

(2007) 06 JH CK 0007

Jharkhand High Court

Case No: Appeal From Appellate Decree No. 12 of 1991 (R)

Smt. Basanti Devi and Others

APPELLANT

Vs

Girdhari Rana and Others

RESPONDENT

Date of Decision: June 28, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Constitution of India, 1950 - Article 136
- Registration Act, 1908 - Section 49, 77

Citation: (2007) 2 BLJR 2858 : (2007) 3 JCR 620

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Debi Prasad, L.K. Lal and Amar Kr. Sinha, for the Appellant; Manjul Prasad, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This appeal by the plaintiffs" u/s 100 C.P.C. is directed against the judgment and decree dated 20.8.1990 passed by 1st Additional District Judge, Hazaribagh in Title Appeal No. 60 of 1989 whereby the appellate court has allowed the appeal and set aside the judgment and decree dated 30th July, 1989 passed by Subordinate Judge-V, Hazaribagh in Title Suit No. 89 of 1984 and finally dismissed the suit.

2. The plaintiffs-appellants filed the aforementioned Title Suit No. 89 of 1984 for declaration that the deed of gift dated 24.8.1983 executed by defendant No. 1 in favour of defendant Nos. 2 to 6 is void, illegal and inoperative and further for a decree of permanent injunction directing defendant No. 1 to admit execution of sale-deeds dated 22.8.1983 and 26.8.1983 or to execute fresh sale-deeds in favour of the plaintiffs before the District Sub Registrar, Hazaribagh. A further relief for khas possession of the suit property was also sought for.

3. The plaintiffs' case is that one Budhan Mistri, grandfather of plaintiff No. 1, Baldeo Rana, had taken raiyati settlement of 14 acres of land in plot No. 3/1384 of Khata No. 28/43 in village Jarahia in the district of Hazaribagh from the ex-landlord under a Hukumnama dated 20.2.1946 and thereafter was recognized as a raiyat and paid rent to the State of Bihar. The settlee being in need of money, sold 7 acres of land out of 14 acres of land by virtue of registered deed of sale dated 19.2.1961 to defendant No. 1. There was an understanding between the grandfather of the plaintiffs and defendant No. 1 that if the vendee, defendant No. 1, will sell the said land, he will first offer to his vendor and if he was dead, then to his heirs at the prevailing market rate. It was further alleged by the plaintiffs that the defendant No. 1 wanted to dispose of the said land and the maximum price fixed was Rs. 15000/-. According to the aforesaid understanding, defendant No. 1 approached plaintiff No. 1 and asked if he was willing to purchase the property at Rs. 15000/- to which plaintiff No. 1 agreed and it was settled that defendant No. 2 shall execute sale-deed; one for Rs. 10000/- and another for Rs. 5000/- covering 5 acres and 2 acres of land in the name of plaintiff No. 1 and his father plaintiff No. 2. Plaintiffs' further case is that pursuant to that understanding, both the plaintiffs and defendant No. 1 came to Hazaribagh and two sale deeds were executed on 22.8.1983 by defendant No. 1 in favour of plaintiff No. 1 and plaintiff No. 2 after receiving the full consideration amount. Defendant No. 1 presented the two sale-deeds for registration on 22.8.1983 before the District Sub Registrar, Hazaribagh, but the said document could not be registered on that date. The parties were directed to appear on the next date i.e. 23.8.1983 for admitting the execution and registration. Plaintiffs' case is that on the next date, defendant No. 1 did not turn up and he was not available in the village. On 25.8.1983, the plaintiffs learnt from the villagers that defendant No. 1 executed a registered deed of gift in respect of the suit property in favour of his sons, defendant Nos. 2 to 6. Plaintiff No. 1 having come to know of this fact, came to Hazaribagh on 26.8.1983 and obtained copy of the registered deed of gift. He filed a petition before the Sub Registrar for issuance of notice to defendant No. 1 for executing two sale deeds in favour of the plaintiffs. Defendant No. 1 appeared before Sub Registrar, Hazaribagh on 27.10.1983 and gave statement that his signatures were taken on a blank stamp paper and he has not received any consideration and that fraud has been practiced upon him. The Sub Registrar, thereafter, passed order on 27.10.1983 refusing to register the documents.

