

Jharkhand High Court

(Smt.) Dhaneshwari Devi vs Dasharath Sao @ Daso Sao And Ors. on 20 August, 2004

Equivalent citations: I (2005) BC 376, 2005 (1) JCR 88 Jhr

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Bench: V Prasad

JUDGMENT Vikramaditya Prasad, J.

1. In this Second Appeal the question to be answered is :

Whether the withdrawal of a sum of Rs. 7459/- from the Savings Bank Account will give rise to a presumption that respondent No. 1 had paid part of the consideration amount?

Defendant plaintiff who is related to the respondent No. 1 as sali (the sister of the wife of respondent No. 1), brought a suit against him that his name (Dasrath Sao @ Daso Sao, respondent defendant No. 1) was fraudulently included in the sale deed No. 7024, dated 4.6.1982 as purchaser No. 2 in collusion with the scribe Girdhari Ram defendant No. 4 which has not created any right and possession to the defendant No. 1. The plaintiff is a purchaser of the land-bearing plot No. 4506 under Khata No. 26 of village Mandai Khurd, Thana No. 163, P.S. and District Hazaribagh in which a tiled house was constructed by them. In the month of May 1982 defendant No. 2 and 3 expressed their desire to sell the aforesaid property and inform Gumani Das about it. Gumani Das told plaintiff about the sell of the aforesaid house and land and she agreed to purchase the same. Thereafter the matter was settled that defendant No. 2 and 3 would sell the property to the plaintiff on consideration of Rs, 8,000/-.

2. The case of the plaintiff is that she was living with defendant respondent No. 1. Defendant No. 2 and 3 wanted to sell the land and from Gumani Das she came to know of their intention and thus she approached the defendant No. 2 and 3 alongwith Gumani Das and the consideration was settled at Rs. 8000/-. Being related to the defendant No. 1, the plaintiff asked him to accompany on the date of execution of the deed and registration thereof. Then defendant No. 1 brought scribe Girdhari Ram (Munshi) (who is defendant No. 4) in the Court and the Munshi demanded the requisite amount for stamp etc. which the plaintiff paid and then the Munshi bought the requisite stamps for scribing the sale deed and the defendant No. 2 and 3 handed over their original sale deed to the Munshi. The Munshi along with defendant No. 1 went aside to write the deed and told the plaintiff and defendant No. 2 and 3 to wait in the uarandah and the Munshi wrote down the deed in the meantime the defendant 2 and 3 demanded the consideration amount of Rs. 8000/which the plaintiff paid to them by herself in presence of Gumani Das and the defendant No. 2 and 3 also signed the deed besides she also put her LTI on different pages. Then before the Registrar when the defendant No. 2 and 3 were called they presented themselves and admitted to have executed the sale deed in favour of the plaintiff but the chirkut was not taken as defendant No. 1 asked her to go. Then on subsequent dates the plaintiff demanded the registration receipt from the defendant No. 1 but he told that as the original sale deed would be issued after a year so it , would be kept reserved so that it may not be lost and as the defendant No.- 1 is own relative of the plaintiff she relied upon him and then the defendant No. 1 went on his duty and whenever the plaintiff asked about the deed he. told that it would be obtained from the registration office after a year and the plaintiff enquired from

others who also informed that it takes about a year in getting back the deed from the registration office and the plaintiff had to wait till a year. Then the plaintiff started the repairing of the purchased house and started living in that house then she applied for mutation and in that Court also the defendant No. 1 took Rs. 200/- from her. Ultimately she came to know from the Karamchhari that the mutation has been done in the name of plaintiff and defendant No. 1. When she obtained the certified copy of the sale deed then she came to know of the fraud. Her claim is that she has paid the entire consideration amount and she is the sole purchaser and defendant No. 1 has fraudulently got his name included in the sale deed so the sale deed has not created any right, title and interest in the house purchased by her. Thereafter the suit was filed.

3. The contesting defendants denied all the allegations. His positive case is that he made negotiation for purchasing the suit property with defendant No. 2 and 3 and he approached the plaintiff to purchase the suit property along with him from defendant No. 2 and 3 because the plaintiff at that time residing in the ancestral house of defendant No. 1 and it was he who introduced Girdhari Ram to the plaintiff and it was claimed that both have paid the money for purchase of the stamp and the consideration amount of Rs. 8000/- was paid in the shop of the vendor at Panch Mandir Chowk in presence of witnesses by the defendant No. 1 on a day before the execution and registration of the sale deed as the vendor demanded the consideration money. It was further pleaded that the plaintiff was not even present at that time of payment of consideration money because at that time the relationship between the plaintiff and defendant was cordial. Thus the specific case established was that it was a joint acquisition made by both and it was also pleaded that Guman Das was the man behind the suit.

