

Satyanarain Prasad vs Gadadhar Ram And Ors. on 1 August, 1975

Equivalent citations: AIR1977SC146, (1975)2SCC564, 1975(7)UJ587(SC), AIR 1977 SUPREME COURT 146, 1975 2 SCC 564, 1975 U J (SC) 587, 1976 PATLJR 433

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Bench: A.N. Ray, K.K. Mathew, S. Murtaza Fazal Ali, V.R. Krishna Iyer

JUDGMENT

A.N. Ray, C.J.

1. This appeal by certificate is from the judgment dated 9 May, 1961 of the High Court at Patna dismissing the appellant's suit.
2. The appellant filed this suit for a declaration that the alienation by the appellant's father by deeds of sale dated 22 May, 1934 and 29 October, 1934 are until and void. The appellant asked for the consequential relief of possession. The defendants to the suit were of two categories. Defendants Nos. 1 to 14 belong to the first category. Defendant No. 15 is the father of the appellant and is in the second category. Defendants in the first category were the vendees to the deeds of sale and the appellant's father was the vendor.
3. The appellant challenged the deeds of sale on two principal grounds First, the appellant alleged that the appellant's father was a minor on the dates of the deeds of sale and therefore, the deeds were void. The second challenge to the deeds of sale was on the ground that there was no consideration and no legal necessity for alienation.
4. The Trial Court held that the deeds of sale were not genuine and there was no legal necessity. The Trial Court also held that for a sum of Rs. 231/- only out of the consideration of the deed of sale dated 29 October, 1934, there was valid consideration. The Trial Court decreed the suit subject to the condition that in respect of the deed of sale dated 29 October, 1934, a sum of Rs. 231/- was to be paid by the plaintiff-appellant to the vendee within two months from the date of decree failing which the suit regarding second deed of sale was to be dismissed.
5. The High Court accepted the appeal of the defendants and dismissed the appellant's suit.

6. On the question of alleged minority of the appellant's father, the High Court came to the conclusion that the appellant's father attained majority in 1931. The onus to prove minority lay on the appellant. The appellant examined his father as a witness on his behalf. The appellant relied on a certificate granted by the Head Master of Purnea Zila School dated 3rd January, 1951. The certificate was sought to be proved by a Clerk of the Zila School. The certificate was obtained by the appellant shortly before the institution of the suit. According to the certificate the appellant's father was born on 13 April, 1916. The certificate is a copy from the Admission Register.

7. The High Court rightly did not place any reliance on the certificate. The truth of the contents of the certificate could not be proved by a Clerk who only proved the hand-writing on the certificate. The Head Master, who issued the certificate, was not examined. The original Admission Register on the basis of which the certificate was given was not proved. The Clerk, who proved the hand-writings of the certificate, could not say who made the original entry in the Admission Register.

8. The appellant's father in his own evidence stated that he did not read in any other school before joining Purnea Zila School. A co-villager who knew the appellant's father and other family members said that the appellant's father read at Dhamdaha School before the appellant's father joined Purnea Zila School. The appellant's father did not deny the evidence given by the co-villager. A Clerk of the Dhamdaha School also did not deny the fact that the appellant's father read at that school. The appellant did not produce any records of Dhamdaha School. Some of the appellant's witnesses and in particular the uncle of the appellant admitted that the appellant's father as well as the appellant possessed horoscopes. Horoscopes were withheld by the appellant.

9. In addition to these facts, the High Court held that the appellant's father was a major and not a minor when the decree in Money Suit No. 452 of 1932 was passed. Money Suit No. 452 of 1932 was contested by the appellant's father. The appellant's father did not there plead minority. The pleader who appeared for the appellant in this suit also appeared for the appellant's father in Money Suit No. 452 of 1932.

10. The High Court held that the appellant's father managed his property after the death of his father in 1928 and executed certain registered documents. In all those documents the appellant's father was described as a major. A bond dated 11 May, 1933, a second bond dated 26 June, 1933 and a third bond dated 12 July, 1933 were relied upon by the High Court to hold that the appellant's father was a major before the impugned deeds of sale. The High Court also held that the appellant's father sold lands to Bir Narain Chand and Shiva Sahay Ram under two different deeds of sale and executed a bond for payment of his father's debts in 1933. In all these documents, the appellant's father was described as a major. The appellant's father said that he sold about 60 bighas of land to Bir Narain Chand in 1933 in satisfaction of his father's debts amounting to Rs. 10,000. The High Court further referred to some entries in registers of Rent Suits of 1933. These Rent Suits were filed by the Darbhanga Raj against the appellant's father. The appellant's father was described as a major therein. The High Court relied on summonses in certain suits. These summonses were served upon the appellant's father as major.

11. On these facts the High Court rightly came to the conclusion that the appellant's father was not a minor at the time the two deeds of sale were executed in the months of May and October, 1934.

12. There is no legal infirmity in any of the findings arrived at by the High Court.

13. The appellant challenged the deeds of sale on the ground of lack of consideration and want of legal necessity. The appellant in his own evidence said that his father lived an immoral life. The appellant's father also said that he led immoral life. But that will not nullify the documents. The High Court found that the first deed of sale dated 22 May, 1934 was executed by the appellant's father for payment of antecedent debts. These antecedent debts comprised Rs. 1187/- for payment of the mortgage dues which the appellant's father had to pay to the vendee under the registered mortgage bond dated 12 July, 1933. That mortgage bond was executed by the appellant's father for satisfying the decretal dues in Money Suit No. 452 of 1932 which was obtained by Baldeo Ram against the appellants's father. A sum of Rs. 200/- was borrowed by the appellant's father for payment of other domestic needs. A sum of Rs. 163/- out of the consideration money was for payment to Tapeshe Mishra in respect of his dues against the appellant's father on a registered 'Sudbharna' bond dated 11 May, 1933. On these facts the High Court rightly held that the deed of sale dated 22 May, 1934 for Rs. 1350/- was for payment of antecedent debts of appellant's father and the appellant was thereby bound.

14. The High Court relied on an endorsement dated 15 August, 1934 where Tapeshe Mishra acknowledged on the 'Sudharna' bond dated 11 May, 1933 that he received the money dues under the bond from the vendee Baldeo Ram and made over the bond to him

15. The High Court found that the second deed of sale dated 29 October, 1934 was executed by the appellant's father for a consideration of Rs. 1995/- for payment of the antecedent debts. A sum of Rs. 950/- was borrowed for payment of decretal dues which the appellant's father was liable pay. Out of the said sum of Rs. 950/-, the vendee to the second deed of sale deposited a sum of Rs. 493/14/3 in a rent decree dated 20 December, 1933, in Rent Suit No. 2909 of 1933. The High Court further found that the vendee deposited a sum of Rs. 290/2/- towards the decretal dues which the appellant's father had to pay against the decree dated 20 December, 1933 in Rent Suit No. 2919 of 1933. The vendee also paid a sum of Rs. 166/9/7 to the appellant's father for payment of arrears of rent including cess. The vendee also paid to the appellant's father Rs. 451/- for payment to Nageshwar Jha in respect of his dues under a "handapote" dated 11 November, 1934 executed by the appellant's father in favour of Nageshwar Jha. The vendee also paid Rs. 594/- to the appellant father for payment to the other creditors and for meeting the other domestic needs.

16. On these facts, the High Court rightly found that the second deed of sale dated 29 October, 1934 was for payment of antecedent debts and also for legal necessity.

17. The findings of the High Court are correct in the facts and circumstances of the case. There is nothing to interfere with any of the finding arrived at by the High Court. For these reasons the appeal fails. The appeal is dismissed with costs.