention the facts alleging fraud, the respondent 1st party were not required to lead any evidence in this regard and the main contest was between the appellants against whom reliefs have been sought and respondent 1st party, who were the plaintiffs, had instituted the suit seeking

those reliefs against the appellants.

16. I may mention here that the learned Counsel for the appellants relying on the decision of the Supreme Court reported in : [1987]2SCR805 , Ram Sarup Gupta v. Bishun Narain Inter College and Ors. has contended that the pleadings of the parties should not be strictly construed and if the parties knew the case of each other and lead evidence, then only on the ground of lack of pleadings the case of any party should not be thrown out. I do not think that this decision can be of any avail to the appellants. In the instant case, the subject matter of the suit was not that small area of 5 Dhurs of land. The cause of action related to only that land measuring 2 Bighas 5 kathas and 151/4 Dhurs in village Dudhia and the plaintiffs-respondent 1st party based their claim of title and possession on the basis of the sale deed (Ext. I/A). If there was any fraud in execution of the sale deed, the contesting party, namely, the .. appellants, could have taken the stand in their pleadings alleging specifically the facts of fraud as contemplated by Rule 4 of Order VI of the Code of Civil Procedure and if they did not take any such plea, they cannot now be allowed to raise such plea on the basis of the aforesaid decision of the Supreme Court, for that might cause prejudice to the respondent party, who could have led evidence to show that the 5 Dhurs land was also sold under the sale deed.

17. It may be mentioned here that the 5 Dhurs land of village Mashrakhpur Bankipur, that was mentioned in the sale deed along with 2 Bighas 15 Kathas of the other village was not the subject matter of the suit and the respondent 1st party could not be expected, in the circumstance, to lead any evidence as to whether or not they had come in possession of that 5 Dhurs of land and whether they had negotiated for the sale of that 5 Dhurs of land also along with 2 Bighas 15 Kathas and odd, which lay within the territorial jurisdiction of Kamtaul Sub-Registry Officer. When the appellants had not taken the plea in their written statement that fraud was committed on the Law of Registration in getting the sale deed (Ext. I/A) registered in Samastipur Registration Officer and the document of title on which respondent 1st party, who had instituted the suit, was legally defective for the lack of proper registration, respondent 1st party could not meet that objection.

18. It may be mentioned here that Section 28 of the Indian Registration Act definitely indicates that if a document relates to even a small area of land, that lies within the territorial limits of jurisdiction of a Sub-Registry Officer, that Sub-Registry Officer had jurisdiction to register such document, though the bulk of property mentioned in the document lies in the territorial limits of any other Sub-Registry Officer. Unless it is definitely found on the pleading and evidence that solely for the purpose of conferring jurisdiction to a SubRegistry Office any small area had been fictitiously mentioned in the document, and the parties definitely had no intention to deal with that small area mentioned in the document, it cannot be said that there was fraud on the Law of Registration and the document can be held to be legally defective for want of proper registration. In the instant case it cannot be said definitely in view of the pleadings and evidence that 5 Dhurs land of other village has been included only for the purpose of getting the sale deed registered in the SubRegistry Officer of Samastipur, particularly when even the sale deed dated 7.2.66 (Ext. A-2), that was subsequently executed by Jadu Rai in favour of the appellants also included little less than 5 Dhurs of land of the same Khata and plot on which the 5 Dhurs land mentioned in the sale deed (Ext. I/A) have been included. The decision reported in : AIR1965 Pat279 , Julumdhari Rai and Ors. v. Debt Rai and Ors. appears to support the view that I have taken above. In that case it was laid down by a Division Bench that material facts in connection with fraud must be stated in the pleading and in the instant case the appellants did not plead any material facts relating to the alleged fraud. In that decision it was also laid down that the law permits registration of a document at a place where any portion of the land covered by any deed of transfer is situate and the parties can take advantage of the provision and get the document registered at a place where not only bulk of the land transferred but also small portion of land that was intended to be sold in situate several decisions have been noticed in that case of Julumdhari Rai and I think the respondent 1st party can avail the ratio of that decision in the facts and circumstances of the case.

19. In view of what I have stated above, I am inclined to hold that the view taken by the Learned Trial Court as well as First Appellate Court below that there was no fraud in the matter of registration is fit to be upheld and the finding seems to be in accordance with law. The substantial question of law stated while admitting this

appeal is accordingly answered.

20. In the result, therefore, this appeal fails and it is, accordingly, dismissed on contest by respondent 1st party with costs.

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