

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.03 of 2018

(Against the judgment dated 28.02.2017 passed by learned District Judge-IX, Palamau at Daltonganj in Title Appeal No.06 of 2009)

1. Lal Saheb Chaudhary
2. Anand Kumar Choudhary @ Anand Kr. Choudhary
3. Hira Lal Chaudhary
4. Moti Lal Chaudhary
5. Ram Chandra Chaudhary

All sons of Gorkh Nath Choudhary

All resident of Village & P.O. Khamdih, P.S. Daltonganj,
District Palamau.

.... Plaintiffs/Appellants/ Appellants

Versus

1. Prabha Devi, wife of Sudesh Chaudhary, daughter of Late Bhukhan Noniya, resident of Village Sutha, P.O. Patan, P.S. Patan, Dist.- Palamau, Naihar Village Khamdih, P.O. Khamdih, P.S. Daltonganj, District Palamau.
2. Sarita Devi, wife of Sukhi Nonia, granddaughter of Late Bhukhan Nonia, resident of Village Parihara, P.O. Tildag, P.S. Garhwa, District- Garhwa.

.... Defendants/Respondents/Respondents

For the Appellants	: Mr. Kishore Kr. Mishra, Advocate Mr. Dilip Kr. Prasad, Advocate
For the Respondents	: Mr. Manjul Prasad, Sr. Advocate Mr. Akhouri Prakhar Sinha, Advocate Mr. Arbind Kumar Sinha, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Second Appeal, under Section 100 of Code of Civil Procedure, has been preferred against the judgment and decree of concurrence and affirmation

dated 28.02.2017 passed by the learned District Judge-IX, Palamau at Daltonganj in Title Appeal No.06 of 2009 whereby and where under the District Judge-IX, Palamau at Daltonganj has dismissed the appeal on contest and affirmed the judgment and decree dated 17.12.2008 and 13.01.2009 respectively passed by the learned Sub-judge II, Palamau at Daltonganj in Title Suit No.36 of 2001.

3. The brief fact of the case is that the plaintiff filed Title Suit No.36 of 2001 with the following reliefs: -

Declaration that by virtue of deed of transfer and part performance thereof, the plaintiffs acquired perfect right, title and possession. The other prayer has been made for debarring the defendant from enforcing any right in respect of suit land other than receiving the rest consideration amount and hand over the *Takajul Badlain* receipt of sale-deed Nos.2332 and 2333 of 2001 to the plaintiffs, and thirdly in case of the failure of the defendant to receive the rest consideration amount as per terms of the contract and recital in the sale-deed, hand over both the receipts by way of mandatory injunction to the defendants and a prayer has also been made for declaration that the deed of cancellation Nos.4502/2001 and 4503/2001 are *abinitio void* and illegal documents having no adverse effect upon the registered sale-deed Nos.2332 of 2001 and 2333 of 2001 and other consequential reliefs.

4. The brief fact of the case is that the defendant namely Prabha Devi entered into an agreement with the plaintiffs to transfer the suit land. On receiving Rs.4,000/- out of the total consideration amount of Rs.44,500/-, the defendant namely Prabha Devi executed two registered sale-deed No.2332 of

2001 in respect of Schedule Á' land of the plaint and deed number 2333 of 2001 in respect of Schedule B' on 08.03.2001 and put the plaintiffs in possession of the entire suit land. She agreed to receive the rest consideration amount after a week but then, she refused to receive the same and when the plaintiffs approached to pay the entire consideration amount without adjusting the advance then also, she along with her husband refused to oblige and ultimately taking the advantage of the custody of *Takajul Badlain* (the receipt for registration and the authorization to the plaintiffs to get the original sale-deed of completion under Section 61 of the Indian Registration Act); she along with her husband on 20.04.2001 threatened to the plaintiffs to pay an amount of Rs.50,000/- for the lands of Schedule Á' and Rs.75,000/- for the lands of Schedule 'B', otherwise the lands would be transferred to someone else and prevented the plaintiffs from cultivating the suit land. The plaintiffs issued legal notice to the defendant and the defendant refused to receive the same. On 15.05.2001, the husband of the defendant No.1 informed the plaintiffs that due to non-payment of money, the defendants cancelled the both sale-deeds. The plaintiffs obtained a copy of the deed of cancellation and came to know from them, the true intention of the defendant No.1 hence, the plaintiffs filed the said suit. The defendant No.1 namely Prabha Devi in her statement challenged the maintainability of the suit on various technical grounds and pleaded that as her father is still alive, hence, she has neither any title nor any possession over the suit land, rather the title and possession of the land is with her father; so, no right, title, interest or possession accrued to the plaintiffs on the basis of the said two sale-deeds. On the pressure of the plaintiffs and their father, the

defendant No.1 became ready to receive the consideration amount mentioned in the deed as per the rate chart for registration; which was lesser than the actual rate and the plaintiffs have not paid a single penny of the consideration amount to the defendants either prior to the execution of the deed or at the time of the execution of the sale-deed. The defendant No.1 retained *Takajul Badlain* in her possession for ensuring the receipt of the consideration amount but as the plaintiffs did not pay the consideration amount, hence, she obtained the original sale-deed from the Registry Office, upon non-receipt of the consideration amount. It is then pleaded by the defendant no1 that both the sale-deeds were executed by the defendant No.1 in favour of the plaintiffs by the plaintiffs exercising fraud and cheating. Originally, Prabha Devi was the only defendant in the suit, later on, her father- Bhukhan Chaudhary, impleaded himself as the defendant No.2 and also filed separate statement. In his written statement, the defendant No. 2, besides challenging the maintainability of the suit on various technical grounds, further pleaded that the suit property is the joint property and after marriage Prabha Devi has no connection with the landed property of her father, hence, defendant No.1 has no right, title, possession over the suit land. Accordingly, she has no right to transfer or execute the transfer of the suit land.

