

Ram Prasad Singh. Vs. Chandrawati Devi, and ors.

Ram Prasad Singh. Vs. Chandrawati Devi, and ors.

SooperKanoon Citation : sooperkanoon.com/915501

Court : Patna

Decided On : Jul-21-2010

Judge : S.N. Hussain, J.

Acts : Code of Criminal Procedure (CrPC) - Sections sections 144, 145; Indian Registration Act - Sections 23, 47, 36; Indian Penal Code (IPC) - Section 188

Appeal No. : APPEAL FROM APPELLATE DECREE NO.27 OF 1990

Appellant : Ram Prasad Singh.

Respondent : Chandrawati Devi, and ors.

Advocate for Def. : Mr. Anil Jaiswal; Mrs.Anjana Bhagat, Advs.

Advocate for Pet/Ap. : Mr. Shashi Shekhar Dwivedi; Veena Rani, Advs.

Judgement :

1. This second appeal has been filed by defendant no.1-appellant-appellant challenging the judgments and decree of both the courts below.

2. The matter arises out of Title Suit No.17 of 1968 which was filed by plaintiffs-respondents-respondent nos.1 and 2 with respect to two sets of properties detailed in Schedule-I and I(a) of the plaint, namely, 3 katha land out of 57 decimals of Plot No.404 khata no.51 and 42 decimals of Plot No.765 khata no.337; 40 decimals of Plot No.890 khata no.361 as well as 47 3/4 decimals of Plot No.404 khata no.51, all of Mauza Korrara, Pergana- Masaurha, P.S. Paliganj, thana

no.336 within the district of Patna, for the following reliefs:-

(i) Declaration of title of plaintiffs on the basis of sale deeds dated 10.09.1962 and 17.09.1962 executed by Ramsurith Singh in favour of plaintiff no.2 Hartali Singh in respect of the suit properties and that defendant no.1 had no right, title or interest in the suit property on the basis of sale deed dated 25.08.1962, allegedly executed by Ramsurith Singh in favour of defendant no.1, which was antedated and fraudulent.

(ii) Declaration that plaintiff no.2 was bonafide purchaser for value without any notice even if there was any prior agreement between Ramsurith Singh and defendant no.1.

(iii) Decree of confirmation of plaintiffs' possession over the suit land and alternatively a decree for recovery of possession.

(iv) Decree of cost of suit to plaintiffs against defendant no.1.

(v) Any other relief or reliefs found fit and proper.

3. The aforesaid suit was contested by defendant no.1 and after considering the pleadings and evidence of the parties the trial court framed the following issues for deciding the title suit.

(i) Is the suit as framed maintainable?

(ii) Have the plaintiffs got any cause of action for the suit?

(iii) Did plaintiff no.2 acquire any right, title or interest in the suit land on the basis of sale deeds dated 10.09.1962 and 17.09.1962 executed by Ramsurith Singh?

(iv) Are the plaintiffs entitled to a decree of declaration of their title and for confirmation of their possession over the suit land as prayed for?

(v) To what other relief or reliefs, if any, are the plaintiffs entitled?

4. After considering the pleadings and evidence of the parties Munsif-II, Patna decreed the suit on contest after arriving at the following findings:-

(a) Court does not find anything in the deposition of DWs to show that Ramsurith Singh had shifted himself to the plaintiffs camp and that he was evading appearance before the Sub-registrar in collusion with the plaintiffs, hence the contesting defendants have failed to reasonably explain the undue delay in the presentation and registration of the sale deed (Ext.B) executed by Ramsurith Singh in favour of defendant no.1.

(b) From the evidence on record it is quite apparent that the fact regarding payment of Rs.825.00 by plaintiff no.2 Hartali Singh to Ramsurith Singh cannot be said to be unbelievable.

(c) Orders dated 16.01.1963 and 10.02.1963 allowing mutation in favour of the contesting defendants has got no sanctity as it is not based on reality.

(d) It is apparent from the records that the plaintiffs continued in possession over the suit land even during the pendency of the proceedings under sections 144 and 145 Cr.P.C.

