

PATNA HIGH COURT

Kamta Prasad

Vs

Lachmi Sah

(Das and James, JJ.)

08.07.1929

JUDGMENT

Das, J.

1. Sakhi Chand and Raghunandan were, two brothers. Tulsi was their cousin. They owned certain properties which have been referred to in these proceedings as house A, house B, house C and parti land D. There was a partition between them and at that partition house C and parti land D were allotted to Tulsi, house A was allotted to Raghunandan and house B was allotted to Sakhi Chand. Tulsi died leaving a son Agandi. Agandi has died without issue and it is the case of the plaintiff that a moiety of what belonged to Tulsi passed to Sakhi Chand and that the other moiety passed to Raghunandan. Bakhi Chand is also dead; and his two sons have been cited in this action as defendants Nos. 2 and 3. It is the common case that defendant No. 1 purchased house A from Raghunandan. Thereafter Raghunandan executed another sale-deed in favour of defendant No. 1, in respect of houses B and C and parti land D. If the conveyance by Raghunandan, defendant No. 4 to defendant No. 1 was a good conveyance, then it is undoubted that defendant No. 1 became entitled to all the properties that at one time belonged to the family. Thereafter and on 26th February, 1923, defendant No. 1 executed a sale deed in respect of house A to defendants Nos. 2 and 3. Defendants Nos. 2 and 3 thereafter sold house A as well as their interest in the remaining properties to the plaintiff; and the plaintiff claims to recover in this action not only house A, but a moiety of that which belonged to Tulsi, that is to say, half the interest in house C and parti land D from defendant No. 1. The suit was resisted by defendant No. 1 on the ground that so far as properties C and D are concerned they did not at any time vest in Sakhi Chand and that, therefore, defendants Nos. 2 and 3 were incompetent to convey those properties or any shares therein to the plaintiff. So far as house A is concerned, defendant No. 1 admits having executed the kabala in question on 22nd February, 1923, but he contends that "the sale-deed was not made operative nor was any exchange of equivalent made."

2. He goes on to say in para. 12 of written statement as follows:

The deed was allowed to remain inoperative on account of the act of defendants Nos. 2 and 3 and

no title devolved upon them by virtue thereof.

3. The Court of first instance dismissed the plaintiff's suit so far as house C and parti land D are concerned, but decreed it so far as house A is concerned. Both the sides appealed to the lower Appellate Court. That Court has dismissed the plaintiff's suit on all points and the plaintiff appeals to this Court.

4. Now the question as regards plaintiff's title to house C and parti land D is a short one and may be disposed of at once. It is true that these two properties were allotted to Tulsi and it is also true that in the ordinary course a moiety would devolve on Sakhi Chand: but as a matter of fact Tulsi was indebted to Raghunandan and it was the case of the defendant that Sakhi Chand declined the inheritance as the estate was heavily encumbered and that Raghunandan has been in possession for many years so as to entitle him to claim a title by adverse possession. The finding on this question is a finding of fact and is conclusive so far as this Court is concerned.

5. But so far as house A is concerned, I am of opinion that the plaintiff is entitled to succeed. It is worthy of note that the defendant does not allege in the written statement that there was any contract between him and defendants Nos. 2 and 3 to the effect that title would not pass until the payment of consideration. As I read the judgment of the lower Appellate Court that learned Judge does not hold that it was the intention of the parties that title should not pass until the payment of consideration money. As I read the judgment of the lower Appellate Court that learned Judge does not hold that it was the intention of the parties that title should not pass until the payment of consideration money. His finding on this question is that the conveyance remained inoperative. In dealing with this point the learned Judge says as follows:

The kabala Ex. 5 was executed on 22nd February, 1925, and registered, but the evidence shows that it remained with Lakshmi defendant (the executant). No consideration was paid to him. Defendants Nos. 2 and 3 did not take any steps to get possession of the house and the kabala for about two years. Defendants Nos. 2 and 3 did not think that they had acquired any title under the kabala. They did not agree to relinquish their rights in the house C and D and so they did not agree to purchase the house.

6. The last sentence in the judgment of the learned Subordinate Judge just quoted needs explanation, It was the case of the plaintiff and of defendants Nos. 2 and 3 that defendant No. 1 required defendants Nos. 2 and 3 to relinquish their interest in house C and parti land D and as defendants Nos. 2 and 3 declined to do so, the conveyance remained inoperative. In my opinion it is quite impossible to assent to the proposition as laid down by the learned Subordinate Judge. I have expressed my opinion on various occasions. My view is that a sale once registered passes title unless it is established to the satisfaction of the Court that the intention of the parties was that title should not pass until the payment of consideration. The find-of the learned Subordinate Judge is to the effect that the document remained inoperative because subsequent to the execution and the registration of the document, defendants Nos. 2 and 3 declined to relinquish

their interest in house C and parti land D. The conclusion, in my opinion is wrong in point of law.

7. Second Appeal No. 611. I would allow the appeal, set aside the judgment and the decree passed by the Court below and restore the judgment and the decree passed by the Court of first instance. The appellant is entitled to his costs throughout.

8. Second Appeal No. 602 is with reference to house C and parti land D. This appeal fails and is dismissed with costs.

James, J.

9. I agree.

