

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No.184 of 2010

Smt. Chandrakanta Devi Appellant
Versus
Sarwajit Saflta Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Atishay Shrestha, Advocate
For the Respondent : In Person

CAV ON 20.06.2024

PRONOUNCED ON 05.07.2024

1. This appeal is preferred by the plaintiff against the judgment of reversal. Plaintiff's declaratory suit for title and recovery of possession was decreed by the learned trial Court and reversed in appeal.
2. The parties shall be referred to by their original placement in the suit and will include their legal representatives substituted at different stages.

PLAINTIFF'S CASE

3. Plaintiff is the mother and the suit has been brought against her son for the declaration of title and possession over the ground floor of a double storied building, detailed in the plaint, on the basis of a sale deed executed by her husband, and father of the defendant on 13.10.2006. After the said purchase, plaintiff got it mutated in the Anchal and is paying rent to the State.

4. The said property was self-acquired property of her husband Ganesh Prasad and was purchased by plaintiff from her own savings and stridhan property and got her name mutated in the anchal. After the said property was purchased both her sons started quarrelling with the plaintiff and consequently, the suit for declaration and recovery of possession was filed.

DEFENDANT'S CASE

5. The case of the defendant is that suit property was allotted by defendant through amicable partition. The house was constructed by Ganesh Prasad and he was inducted in the house.

6. With regard to the sale deed, it is pleaded that his father was suffering mental illness of dementia and paralysis. His mother was a complete house wife without any independent source of income. The said sale deed was not to the knowledge of the defendant and the same was forged and fabricated

prepared in the name of the executant Ganesh Prasad to grab the share of the defendant which was allotted to him in amicable partition between his father Sri Ganesh Prasad, the defendant and his eldest brother. In the said partition the ground floor of the main building was allotted to the defendant and the 1st floor to the share of eldest brother.

7. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court:-

(III) *Whether the plaintiff has purchased the suit property out of her own funds, savings and Stridhan?*

(IV) *Whether plaintiff has got right, title and interest over the suit property?*

8. The learned trial Court decreed the suit by recording finding of fact in favour of plaintiff.

9. The first appellate Court reversed the finding of the learned trial Court and dismissed the suit of the Plaintiff on the ground that the sale deed (Exhibit 1) had not been duly proved. Although it was stated in the content of the sale deed that Ganesh Prasad executed the sale deed, signature of Ganesh Prasad on the entire sale deed was absent and only his thumb impressions were there. The thumb impressions were not identified by anyone. The witness namely Awadhesh Prasad and Sarveshwar Prasad to the sale deed, were not examined and therefore, it was not validly and legally executed.

10. Instant appeal has been admitted to be heard on the following substantial question of law:-

I. *Whether the learned lower appellate court has committed an error on a substantial question of law by reversing the judgment and decree passed by the learned trial court without considering and meeting the reasonings given by the learned trial court in support of its judgments?*

II. *Whether, since for decreeing the suit the learned trial court had relied upon Exhibit 1, the registered sale deed (an admitted document marked exhibit without objection), the evidence of the plaintiff showing her independent source of income, the custody of the original sale deed, the custody of the vendor's sale deed (exhibit-1/A) for the purpose of holding that the plaintiff got title over the suit property, the learned lower appellate court has committed an error on a substantial question of law by setting aside the judgment and decree of the learned trial court without considering the reasoning of the learned trial court?*

11. It is argued on behalf of appellant that there is presumption of due

execution of registered sale-deed (Exhibit-1) and onus lies upon the parties who seeks to challenge the due execution of it. It is not disputed in the written statement, that Sri Ganesh Prasad was the owner of the suit property for which the sale deed was executed in favour of the plaintiff. It is argued that the learned first appellate court completely misdirected itself while holding that burden was on the plaintiff to prove the registered sale deed and the witnesses to the sale deed were not examined, therefore, the sale deed (Exhibit 1) was disbelieved.

12. The second ground on which the appeal was allowed was that at the time of execution of sale-deed, the executor was suffering from physical as well as mental disability of dementia, in view of the medical evidence of treatment being Exhibits A/3, A/4, A/5, Exhibit B, Exhibit B/1 and Ext. C. In this regard, it is argued that the specific case of the defendant is pleaded in Para-15 of the written statement that executor (Ganesh Prasad) was suffering from mental illness and was under treatment of Dr. S. N. Sharma. It is submitted that Dr. S. N. Sharma in his prescription dated 16.10.2003 (Exhibit A/1) states the illness of Ganesh Prasad to be of hemapheresis. This ailment is physical paralysis of half the limbs and it is not concerned with the mental illness which has been specifically pleaded by the defendant.

13. It is argued by referring to Exhibit D which is a memorandum of meeting of the villagers in the house of plaintiff, which shows that an attempt was made to project Ganesh Prasad to be suffering from mental illness which was not agreed and was struck down by the villagers. Neither the doctor nor the villagers or relatives have come to support the contention case of the defendant that Ganesh Prasad was suffering from mental illness.