(e) Sale deed (Ext.B) said to have been executed by Ramsurith Singh in favour of contesting defendant is a fabricated and antedated document and it saw the light of the day after the plaintiffs' sale deed (Ext.3/A and Ext.3/B) had come into effect.

(f) Plaintiff no.2 Hartali Singh acquired right, title and interest in the suit land on the basis of sale deeds dated 10.09.1962 and 17.09.1962.

(g) As the defendants' possession over the suit land was declared in the proceeding under section 145 Cr.P.C, it is desirable that a decree for delivery of possession and not that of confirmation of possession be passed in favour of the plaintiffs.

5. Against the aforesaid judgment and decree of the trial court defendant no.1 filed Title Appeal No.69 of 1974 (72/1985) which was contested by the plaintiffs-respondents 1st party whereafter the court of appeal below formulated the following point for deciding the appeal.

"Whether sale deeds dated 10.09.1962 and 17.09.1962 executed in favour of plaintiff no.2 Hartali Singh are genuine, valid and for consideration and were executed prior to sale deed dated 25.08.1962 in favour of defendant no.1?"

6. After hearing the parties on the said issue involved in the case and after considering the pleadings and evidence of the parties, Additional District Judge-XI, Patna dismissed the title appeal on contest vide his judgment and decree dated 31.08.1989 after arriving at the following findings:-

(a) There is nothing wrong in the execution of the two sale deeds (Exts.3/A & 3/B) in favour of the plaintiffs and they were executed on the dates as alleged by them.

(b) From the contradictory evidence of the defendants, it is apparent that there was no earlier talk for sale and consequently the execution of sale deed on 25.08.1962 in favour of defendant no.1 and passing of consideration money was not a true and faithful affair.

(c) Two sale deeds (Ext.3/A and Ext.3/B) in favour of plaintiff no.2 Hartali Singh were executed and registered earlier than sale deed (Ext.B) which was executed and registered in favour of defendant Ram Prasad Singh on 06.11.1962.

(d) On the basis of the aforesaid two sale deeds plaintiff no.2 acquired right, title and interest in the suit land covered by the said deeds, whereafter Ramsurith Singh had no title left in the suit property to transfer to defendant no.1.

(e) Admittedly in Mutation Case No.270 of 1962-63 possession of defendant was found, but subsequently in proceeding under sections 144 and 145 Cr.P.C. the defendant claimed that the plaintiff had taken forcible possession over the suit land about one year and eight months earlier which corresponded to 1963, but at the time of disposal of the proceeding it was found that the land in question was in possession of the defendant.

(f) During the said proceeding suit property was in custodia legis, although earlier it was found to be in possession of plaintiffs and was subsequently held to be in possession of the defendant. The said litigation continued to higher courts but subsequently title suit was filed by the plaintiffs in the year 1968.

(g) In the facts and circumstances of the case plaintiffs are entitled for the alternative relief of recovery of possession.

7. Against the aforesaid judgment and decree of the courts below defendant no.1-appellant filed the instant second appeal which was admitted by a Bench of this court vide order dated 01.04.1991 on the basis of following substantial questions of law:-

(i) Whether the ingredients of fraud have been properly pleaded and proved?

(ii) Whether the court has resorted to a wrong legal test in declaring Exts.3/A and 3/B , the sale deeds of the plaintiffs, to be earlier to the sale deed of defendant no.1 executed on 25.08.1962 (Ext.B) and registered on 06.12.1962?

(iii) Whether the courts should have considered the effect of sections 23 and 47 of the Indian Registration Act along with section 36 of the said Act in disposing of the dispute?

8. When final hearing of the second appeal started learned counsel for the appellant raised further substantial questions of law to be considered on 05.04.2010 which are as follows:-

(iv) Whether the allegation of fraud and its ingredients not having been specifically pleaded and proved, the finding of the courts below on the point is vitiated in law?

(v) Whether the bias of the court below is apparent from the dual standard of evaluation adopted by the court below and the judgments are perverse and unsustainable in law?

