

ORISSA HIGH COURT

Ramchandra Biharilal Firm

Vs

Mathuramohan Naik

Second Appeal No. 67 of 1962

(S. Barman, J.)

15.01.1964

JUDGMENT

S. Barman, J.

1. Defendant No. 1 is the appellant. This appeal arises out of a suit filed by the plaintiff for declaration of title and possession of 12.88 acres described in Schedule Ka.

2. The plaintiff's case is this; The suit land originally belonged to one Narahari Mohapatra, grand-father of defendants 2 and 3. Defendant No. 1 Ramchandra Beharilal, a firm, obtained a money decree against Narahari. Defendant No. 1 put the suit land in court sale in execution of the said decree and purchased the same. On January 18, 1956 by a registered sale deed Ext. A/1 defendant No. 1 sold the suit land 12.88 acres in area for consideration of Rs. 600/-. It was agreed that Rs. 300/- would be paid immediately and possession would be delivered; that the balance of Rs. 300/- would be paid one year after; then the sale deed itself would be delivered after such payment of the entire consideration money. In pursuance of the said agreement Rs. 300/- was immediately paid and possession was delivered. The balance of Rs. 300/- was not paid. On April 5, 1956 defendant No. 1 sold the suit land to defendants 2 and 3 under a registered sale deed Ext. A-2. The subsequent purchasers defendants 2 and 3 obstructed the plaintiff and took away paddy worth Rs. 200/- which the plaintiff claims as damages. On April 2, 1957 the plaintiff filed the suit for declaration of his title on the basis of his sale deed Ext. A-1, and for setting aside the subsequent sale deed dated April 5, 1956 executed by defendant No. 1 in favor of defendants 2 and 3 under the registered sale deed Ext. A-2 as aforesaid.

3. The defense is this : It was agreed that the purchaser plaintiff would pay Rs. 600/- within three days; that the vendor defendant 1 on receipt of Rs. 600/- will endorse the Registration Ticket in favor of the plaintiff to get the sale deed from the registration office. The plaintiff having failed to pay the consideration money a registered notice Ext. C-1 was given by defendant No. 1 to the

plaintiff on January 25, 1956. The said notice was received by the plaintiff on February 1956. Thereafter by a registered cancellation deed dated February 15, 1956 the vendor defendant No. 1 cancelled the previous sale deed in favor of the plaintiff. The defense is that no consideration had passed. The plaintiff's case of alleged payment of Rs. 300/- is false; there is no delivery of possession of the suit land to the plaintiff.

4. The concurrent findings of the courts below are these : There was no agreement between the plaintiff and defendant No. 1 that consideration money Rs. 600/- would be paid within three days but no part of the consideration was in fact paid. Possession of the suit land was not delivered to the plaintiff. Therefore there was no question of damages to the suit land as alleged. The sale deed Ext. A/1 was in the custody of the vendor defendant No. 1. It was still found that in view of the terms of the sale deed title passed to the plaintiff irrespective of non-payment of consideration. Accordingly the suit was decreed in favor of the plaintiff and his title was declared but no damages were granted. The second appeal was filed by defendant No. 1 against the decision of the courts below whereby the plaintiff's title was declared. The plaintiff filed a cross appeal against the decision of the courts below who disallowed the plaintiff's claim for damages and mesne profits.

5. The main question is whether on the interpretation of the impugned sale deed Ext. A/1 dated January 18, 1956 title had passed to the purchaser plaintiff although no part of the consideration was paid. There are three types of cases, namely; firstly, where it is independent clause, that is to say title would pass independently of the passing of consideration; secondly, dependent clause, that is to say passing of title would be solely dependent on the passing of consideration; Thirdly, involved clause that is to say where the terms regarding passing of title, passing of consideration and the vendee being made the owner in respect of the property sold are intermingled that it is very difficult to make out from the recitals a definite position that in fact the parties intended that title would pass independent of the question of consideration. It is on application of these tests as to under what category the present case falls that (sic) the impugned sale deed Ext. A/1 as translated in English reads as follows :

"We are owners in possession of the property mentioned in the schedule below having purchased the same in auction sale from the Civil Court. Now the said property is inconvenient for us and being in need of money for our business we out of our own free will and consent sell 12.88-7/12 acres of land described in the schedule below in which we have title and possession to you for the present prevalent price of Rs. 600/- and having received the consideration in cash make the vendee the owner in possession of the vended property from this date and stipulate that the vendee himself and his sons, grand-sons and future generations shall possess the said property and enjoy all rights thereto, pay rents in the Zamindar's sherista, obtain rent receipts in your own name and having mutated your own name in the settlement records transfer if necessary and for which neither we nor our successors shall lay any claim. If we lay any claim it shall be rejected."

The question is : Under which category this clause falls ? Is it an independent clause or a dependent clause or an involved clause ? This is a question of construction of the document which is undoubtedly a question of law. In my opinion this clause falls under the third category, namely, that is an involved clause.

This view is clearly supported by the relevant portion of the clause in its original vernacular (Oriya), namely this :

"Bartaman kalochit mulya pramane subalaga chhaayasata 600 tanka jarasamanare apana mustarinka haste jatartha bikri kari jarsaman tanka nagad bujhinei bikraya brutire mustarinknu aja tahikharu malik dakhalkar satwaban karai enkrar kari lekhi deu acchuki ookta britimaye tadasthita jabatiya satwa o upasatwa lavasahitaku mustari nije o apnnar putra poutradi sahita pursuanuktame bhog dakhhal kari ookta brutir jama jamidari sirastare aday dei apana name pouti hasal karuthiba."

6. Reading the original document carefully it appears to me that it is very difficult to make out a definite position that in fact the parties intended that title would pass independent of the question of consideration. In such a case the court has to take into consideration the extraneous factors such as the custody of the document, conduct of the parties and other surrounding circumstances. Here the concurrent findings of the courts below are that no part of the consideration passed, possession was not delivered and that the impugned sale deed was left in the custody of the vendor defendant No. 1. In fact the plaintiff's case as pleaded in the plaint and his evidence in court were not believed by the courts below. The nonpayment of any part of the consideration to the vendor, non-delivery of possession of the suit land to the purchaser and the custody of the sale deed itself left with the vendor defendant No. 1 are telling circumstances to show that it was not the intention of the parties that title would pass irrespective of non-payment of consideration. On this point several decisions were cited on both sides all of which were decided on the construction of the terms of the impugned document in each case. It is unnecessary to deal with them. There is no dispute about the tests to be applied in such cases. In my opinion, the courts below were not correct in their construction of the impugned sale deed. Apparently they did not keep in view the tests in the light of which a document is to be construed in such a case. In this view of the case the plaintiff purchaser's claim, to the suit land as based on the impugned document Ext. A/1 must fail because no title passed under the same.

7. As regards the plaintiff's cross appeal against the decision of the courts below which disallowed his claim for damages, in view of my holding that the plaintiff's claim of title to the suit land must fail, there is no question of damages as claimed by the plaintiff.

8. In the result, therefore, defendant No. 1's appeal is allowed and the decision of the court's below declaring the plaintiff's title to the suit land is set aside. The plaintiff's cross appeal for damages stands dismissed. Accordingly the plaintiff's suit stands dismissed. As the plaintiff has

failed both in the appeal as also in the cross appeal, he is to pay the costs throughout.
Order accordingly.