4. The learned trial Court along with other issues framed an issue-whether the sale deed executed in favour of plaintiff and defendant No. 1 is tainted with fraud? The learned trial Court also considered the evidence of both the sides. The plaintiff produced witnesses who speak of payment of consideration money in their presence, on the other hand the defendants besides his oral evidence has produced his passbook" (Ext. D) which shows that a sum of Rs. 7450/- was withdrawn on 3rd June 1982. The Court below found that since the consideration money was Rs. 8000/- then appellant had to pay only Rs. 4000/- as 1/2 of the consideration amount, there was no necessity to withdraw such a huge amount and thus he came to find that in order to cheat the illiterate plaintiff such tactics was adopted. The learned trial Court held that the deed was fraudulent and consequently decreed the suit.

5. The First Appellate Court has framed the point for determination. Whether the plaintiff was the sole purchaser of the disputed land and the name of defendant No. 1 was fraudulently entered in the sale deed?

The learned appellate Court relying on AIR 1951 SC 284, observed that party pleading commission of fraud must set forth full particulars. But in the instant case the full particulars of fraud was neither pleaded nor proved. The learned appellate Court also on the consideration of the evidence found that DW 4 has said that the consideration money was paid one day before the registration of the deed at Panch Mandir Chowk. The learned appellate Court while considering the evidence of DW 6 found that Rs. 7450/- was withdrawn, in his opinion, this was relevant and it showed that

defendant No. 1 had sufficient money at the relevant time for purchasing of the land. As said DW 4 has denied that the consideration money was paid at the time of execution of the sale deed and as he was independent witness the Court found that it was probable that consideration money for the purchase of the disputed and was paid in equal share by both the purchasers and thus reserved the decree.

6. The plaintiff appellant in the plaint on the payment of consideration amount vide Part 6 said that at the time of writing of the deed she paid the total consideration amount of Rs. 8,000/- in presence of Gumani Das and the defendant No. 2 and 3 without reading the deed signed on it. The defendant Made out a case that the sale deed was written in presence of all and the consideration amount of Rs. 8,000/- was paid in the shop of the vendor at Panch Mandir Chowk in presence of witnesses by defendant No. 1 on a day before registration of sale deed thus according to the plaintiffs pleading the consideration money was paid on the date of execution of the deed, whereas according to the defendant it was paid one day earlier. The plaintiff in her evidence (PW 10) vide paragraph-13 of her cross- examination says that she had paid money to the vendors at their residence the witness of which is only Gumani Das. She further added that she has paid the money at the residence one day earlier. There is nothing on the record to show that she was withdrawn the money from the bank or she had paid it by herself that was kept in her house. It is not clear from her evidence wherefrom the plaintiff has got the money, so when this plaintiff makes aforesaid submission then she admits the claim of the defendant No. 1 made in the W.S. that the money was paid one day earlier and in this way the plaintiff herself gave a go bye to her claim made in the plaint that the money was paid on the date of its execution. According to her only witness of payment was Gumani Das and when Gumani das was examined as PW 6 and in his examination-in-chief he says that money was paid at the time of execution and then the vendor signed the deed. The Dhaneshwari Devi taken out the money from her jhola thus this witness contradicts the plaintiff herself. As against this the evidence of the defendant No. 1 is that the money was withdrawn on 3.6.1982 from bank vide (Ext. D) the sale deed is of 4.6.1982. Thus it is proved that the money was withdrawn one day prior to the execution of the sale deed and according to the defendant the money was paid on the same day. It was also corroborated by the plaintiff. Wherefrom the money was got by the plaintiff as stated above has not been brought in the evidence of the plaintiff but peculiarly a suggestion was given though beyond the pleadings of the plaintiff to the defendant No. 1 (DW 6, Para 16) that in November 1981 Dhaneshwari Devi plaintiff had gave Rs. 4,000/- to the defendant and by May 1982 the Dhaneshwari Devi had deposited Rs. 7500/- with the defendant for the purpose of purchasing the land. The defendant denied this suggestion. From this it appears that the plaintiff wants to say that the money that was withdrawn by the defendant one day earlier to the execution of the sale deed and was paid according to the plaintiff also on the same date was what the plaintiff gave rather it was by the defendant No. 1. In absence of any pleading this cannot be allowed.

7. Therefore the whole circumstances are :-

(i) That the plaintiff is not very sure as to when the money was paid she also corroborates the defendant No. 10 payment of the money one day prior to the execution of the deed.

(ii) No source of money given by the plaintiff either in pleading or in evidence.

Then there is no reason to disbelieve that the money was paid one day earlier and by defendant No. 1. It is other facts that what were conditions and that has not come in clear way. But in the aforesaid circumstances withdrawal of that amount of Rs. 7500/- on the day of payment to the vendor gives rise to a presumption that the consideration money was paid. The question is answered accordingly.

8. This Second Appeal is dismissed.