(vi) Whether the issue regarding the plaintiffs being bonafide purchasers for value without notice not even been framed and no evidence having been led, the court below could hold as such?

9. Before entering into the aforesaid substantial questions of law raised on behalf of the sole defendant-appellant, it is necessary to consider the essential factum involved in the matter. The suit properties detailed in paragraph-2 above admittedly belonged to Ramsurith Singh and the claim of both the parties are based on

registered sale deeds executed by the aforesaid admitted original owner Ramsurith Singh. Defendant-appellant is relying upon sale deed said to have been executed on 25.08.1962 and registered on 06.12.1962 (Ext.B) by Ramsurith Singh in favour of Ram Prasad Singh (defendant- appellant) with respect to the suit plots. On the other hand, plaintiffs-respondents are relying upon the sale deed executed and registered on 10.09.1962 (Ext.3/A) as also sale deed executed and registered on 17.09.1962 (Ext.3/B), both by Ramsurith Singh in favour of Hartali Singh (plaintiff no.2) with respect to the suit lands as well as a sale deed executed and registered on 18.10.1962 (Ext.3) by Hartali Singh (plaintiff no.2) in favour of Ram Bhajju Singh (plaintiff no.1) with respect to a portion of the suit land. The main question involved in the instant case is as to which of the aforesaid deeds is legal and valid and has been acted upon.

10. So far questions of law no. (ii) and (iii) are concerned, they are interconnected and hence they are being taken up together. The claim of the defendant- appellant is that Ramsurith Singh sold the entire suit properties to the defendant-appellant by sale deed executed on 25.08.1962 (Ext.B) and hence sale deeds executed much thereafter on 10.09.1962 (Ext.3/A) and 17.09.1962 (Ext.3/B) with respect to the same land by Ramsurith Singh in favour of plaintiff no.2 cannot be held to be legal and valid and the plaintiffs cannot take advantage of the registration of sale deed dated 25.08.1962 (Ext.B) subsequently on 05.12.1962 in view of the specific provision of sections 23 and 47 read with section 36 of the Indian Registration Act 1908 which provided that a document can be registered within four months from the date of its execution and that a registered document would be effective from the date of its execution and not from the time of its registration and in the instant case the document of the defendant-appellant was registered (Ext.B) within four months of its execution, whereas the documents of the plaintiffs-respondents (Ext.3/A and 3/B) were executed by the same person before the lapse of four months from the date of execution of the earlier document (Ext.B) in favour of the defendant. In this connection learned counsel for the defendant-appellant relies upon a decision of the Apex Court in case of Gurbax Singh vs. Kartar Singh and others, reported in (2002) 2 SCC 611.

11. Learned counsel for the defendant-appellant further submits that on 11.06.1962 stamp papers were purchased on which sale deed was executed on 25.08.1962 (Ext.B) by Ramsurith Singh in favour of the defendant-appellant showing that some money was paid before the execution of the sale deed and some money would be paid at the time of registration. It was also claimed that within four months thereafter defendant-appellant filed it for registration on 06.11.1962 before the Registrar, whereafter notices were sent to Ramsurith Singh who appeared before the Registrar on 05.12.1962 and admitted the deed for registration before the Registrar. It was also claimed that no issue was framed by the courts with regard to Ext.B nor the scribe thereof was produced.

12. In view of the aforesaid stand of defendant-appellant the question to be decided is as to whether defendant's sale deed (Ext.B) was executed on 25.08.1962 as claimed by the defendant or it was executed much subsequently in November and registered in December antedating it as 25.08.1962 with a view to nullify the plaintiffs' sale deeds (Ext.3/A and Ext.3/B) executed in September, 1962 as claimed by the plaintiffs.

13. The legal proposition as raised by the defendant-appellant cannot be denied as the law is well settled as per the provision of the Registration Act as well as a decision of the Apex Court in case of Gurbax Singh (supra) that a deed has to be registered within four months of its execution and that the deed would be effective from the date of its execution and not from the date of its registration.

