

Bhatori (Smt)

Vs

Ram Piari (Smt)

Civil Appeal No. 676 of 1995

(K. Ramaswamy, G. B. Pattanaik JJ)

30.07.1996

ORDER

1. Heard counsel for the appellant.

2. Pursuant to notice issued on 22-11-1988, Mr Uma Dutta had appeared for the respondent. Subsequently, he reported on 6-1-1995 that he was instructed not to appear in the matter. He sought for and was granted permission to withdraw from the case. Thereafter, none appeared for the respondent. Initially, the case was adjourned since consequent upon reference doubting correctness of Mithilesh Kumari v. Prem Behari Khare [(1989) 2 SCC 95] decision by a three-Judge Bench was awaited. The controversy is no longer res judicata. In view of the judgment of a three-Judge Bench in R. Rajagopal Reddy v. Padmini Chandrasekharan [(1995) 2 SCC 630] wherein it was held that the Benami Transactions (Prohibition) Act, 1988 is prospective in operation, the question in this case is whether the sale of the appellant's land to the wife of the second respondent, Ram Mehrar, holder of power of attorney of the appellant is valid in law ?

3. It is seen that Ram Mehrar had general power of attorney not only to engage a counsel and conduct litigation on behalf of the appellant, but can also mortgage, alienate or transfer possession of the agricultural land to anyone whosoever after obtaining the exemption from the appropriate authorities. It is seen that notification under Section 4(1) of the Land Acquisition Act, 1894 acquiring the land was published in January 1979. Notice, thereafter, was given to the appellant on 28-3-1979. When the appellant demanded from the second respondent in August 1979 the return of her power of attorney, he did not return it. On the other hand, he promised that he would not act detrimental to her interest. The second respondent appears to have filed a suit on 23-8-1979 in which he impleaded the appellant as party-defendant. It is the case of the appellant that the second respondent engaged two advocates, one Mr Mitter Sain on behalf of himself and the other Ram Kishan for the appellant. The counsel appearing for her informed her that the suit was not for the purpose of obtaining compensation from the Land Acquisition authorities, but for declaration of his title to her lands. When the appellant questioned him, he did not properly respond to her enquiry. Thereafter, she contested the suit. It was adjourned for appearance of the respondent to 11-10-1979, on which date he did not appear. As a consequence the suit was dismissed for default. Subsequently he seems to have created alienation by executing sale deeds dated 11-10-1979 and 22-10-1979 in respect of the selfsame land in favour of Ram Piari, his wife for a consideration of Rs 10,000. The appellant had filed criminal case against him under Sections 420, 406 and 407 IPC, with which we are not concerned. Similarly, she had filed civil suit for declaration. The suit came to be dismissed on 27-3-1985. On appeal, it was confirmed on 21-12-1985. The second appeal was also dismissed on 22-7-1986. Thus this appeal by special leave.

4. Narration of the facts clearly indicates that Respondent 2, Patwari, having had power of attorney in his favour from the appellant obviously had played fraud upon the appellant and got her lands transferred in the name of his wife. The fraud played had produced damage to the appellant depriving her of the valuable property denuding right, title and interest to claim compensation in respect of her lands acquired by the Government. Having been defrauded, she is entitled to lay the suit for declaration of title and other reliefs in the suit. It would, therefore, be a clear case of fraud played by the respondent upon the appellant. The fraud unravels the contract and it is void. The courts below have committed grave error by not appreciating the fraud played by the respondent in proper perspective.

5. The appeal is accordingly allowed. The judgments and decrees of the courts below are set aside. In the circumstances, the suit is decreed with exemplary costs throughout quantified at Rs 10,000 at each of the stages including in this Court.