

(2012) 08 PAT CK 0075

Patna High Court

Case No: Second Appeal No. 132 of 2010

Shiva Devi and Others

APPELLANT

Vs

Dwarika Prasad Poddar and
Others

RESPONDENT

Date of Decision: Aug. 31, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11, Order 41 Rule 31

Citation: (2013) 3 PLJR 526

Hon'ble Judges: Mungeshwar Sahoo, J

Bench: Single Bench

Advocate: Pramod Kumar Sinha, Arvind Kr. Sharma-1, Surendra Prasad Singh and Chetan Kumar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Mungeshwar Sahoo, J.

Heard the learned counsel, Mr. Pramod Kumar Sinha appearing on behalf of the appellants under Order 41 Rule 11 C.P.C. The plaintiffs-respondents-appellants have filed this Second Appeal against the judgment and decree dated 29.1.2010 passed by the learned 5th Additional District Judge, Begusarai in Title Appeal No. 19 of 2007 reversing the judgment of the trial court dated 28.2.2007 passed by learned Additional Munsif-IV, Begusarai in Title Suit No. 37 of 1969 whereby the plaintiff's suit was decreed.

2. The plaintiffs-appellants filed the aforesaid suit for declaration of title on the suit property after setting aside the sale deed executed by the defendant, 2nd party, Issar Sahu in favour of the defendant No. 1, Ramautar Poddar. According to the plaintiffs, the defendant No. 1 got the sale deed by practicing fraud upon said Issar Sahu. The plaintiff further asserted that in fact, the property was purchased by the plaintiff No. 1, Triveni Sahu in the name of his father, Issar Sahu for the benefit of

the joint family. His father, Issar Sahu was living with "Sadhus" and was addicted to Ganja and Bhang. On the influence of the defendant No. 1, he sold the suit premises in favour of the defendant No. 1 by registered sale deed in the year 1967.

3. On the contrary, the defendant No. 1 case is that the property was the self-acquired property of Issar Sahu who sold the same in the year 1967 in favour of the defendant No. 1.

4. From the facts stated in the judgment, it appears that earlier the trial court decreed the plaintiff's suit. On appeal, the Lower Appellate Court reversed the finding of the trial court. Therefore, the plaintiffs filed Second Appeal before this High Court being Second Appeal No. 82 of 1981. This court allowed the Second Appeal and set aside the judgment of both the courts below and remanded the matter to the trial court for decision on particular question stated in the remand order. Thereafter, the trial court passed the present judgment and decree whereby the plaintiff's suit was decreed recording the finding that the suit land has not been purchased exclusively by the plaintiff himself as alleged by him or Issar Sahu as contended by the defendants rather the suit land has been purchased by the income of joint family of the plaintiff and Issar Sahu and the same would be determined as joint family property. The trial court also recorded a finding that since the consideration amount is only Rs. 2,000/-, therefore, the same has been sold for lesser consideration of Rs. 2,000/- which apparently shows that there is something fraudulent and undue advantage has been taken in execution of the sale deed itself.

5. On appeal, the Lower Appellate Court reversed the finding on both the points and held that there is no ground to hold that the sale deed was obtained by defendant 1st party fraudulently without paying consideration money vide paragraph 12 and then at paragraph 14, the Lower Appellate Court recorded the finding that the suit land was the purchased land of Issar Sahu.

6. The learned counsel appearing on behalf of the appellants submitted that the Lower Appellate Court has not framed any point as required under Order 41 Rule, 31 C.P.C. and has only decided issue Nos. 4 and 5 framed by the trial court. The learned counsel secondly submitted that the Lower Appellate Court has wrongly held that the property is the property of Issar Sahu particularly when Issar Sahu himself filed written statement stating that the property is joint family property and he has only 1/5th share and has sold his share only. The learned counsel further submitted that since the plaintiff and Issar Sahu were living jointly, therefore, there is presumption that the property was joint family property.

7. The learned counsel for the appellants further submitted that the father of Issar Sahu had filed supporting written statement. So far this submission is concerned, it may be mentioned here that after selling the property by defendant No. 4, any statement made by him in favour of the plaintiff will not be admissible against real owner of the property who has already acquired title on the basis of registered sale

deed particularly when the father of plaintiff never challenged the sale deed either on the ground of fraud or on the ground of non payment of consideration. Therefore, the plaintiff is also estopped from challenging the passing of consideration. The father did not examine himself in support of the statement made in written statement.