14. But here, in the instant case the question is as to when sale deed (Ext.B) was executed by Ramsurith Singh in favour of the defendant-appellant. In that regard, the plaintiffs-respondents had specifically sought a relief including relief no. (i) of their plaint for declaration that the aforesaid Ext.B was antedated and fraudulent whereafter the trial court framed issue no.(iii) with regard to plaintiffs-respondents' acquiring right and title vide Ext.3/A and Ext.3/B in which the question of the validity and antedating of Ext.B was also included. Furthermore, the lower appellate court framed only one point for deciding the title appeal in which the question with regard to the validity or antedating of sale deed Ext.B was also included. Both the courts below after full consideration of the pleadings and

evidence of the parties came to the specific conclusion that the plaintiffs were able to prove that plaintiffs' sale deeds (Ext.3/A and Ext.3/B) were not forged and fabricated documents as claimed by the defendants, rather they were duly executed by Ramsurith Singh on the date on which they were registered i.e. on 10.09.1962 and 17.09.1962. Learned counsel for the defendant-appellant in this court also could not prove or show by any valid material that the plaintiffs' sale deeds (Ext.3/A and Ext.3/B) were not executed by Ramsurith Singh.

15. As regards sale deed of defendant-appellant (Ext.B), the defendant- appellant had claimed that before the execution of the aforesaid sale deed dated 25.08.1962 (Ext.B) there was a negotiation for sale between Ramsurith Singh and defendant-appellant for the suit land fixing the consideration amount of Rs.2,000.00 out of which Rs.500.00 was paid as advance, but neither the agreement for sale nor receipt for Rs.500.00 advance has been produced by the defendant-appellant, whereas evidence of the defendant specially DW.3 and DW.7, who deposed on the point of agreement for sale were quite contradictory to each other which falsified the claim of the defendant with respect to the agreement for sale and payment of advance.

16. With regard to purchase of the stamp papers and execution of the sale deed (Ext.B) is concerned, the relevant witnesses were DWs.2, 3, 5, 8 and 15 but their depositions were full of vital contradictions due to which the story of defendant-appellant with regard to the purchase of stamp by Ramsurith Singh and execution of the sale deed (Ext.B) on 25.08.1962 could not be proved. Furthermore, the said Ramsurith Singh who admitted sale deed dated 25.08.1962 (Ext.B) before the Registrar on 05.12.1962 in favour of the defendant-appellant never did not come to support his claim nor his heirs ever came to support the case of defendant-appellant. On the other hand, the claim of the plaintiffs with regard to the aforesaid sale deed was fully proved by their oral and documentary evidence including Ext.3 series and PWs.5, 8, 9, 10, 12 and 16. In the said circumstances, the courts below were quite justified in coming to the conclusion that the sale deed of the defendant-appellant dated 25.08.1962 (Ext.B) was antedated and was prepared after execution and registration of plaintiff's sale deeds (Ext.3/A and Ext.3/B), merely with a view to nullify the same.

17. So far the factum of possession is concerned in Mutation Case No.270 of 1962-63 the revenue authority found defendant-appellant in possession of the suit land vide its order (Ext.G), but subsequently the said order was reversed by the appellate authority in Case No.35A of 1964-65 (Ext.6/B), whereafter the Additional Collector remanded the case to the lower court for reconsideration (Ext.G). Hence, the revenue authority did not arrive at any definite finding with regard to the possession. However, there was a proceeding under section 144 of the Code of Criminal Procedure which gave rise to another proceeding under section 188 of the Indian Penal Code and in that proceeding the defendant-appellant deposed as PW.9 on 02.09.1964 admitting that the plaintiffs- respondents had forcibly took possession over the suit land about one year and eight months back which would naturally correspond to early 1963. However, subsequently there was a proceeding under section 145 of the Code of Criminal Proceeding and during that preceding the suit property was custodia legis and subsequently it was found to be in possession of defendant-appellant who had taken forcible possession. In the said circumstances, it was rightly held by the courts below that the sale deeds of the plaintiffs- respondents (Exts.3 series) were legal, valid and proper and were acted upon according to which the plaintiffs-respondents came in possession of the suit land and remained in possession which was admitted by the defendant-appellant himself in an earlier proceeding but subsequently during the pendency of a proceeding under section 145 of the Code of Criminal Procedure the defendant-appellant forcibly occupied the suit property and hence the plaintiffs-respondents were fully entitled for decree of recovery of possession.

