

PATNA HIGH COURT

Panchoo Sahu

Vs

Janki Mandar

A.F.A.D. No. 1961 of 1948

(Lakshmikanta Jha, C.J. and Chatterji, J.)

26.09.1951

JUDGMENT

Chatterji, J

1. This is an appeal by the plaintiff in a suit for declaration of title and recovery of possession in respect of 1 katha of land out of Survey Plot No. 1169 in village Sultangunj.
2. The plaintiff claims title to the disputed 1 katha of land under a registered sale-deed, dated the 5th October 1942, executed in his favour by defendant No. 1 for Rs. 100/- in respect of the entire Plot No. 1169 measuring .05 acre equivalent to 1 katha 14½ dhurs. The plaintiff's case is that he paid the entire consideration money to defendant No. 1, but the latter never made over the registered sale-deed to him in spite of demands. The plaintiff, however, it is said, came into possession of the entire plot and amalgamated 15 dhurs out of it with his house. The remaining 1 katha which is in dispute was used by him as his bari, but the defendants dispossessed him from it on 1st Asarh 1353 Fs. (June 1946). The suit was instituted on 6th July 1946.
3. The defendants belong to the same family of which the defendant No. 1 is the head. Their defence is that the real consideration of the sale-deed in favour of the plaintiff, executed by defendant No. 1, was Rs. 170/- though only Rs. 100/- was mentioned in the deed, and that the plaintiff paid only Rs. 70/- out of the consideration and did not pay the balance and, therefore, the sale-deed remained with the defendants. There was a difference between the parties which was referred to Panches and, according to the decision of the panches, defendant No. 1 was to execute a fresh sale-deed in favor of the plaintiff in respect of 14 dhurs out of the Plot No. 1169. The plaintiff accordingly amalgamated 14 dhurs with his house and the disputed 1 katha remained in possession of the defendants as before. The defendant No. 1 also executed a fresh sale-deed for Rs. 50/- in favor of the plaintiff's son in respect of this 14 dhurs. This sale-deed, however, was not registered. According to the defendants, the registered sale-deed, dated the 5th October 1942, is inoperative and the plaintiff is not entitled to any relief on the basis of that deed.
4. The learned Munsiff who tried the suit held that the defendants were precluded by Section 92 of the Evidence Act from proving that the consideration money of the sale-deed in question was

not Rs. 100/- but Rs. 170/-. He also held that the plaintiff paid the entire consideration money Rs. 100/- and came into possession of the entire plot, but was subsequently dispossessed by the defendant from the disputed land. He did not accept the story of the panchayati set up by the defendants. He accordingly decreed the suit.

5. On appeal, the learned Subordinate Judge agreed with the learned Munsiff that oral evidence was not admissible to prove that the consideration of the sale-deed in question was Rs. 170/- and not Rs. 100/-. But he held that out of the consideration of Rs. 100/- the plaintiff paid Rs. 70/- only to defendant No. 1. He also held that the intention of the parties was that title to the land would pass on payment of the entire consideration and as the entire consideration was not paid, the plaintiff did not acquire any title to the disputed land. He further held that the plaintiff never came into possession of any portion of plot No. 1169 by virtue of the sale-deed, but came into possession of only 14½ dhurs cut of it, sometime later as a result of the panchyati alleged by the defendants. He, however, did not accept the defendants' case about the execution of the subsequent sale-deed in respect of the 14½ dhurs. In the result he allowed the appeal and dismissed the suit. Hence this second appeal.

6. The main question for determination in this appeal is whether title passed on the mere execution and registration of the sale-deed in question, or, the intention of the parties was that title would not pass until the full consideration was paid. This question has been considered by this Court in various cases and it is now well-settled that the intention is to be gathered from the sale-deed itself; '*Rasikananda Mallick v. Gangadhar Panda*¹', '*Radhamohan Thakur v. Bipin Behari Mitra*²', '*Md. Murtaza v. Abdul Rahman*³', and '*Motilal Sahu v. Ugrah Narain Sahu*⁴'. It has also been laid down in the second case ILR 17 Pat 318 and in the third 27 Pat 122, that though the sale-deed may recite that the consideration has been paid, there is nothing to prevent the parties from adducing evidence to, show that the recital is untrue and that in fact the consideration was not paid.

7. The sale-deed in question, Exhibit A/2, recites :

"Having received payment of the whole and entire consideration money in cash from the aforesaid vendee, I put him (the vendee) in possession and occupation of the vended property."

It again recites, lower down :

"On receipt of the fair consideration money I the executant sell the vended land."