4. The case of the defendants'- respondents, on the other hand, is that the suit is barred by limitation. The defendants denied each and every allegation made in the plaint. Defendant No. 1 denied that he ever wanted to dispose of the property and he was not in need of money. He neither approached plaintiff No. 1 nor ever agreed to sell the suit property by executing two sale-deeds. Defendant No. 1 also denied the fact that he ever came to Hazaribagh on 22.8.1983 along with plaintiff No. 1 and executed any sale deed. On the contrary, on 22.8.1983, while defendant No. 1 was in

the village home, plaintiff No. 1 came to him and brought him to Hazaribagh. In front of the office of Hazaribagh Municipality, he along with other persons was encircled and plaintiff No. 1 obtained his signature on blank stamp-paper forcibly putting him into fear of his instant death. Soon after the incidence, defendant No. 1 alleged to have come down to his village home and narrated the whole incidence and made an attempt to lodge FIR in Barhi Police Station on 23.8.1983. The police declined to register the case. It was alleged by defendant No. 1 that thereafter, he also tried to lodge Sanha at the Sadar Police Station, Hazaribagh, but the Police Officer advised him to come on the next day. Consequently, the Sanha was not recorded. Thereafter, defendant No. 1 alleged to have filed a complaint case on 26.8.1983. Defendants' further case is that plaintiff No. 1, after obtaining signatures of defendant No. 1 on the blank stamp paper, converted it into two sale-deeds and got the same presented before the District Sub Registrar, Hazaribagh in a futile attempt to get those sale-deeds registered. Besides the other facts, defendants pleaded that the plaintiffs are not entitled to any decree as sought for by them.

5. The trial Court decreed the suit holding that no fraud or coercion was done by plaintiff No. 1 for obtaining the signature of defendant No. 1 who has received the entire consideration amount of the two sale deeds. The trial Court further held that the signature of defendant No. 1 was not obtained on a blank stamp paper as alleged by defendant No. 1. Accordingly, the suit was decreed by the trial Court.

6. The appellate Court, after considering both oral and documentary evidence, held that defendant No. 1 failed to prove that his signatures were obtained on the blank stamp paper. The appellate Court, however, finally held that the suit for specific relief was not maintainable and dismissed the suit by allowing the appeal. Hence, this appeal by the plaintiffs.

7. This Court formulated the following substantial questions of law for consideration in this appeal

(i) Whether the plaintiffs could be non-suited on the ground that the suit for specific performance of contract is not in conformity with Form 47 or 48 of the Appendix Schedule I of the Code of Civil Procedure?

(ii) Whether on the finding recorded by the lower appellate court that the signature of Dilo Rana was obtained on blank stamp paper, but after the deeds were scribed, the plaintiffs' suit can be dismissed?

8. Mr. L.K. Lal, learned Counsel appearing on behalf of the plaintiffs-appellants, assailed the finding of the appellate Court as being contrary to law and facts on record. Learned Counsel submitted that in view of the judgment of affirmance of the appellate Court on the finding that the signatures of defendant No. 1 were not obtained on the blank stamp paper and there was no coercion or fraud, the suit ought to have been decreed. Learned Counsel submitted that the approach of the appellate Court that the plaintiffs failed to comply the requirements as provided

under Clause 47 or 48 is wholly misconceived. Learned Counsel further submitted that the appellate Court has taken an erroneous approach that the suit for specific performance is not maintainable.

9. Mr. Manjul Prasad, learned Counsel appearing for the respondents, on the other hand, submitted that a comprehensive suit filed u/s 77 of the Registration Act and under the Specific Relief Act is not maintainable. Learned Counsel submitted that since the suit filed u/s 77 of the Registration Act was barred by limitation, no decree for specific performance can be passed. In this connection, learned Counsel relied upon a decision of the Supreme Court in the case of [Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy](#), .

10. As noticed above, both the trial Court and the appellate Court have recorded concurrent finding of fact that defendants-respondents have failed to prove that signatures of the defendant No. 1 were obtained on blank stamp paper. However, the appellate Court proceeded further and held that signatures of defendant No. 1 on sale deeds are not sufficient to prove passing of consideration and that all the signatures were given voluntarily. The appellate Court further held that the signatures were obtained by coercion. Appellate Court then held that since there is no averment in the plaint that the plaintiffs are ready and willing to perform their part of the contract, the suit for specific performance is not maintainable.

11. In my considered opinion, the approach of the appellate Court is not correct in law. A specific averment of readiness and willingness by the plaintiffs to perform their part of contract is not fatal, particularly in the facts of the present case. Plaintiffs have categorically stated in the plaint that pursuant to agreement and undertakings, two sale-deeds were executed by the defendant on 22.8.1983 and were presented for registration on the same date, but as 22.8.1983 was declared half-working day and there was some delay in presentation of document, so document could not be registered on that day and parties were directed to appear on the next date. On the next date, i.e. 23.8.1983, defendant No. 1 did not turn up for registration. The plaintiffs subsequently learnt that two days thereafter i.e. on 25.8.1983, defendant No. 1 executed and registered a deed of gift in favour of his sons. It was categorically pleaded by plaintiff No. 1 that immediately he took all steps for compelling defendant No. 1 to admit execution of the documents for registration.