8. So far the submission of the learned counsel for the appellants that since the Lower Appellate Court has found that property was purchased when the plaintiff and Issar Sahu were joint, therefore, under Hindu Law, there will be presumption that the property is the joint family property is concerned, it may be mentioned here that there is no presumption that a family because it is joint possesses joint property or any property. To render the property joint, the plaintiff must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the properties possessed by the family is joint family property. The burden of proving that it is joint family property is on the party asserting it in the present case, admittedly, the property stands in the name of Issar Sahu, the father of plaintiff No. 1. Further, it is the specific pleading of the plaintiff that Triveni Sahu, the plaintiff No. 1 purchased the property in the name of his father, Issar Sahu. Therefore, it is for the plaintiff No. 1 to prove that in fact, out of his own income, he purchased property in the name of his father for the benefit of the joint family. It may be mentioned here that as stated above, the case of plaintiff No. 1 is that he is real owner who purchased the property in the name of his father for the benefit of joint family whereas the case of the defendant is that it was the self-acquired property of Issar Sahu. The trial court recorded the finding that the property is not the property purchased by plaintiff No. 1 or purchased by Issar Sahu. Therefore, the trial court made a third case not pleaded by either of the parties.

9. In the case of [Bachhaj Nahar Vs. Nilima Mandal and Another](#), the Apex Court has held that no amount of evidence on a plea i.e. not put forward in the pleadings can be looked into to grant any relief. Only in exceptional cases, can this general rule be deviated from if the court is fully satisfied that the pleadings and issues generally covered the case subsequently put forward and that the parties being conscious of the issue had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception of the general rule does not arise. Again, where neither party put forth such a contention the court cannot make out such a case not pleaded *suo motu*. In the present case, there is no pleading nor any issue nor any evidence on the record. In my opinion, therefore, the trial court has made out a third case. In such circumstances, the finding recorded by the Lower Appellate Court, it cannot be said that it suffers from any illegality or irregularity.

10. So far the submission of the learned counsel for the appellants that no specific point independently has been framed by the Lower Appellate Court is concerned,

from perusal of the Lower Appellate Court judgment, paragraph 11, it appears that the Lower Appellate Court has clearly mentioned that in view of the facts of the case, the issue which is required to be decided in the appeal are issue Nos. 4 and 5. In my opinion, this is substantial compliance of Order 41 Rule 31 C.P.C. Moreover, considering the controversies between the parties, if the court decides the controversy then merely because a separate point has not been formulated, it cannot be said that the judgment is vitiated. In this regard, the reference may be made to the case of [Ajit Ojha Vs. Lallan Ojha and Others](#) . Therefore, this ground also is not a substantial question of law.

11. So far the submission of the learned counsel that the trial court recorded the finding after appreciation of evidences and materials but the Lower Appellate Court has not considered the same in right perspective and has only decided the matter without meeting the reasonings, in my opinion, this is also not a substantial question of law. In the case of [Arumugham \(Dead\) By Lrs. and Others Vs. Sundarambal and Another](#) , the Apex Court relying upon the earlier decision, the case of [R. Ramachandran Ayyar Vs. Ramalingam Chettiar](#), held that second appellate court cannot interfere with the judgment of the first appellate court on the ground that the first appellate court had not come to the close grip with the reasonings of the trial court it is open to the first appellate court to consider the evidence adduced by the parties and give its own reasonings for accepting the evidence on one side or rejecting the evidence on other side.

12. So far the submission of the teamed counsel for the appellants that the trial court recorded the finding that the sale deed in favour of the defendant 1st party is for lesser consideration amount and is, therefore, fraudulent, in my opinion, this ground of the trial court is unsustainable in the eye of law. It is the case of the plaintiff that in fact, he is the real purchaser in the name of his father. Therefore, the onus is upon the plaintiff to prove that the sale deed is obtained by playing fraud and undue influence. In the case of [Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath Jajoo](#) , the Apex Court held that a registered deed of sale carries presumption that the transaction was genuine one. After execution of sale deed is proved, onus is on the defendant to prove that the deed was not executed and it was a sham transaction. In the present case, the defendant No. 4 is Issar Sahu who though filed written statement but never challenged the genuineness of the sale deed executed by him in favour of the defendant 1st party.

13. In the case of Sita Sharan Prasad vs. Manorma Devi, 2012 (2) BLJ 165 [: 2012 (2) PLJR 190], this High Court has held that a registered sale deed is presumed to have been validly executed with all its legal consequences and such document cannot be said to be void ab initio. There cannot be presumptive invalidity attached to such a transaction. Such document remains valid on principle that apparent state of affairs is real state of affairs, until the facts invalidating the same are established. Therefore, it was for the plaintiff to prove the fact invalidating the registered sale

deed. From perusal of the Lower Appellate Court judgment, it appears that the Lower Appellate Court after considering the evidences and materials recorded a finding that the sale deed has not been obtained by the defendant 1st party by playing fraud or undue influence. Therefore, in my opinion, this is also pure finding of fact recorded by the Lower Appellate Court. In view of the above discussion, in my opinion, no substantial question of law is involved in this Second Appeal. Thus, this Second Appeal is dismissed at the admission stage itself.