These recitals clearly indicate that title would pass and possession would be delivered on payment "of the whole and entire consideration money." In the cases in '*Rasikananda v. Gangadhar*', 1 Cut LT 1(Supra); '*Md. Murtaza v. Abdul Rahman*'. 27 Pat 122(supra) and '*Motilal Sahu v. Ugrah Narain Sahu*', AIR (37) 1950 Pat 288(supra), already cited, the sale-deeds were similarly worded and it was held that the intention of the parties was that the passing of title should depend on the passing of consideration. In the last two cases it was also held that if the terms of the sale-deed were ambiguous, the Court might also take into consideration the facts that the vendor retained the sale deed and never made it over to the

vendee and that possession was not delivered in pursuance of the sale deed. In the present case, it has been found by the learned Subordinate Judge that the entire consideration money was not paid, that the defendant No. 1 did not make over the sale deed to the plaintiff and that the plaintiff never came in possession of any portion of the vended plot consequent on the registration of the sale deed. Upon these findings, taken with the recitals in the sale deed, I think, the learned Judge was quite right in coming to the conclusion that "the intention of the parties was that title would pass to the vendor only on payment of the entire consideration money and not otherwise"

8. Mr. S.C. Misra on behalf of the appellant seeks to distinguish the present case from the aforesaid decisions on the ground that here the bulk of the consideration money, that is, Rs. 70/- out of Rs. 100/- was paid. But if the intention of the parties, as gathered from the sale deed itself was that title would pass only on payment "of the whole and entire consideration money", it is immaterial that the bulk of the consideration was actually paid.

9. Mr. Misra also lays great stress on the following recital in the sale deed which comes immediately after the first of the two above-quoted passages :

"Should in future, at any time I, the executant or my heirs and representative put forward any claim in respect of the consideration money or the sale deed of the vended property it will be illegal and null and void in Court."

But this recital obviously means that the vendor, would not put forward any claim for the consideration money; in other words, it would not be open to him to dispute the correctness of the recital that he received the consideration money. As pointed out in '*Radhamohan v. Bipin Behari*', 17 Pat 318 (Supra) and in '*Md. Murtaza v. Abdul Rahman*', 27 Pat 122 (Supra) that in spite of such recital, it would be open to the parties to show that it was incorrect.

10. Mr. Misra then relies on the following recital in the sale deed :

"Should, on account of any act done by me the executant there be found any kind of defect on the vendee viz., the claimant be put to any trouble and loss in the matter of the purchase of the vended property and in consequence thereof he (vendee) be dispossessed (from the vended property) or I, the executant or my heirs and representative dispossess him (vendee) or get him dispossessed (from the vended property), the said vendee shall be competent to realise the entire costs, damages and the entire consideration money paid with interest at the rate of Rs. 1/- per cent per month from the date of dispossession to the date of realization from the person and properties of me the executant and my heirs and representatives."

It is said that this shows that the intention was that the title would at once vest in the vendee. But this passage must be considered along with the earlier recital which clearly shows that the vendee would be put in possession of the vended property on receipt of the "whole and entire consideration money". If the entire consideration money was not paid, possession would not be delivered and, therefore, no question of dispossession of the vendee could arise. The words "the said vendee shall be competent to realise the entire costs, damages and the entire consideration

money paid with interest" in the passage relied upon are pertinent and they obviously mean that the vendee would be liable to refund the entire consideration money with costs, damages etc. This implies that the entire consideration money must have been paid.

11. Mr. Misra next contends that the plaintiff having paid the bulk of the consideration of the sale deed, the defendants ought to have performed their part of the contract. But this is not a suit for specific performance and the plaintiff never suggested in his plaint that he was ready and willing to pay the balance of the consideration money. On the contrary, his case was that he paid the entire consideration and came into possession of the entire vended property. It is important to notice that the suit was instituted more than three years after registration of the sale deed.

12. Mr. Misra further contends that the learned Subordinate Judge in view of the provisions of the Indian Arbitration Act, 1940, should not have at all taken into consideration the award of the panches by reason of which the plaintiff is said to have been given possession of the 14½ dhurs out of the vended plot. But that area is not in dispute and, therefore, the question of panchyati is not relevant. Besides, the decision of the learned Judge means no more than that the plaintiff came into possession of the 14½ dhurs by some subsequent amicable arrangement.

13. In my opinion, the decision of the learned Subordinate Judge is right and the appeal must be dismissed with costs.

Lakshmikanta Jha, C. J.

14. I agree.

Appeal dismissed.

Cases Referred.

¹ Cut LT 1

² 17 Pat 318

³ 27 Pat 122

⁴ AIR (37) 1950 Pat 288