5. On the basis of rival pleadings of the parties, the trial Court settled the following issues: -

- I. Is the suit maintainable?
- II. Is there cause of action for the suit?
- III. Did the plaintiff acquire valid right, title and interest over the suit land?

- IV. Are the plaintiffs entitled to a decree for part performance of contract?
- V. Are the plaintiffs entitled to get “takajul badlain” from the defendant No.1 regarding sale deed nos.2332/2001 and 2333/2001?
- VI. Whether the sale deeds executed by defendant no. 1 are valid or not?
- VII. Whether the deeds of cancellation; in respect of suit land executed by defendant no.1 are valid?
- VIII. Are the plaintiffs entitled to relief as prayed for?

In support of their case, the plaintiffs have examined 8 witnesses and proved the documents which have been marked as Ext.1 to 2 and the defendants examined 6 witnesses and proved the documents which have been marked as Ext.A to C.

6. The learned trial court first took up Issue Nos. III, IV, V and VI together and after considering the evidence in the record came to the conclusion that the sale-deeds marked as Ext.1 and 1/A are not valid but illegal documents so, there is no need to cancel them through execution of deed of cancellation and the plaintiffs are not entitled to receive the registration slip i.e. receipt of takajul badlain as title has not been passed through the said sale deeds and decided Issue Nos.III, IV, V and VI against the plaintiffs.

7. The learned trial court next took up Issue Nos.I, II and VIII together and held that the suit of the plaintiffs has no valid cause of action, hence, the suit is not maintainable. The plaintiffs are not entitled to get relief prayed for in the suit and dismissed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Sub-judge II, Palamau at Daltonganj in Title Suit No.36 of 2001, the plaintiffs filed

Title Appeal No.6 of 2009 in the court of Principal District Judge, Palamau at Daltonganj which is ultimately heard and disposed of by the learned first appellate court as already indicated above. The learned first appellate court on the basis of the materials available in the record and the submissions made before it, formulated the following three points for determination: -

- (A) Whether the defendant no. 1 had valid right, title, interest and share in the property at the very time of execution of sale deeds and whether the said sale deeds are valid or not?
- (B) Whether the plaintiffs acquired valid right, title and interest over the suit land and entitled to get "takajul badlain" from the defendant regarding sale deed nos. 2332 and 2333/ 2001?
- (C) Whether the appellants/plaintiffs are entitled for any relief or reliefs as claimed in this appeal?

9. The learned first appellate court by independent appreciation of the evidence in the record considered the fact that the Record of Rights marked as Ext.C of the suit land stands recorded in the name of Prasad Nonia- the grandfather of defendant No.2. The descendant sons of Prasad Nonia are in jointness of the property without any partition by metes and bounds among them. The recital of the sale-deeds executed by the Prabha Devi did not contain any description as to how Prabha Devi became the title holder of the land sold by her nor there is any evidence either oral or documentary in the record in this respect and went on to hold that Prabha Devi was not having right, title or interest of the suit property at the time of execution of the sale-deed by her. Learned first appellate court next considered that as Prabha Devi was not

legally entitled to execute the sale-deeds; hence, both the sale-deeds dated 08.03.2001 executed by her is void and no right, title or interest on the basis of the same has been accrued to the plaintiffs. Therefore, the plaintiffs are not entitled to get *Takajul Badlain* from the defendants and went on to hold that the plaintiffs are not entitled to the same and dismissed the appeal.

10. Learned counsel for the appellants submits that both the courts below could not appreciate the evidence in the record in their right perspective and erroneously held that the defendants No.1 has no valid right, title, interest and share in the property at the time of execution of the sale-deed and that the plaintiffs are not entitled to get *Takajul Badlain* from the defendants. Hence, it is submitted that the judgment and decree passed by both the courts below be set aside and the suit of the plaintiffs be decreed after formulating the proper substantial question of law.

11. Learned counsel for the respondents submits that the undisputed fact remains that the defendants are 'Nonia' by caste which is a Backward Class and draws attention of this Court to proviso (b) of Section 46(1) of the Chota Nagpur Tenancy Act, 1908. It is next submitted by the learned counsel for the respondents that as undisputedly no previous sanction has been obtained from the Deputy Commissioner otherwise also no right, title, interest has been accrued to the plaintiffs, as the sale-deeds being in violation of the said proviso. Therefore, it is submitted that no illegality has been committed by both the courts below in dismissing the suit and the appeal respectively. Hence, it is submitted that this appeal, being without any merit, be dismissed.

12. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that the undisputed fact remains that the suit land was a joint family property of the descendant of the original recorded tenants. The undisputed fact remains that the defendant No.1 is a married lady residing with her husband having no connection with the affairs of the suit property. It is the case of the defendant that no consideration amount was paid. Further, the undisputed fact remains that the defendant No.1 is 'Nonia' by caste and is a member of Backward Classes. It also remains undisputed that the sale-deeds were executed without the previous sanction of the Deputy Commissioner.

13. Under such circumstances, this Court has no hesitation in holding that even otherwise also both the sale-deeds are not valid having been executed in violation of the proviso (b) of Section 46(1) of the Chota Nagpur Tenancy Act, 1908.

14. In view of the discussions made above, this Court do not find any illegality in the impugned judgment passed by the learned trial court in dismissing the suit and the appellate court in dismissing the appeal and no substantial question of law is involved in this appeal.

15. Accordingly, this appeal, being without any merit, is dismissed.

16. Let the copy of this judgment be sent to the courts below.

(Anil Kumar Choudhary, J.)