12. One of the important aspects of the matter has not been considered by both the Courts below. As noticed above, two sale-deeds duly signed by defendant No. 1 were presented before the District Sub Registrar, Hazaribagh on 22.8.1983 for registration. Registration could not be effected on the same date and the parties were directed to come on the next date. On 24.8.1983, defendant No. 1 executed and registered a deed of gift in favour of his sons. Knowing the said fact, the plaintiffs filed petition before the Sub Registrar on 26.8.1983. Pursuant to that notices were issued to the defendants by Sub Registrar. The conduct of defendant

No. 1 in executing the deed of gift in favour of his sons two days after presentation of the sale-deeds for registration goes to show that denial of the defendants that sale deeds were not presented for registration is false and fabricated. Since the date of execution of two sale-deeds, plaintiffs have taken all steps for registration of the documents and therefore, it cannot be held that decree for specific performance cannot be passed for not making specific averment about the readiness and willingness of the plaintiffs to perform their part of contract.

13. On the next question as to whether suit for specific performance is not maintainable in view of provision of Section 77 of the Registration Act, as held by the appellate Court, Mr. Manjul Prasad, learned Counsel for the defendants-respondents, relied upon the decision of the supreme Court in the case of Kalavakurti Venkata Subbaiah (supra). The facts of the case before the Supreme Court was that the respondent filed a suit for specific performance seeking a direction to register the sale deed dated 2-7-1979 (Exhibit A-6) and for injunction or possession of the immovable property referred to therein. His case is that the appellant had duly executed the sale deed in his favour in respect of the suit premises for a sale consideration of Rs. 3200 but the appellant did not get the document registered thereafter. The case set up by the appellant is that he signed the sale deed dated 2-7-1979 as a result of fraud and misrepresentation by the respondent taking advantage of the fact that he was an illiterate person. The trial court dismissed the suit of the respondent on the ground that the respondent had to avail of the remedy u/s 77 of the Registration Act, 1908 (hereinafter referred to as "the Act") and not bring a suit for specific performance. The matter was carried in appeal. The first appellate court allowed the appeal and decreed the suit on the basis that the relief insofar as the decree for specific performance of the later half of the document could be granted and that Section 77 of the Act will not come in the way. A second appeal was preferred against the judgment and decree of the first appellate court and the High Court held that the view taken by the first appellate court was correct and dismissed the second appeal. Thereafter review petition was also preferred on the ground that the High Court had proceeded on the view that the judgments of the courts below were concurrent and the matter involves only pure findings of fact. The said review petition was dismissed by the High Court. Thereafter the matter was brought up before this Court under Article 136 of the Constitution and. this Court, having granted leave, has now registered it as an appeal.

14. The Supreme Court after considering the various decisions, settled the law and held as under:

10. The difference of opinion amongst the various High Courts on this aspect of the matter is that Section 77 of the Act is a complete code in itself providing for the enforcement of a right to get a document registered by filing a civil suit which but for the special provision of that section could not be maintainable. Several

difficulties have been considered in these decisions, such as, when the time has expired since the date of the execution of the document whether there could be a decree to direct the Sub-Registrar to register the document. On the other hand, it has also been noticed that an agreement for transfer of property implies a contract not only to execute the deed of transfer but also to appear before the registering officer and to admit execution thereby facilitating the registration of the document wherever it is compulsory. The provisions of the Specific Relief Act and the Registration Act may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in Section 77 of the Act has reached and no other relief except a direction for registration of the document is really asked for, Section 77 of the Act may be an exclusive remedy. However in other cases it has not application inasmuch as a suit for specific performance is of a wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit u/s 77 of the Act is not an adequate remedy.

11. The analysis of the provisions of Section 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated 2-7-1979 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule- mentioned property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated u/s 77 of the Act have not arisen in the present case at all. We do not think, in such a case when the vendor declines to appear before the Sub-Registrar, the situation contemplated u/s 77 of the Act would arise. It is only on presentation of a document the other circumstances would arise. The first appellate court rightly took the view that u/s 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. The said Court noticed that there was an agreement to transfer the immovable property in the suit by the defendant to the plaintiff on the terms stated in the sale deed. Such an agreement to sell the immovable property in suit could be specifically enforced under the provisions of the Specific Relief Act. Therefore, the first appellate court was of the opinion that the plaintiff was alternatively entitled to base his claim of specific performance on the pleaded oral agreement to sell and, inasmuch as there are further reliefs sought for, it was a comprehensive suit including a relief for specific performance of a contract contained in the sale deed executed, but not registered and, therefore, held that such relief for specific performance could be granted.

15. In the instant case, as noticed above, plaintiff not only claimed a relief for direction to the defendants to admit execution of the sale deeds but also in the alternative a decree for specific performance directing the defendants to execute two fresh sale deeds. The trial court held that so far two sale deeds (Exts.2 and 2/A) which were executed and presented for registration are concerned, they cannot be directed to be registered because the suit was not instituted within the prescribed period of limitation. The finding of the appellate court that a decree for specific performance directing the defendants to execute sale deeds in favour of the plaintiff could not have been passed, in my considered opinion, cannot be sustained in law.

16. For the Aforesaid reasons, this appeal is allowed and the judgment and decree passed by the appellate court is set aside and that of the trial court is restored.