14. Reliance is placed on the following authorities:

- a. ***Ram Narain Gupta Versus Rameshwari Devi, 1988(4) SCC 247***
and on ***Smt. Sudama & Others Versus Rakeshpal Singh (deceased) [represented by L.R. & Others], 2013 SCC OnLine All 13428.***
- b. On the point of adverse inference that has been drawn by the learned First Appellate Court, reliance is placed on **2015(7) SCC 178 para 21.**
- c. With regard to the veracity of thumb impression, reliance is

placed on *Lachhmi Narain Versus Surjung Singh, 2021 SCC online SC 606* para-19.

15. Respondent-Sarawjit Saflta appears in person and defended the judgment and decree passed by the first appellate court. It is submitted that a wife will make payment of consideration money to executor of the sale deed who happens to be her husband.

16. It is submitted by the Respondent/Defendant appearing in person that wife cannot purchase the property from her husband. His mother had no source of income to pay the consideration amount. No witness has been examined in support of source of income of the plaintiff. Plaintiff (P.W.-1) has admitted that she was not working and had no separate income. The mode of payment has also not been disclosed. There has been admission in the evidence of P.W.1 in para-66 that she was not in service and had no independent income.

17. His father was a senior Accountant, but he had not signed the sale deed, rather his LTI were affixed. Consideration money of Rs.5,62,500/- was paid in cash and not by cheque or demand draft as it should have been.

FINDINGS

18. To begin with, suit property being the self-acquired property of Ganesh Prasad, he had all right to dispose it by testamentary or by sale, gift to any person including his wife, who is the plaintiff of the case.

19. Plaintiff on her part had all right to acquire the said property in her name in view of Section 14(1) of the Hindu Succession Act, 1956 which provides that any property possessed by female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as limited owner. “Property” under explanation means to include immovable property purchased by her. The principle laid down in Section 14(1) of the Act has read by courts in a very comprehensive manner since the said Act over rights the old law in Streedhan in respect to property possessed by a female Hindu as has been held in **(2009) 15 SCC 756**.

It has been held in ***Marabasappa v. Ningappa, (2011) 9 SCC 451***

“Section 14 of the Hindu Succession Act, 1956 clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The Explanation to sub-section (1) further clarifies that a Hindu woman has full

ownership over any property that she has acquired on her own or as stridhana. As a consequence, she may dispose of the same as per her wish, and that the same shall not be treated as a part of the joint Hindu family property.”

20. There are certain fundamental principles of pleadings which appear to have been lost sight of by the learned first appellate court. Pleading of a party may be alternative and inconsistent, but once the party has taken a definite stand and the Court has proceeded to decide on that basis, he cannot turn around and take an inconsistent plea. This is for the reason that law does not permit a person to both approve and disapprove. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage” [Refer to *R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683*]. Hon’ble Supreme Court stated in **AIR 1996 SC 112** that no amount of proof can substitute pleading which are the foundation of claim of a litigating party.

21. Plaintiff has taken three inconsistent pleas in the written statement. First is that the sale deed was a forged and fabricated document, secondly executant was suffering from dementia and was under the undue influence of Plaintiff mother, and her elder son. Lastly, the purchaser had no independent earning to have purchased the suit property. All these three pleas are irreconcilable, for the reason that if one pleads that it was forged, meaning thereby that it was not signed by the executor, then it cannot be said that it was induced by undue influence. In case of execution by undue influence, it logically follows that instrument had been signed, but the consent was obtained by undue influence and not by forgery. The third plea that if Plaintiff had no independent income, alludes to the plea that it was obtained without any consideration.

22. There is a presumption of the correctness of the endorsement made by the Sub-Registrar under Section 58 of the Registration Act, refer to **Ishwar Dass Jain v. Sohan Lal, (2000) 1 SCC 434**. Further, it has been held in **Vimal Chand Ghevar Chand Jain & Others Versus Ramakant Eknath Jadoo, 2009 (5) SCC 713** that there is presumption of genuineness in favour

of registered document and heavy burden lies on the party who assails such a document.

23. A sale deed cannot be challenged for want of consideration money and a money suit can be filed by the executor of the deed.

24. In the view of the settled position of law, the approach of the first appellate Court to shift the burden of proof of the registered deed of sale on the plaintiff was impermissible, as there was presumption of its due execution and the burden was on the defendant to rebut the same by leading cogent evidence. Instead of looking for the evidence of execution, evidence in rebuttal if any should have been looked into by the first appellate court.

25. Under the circumstance, this Court is of the view that First Appellate Court has not properly met with the reasoning of the trial Court, and further committed error in ignoring the presumption of due execution of the sale deed and holding that the plaintiff failed to prove the sale deed. Both the substantial questions of law are answered in favour of the Plaintiff/appellant.

Judgment and decree of the appellate Court is set aside, and that of the trial Court is resorted.

Second appeal is allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated 5th 07.2024

AFR/Anit