18. So far questions of law no.(i) and (iv) raised by the defendant-appellant are concerned, they are taken up together, as both of them are concerned with the allegation of fraud. Learned counsel for the defendant-appellant has claimed that neither any issue was framed regarding fraud by the courts below nor the factum of fraud was proved by any valid material by the plaintiffs, but in spite of that both the courts below passed their decree in favour of the plaintiffs-respondents. In this regard, learned counsel for the defendant- appellant relies upon the notings made in Woodroff's and Ameer Ali's Law of evidence (14th Edition) 1979 volume 1 at page 558 as well as a decision of the Apex Court in case of Bishundeo Narain & another vs. Seogeni Rai & others, reported in AIR 1951 SC 280 and also a

decision of the Allahabad High Court in case of Satish Kumar Rao and others vs. Gorakhpur University, reported in AIR 1981 Allahabad 377. In case of Bishundeo Narain (Supra) it was held by the Apex Court that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. In case of Satish Kumar (Supra) a Division Bench of Allahabad High Court has held that the general rule is that he who alleges fraud has the burden of establishing it. But, the law equally settled is that inferences may be drawn from the circumstances where production of direct evidence is not possible. The notings in the aforesaid book on the law of evidence by Woodroff and Ameer Ali the same principle has been noted, but in view of the notings at page 558 of the said book, it is quite apparent that the claim of the defendant-appellant has been falsified. In the instant case both the courts below have clearly arrived at the findings of fact after full consideration of the pleadings and evidence of the parties that the defendant's sale deed (Ext.B) although shown to have been executed on 25.08.1962 was executed after the execution of the plaintiffs' sale deeds of September, 1962 (Ext.3/A and 3/B) and hence Ext.B was antedated merely with a view to nullify Ext.3/A and 3/B. The aforesaid facts of the instant case clearly show that the direct evidence with respect thereto was not possible, rather it was proved by inferences reasonably drawn from the intrinsic evidence and surrounding circumstances respecting the transactions itself which clearly was in favour of the plaintiffs-respondents. Hence the learned courts below were quite justified in arriving at specific findings that the document (Ext.B) said to have been executed by Ramsurith Singh in favour of the defendant-appellant was a fabricated and antedated document which saw the light of the day only after the execution of the sale deeds (Ext.3/A and Ext.3/B) in favour of the plaintiffs and hence the plaintiffs acquired right, title and interest on the basis of their sale deeds (Ext.3 series).

19. So far questions of law no.(v) and (vi) raised by the defendant-appellant are concerned, from a bare perusal of the judgments and decree of the courts below it does not appear that any dual standard was adopted by any of the courts below for evaluation of pleadings and evidence of the parties, rather the courts below very carefully considered the said pleadings and evidence of the parties and arrived at a decision which was just, legal and proper. Furthermore, since it was

found that no sale deed was executed by the original owner Ramsurith Singh in favour of the defendant-appellant prior to the sale deeds executed by the original owner in favour of the plaintiffs-respondents in September, 1962, there was no question of any notings to the plaintiffs with regard to any earlier purchase specially the sale deed of the defendant-appellant (Ext.B) which although claimed by the defendant- appellant to be of August, 1962 but was found to be subsequent to September, 1962 as it was registered in December 1962. Hence, neither there was any claim of evidence of purchase for value without notice by any of the parties nor there was any occasion for the courts below to frame any such issue and decide the same. In the said circumstances the said questions raised by the defendant-appellant are also frivolous and misconceived.

20. In the aforesaid facts and circumstances, this court does not find any illegality in the impugned judgments and neither decree of the courts below nor the defendant- appellant could substantiate the questions of law raised by them by any material or any provision or principle of law. Accordingly, this second appeal is dismissed but in the facts and circumstances there will be no order as to cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com