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IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.122 of 1992

An application under Section 100 of the Civil Procedure Code.

Dinabandhu Behera ***Appellant***

-versus-

Binod Ram & Others ***Respondents***

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellant - Ms. Sumitra Mohanty, Advocate
appearing on behalf of
Mr. R.C. Mohanty, Advocate
For Respondents - Ms. J. Sahoo, Advocate
Appearing on behalf of
Mr. M. Mishra, Senior Advocate

CORAM:

MR. JUSTICE A.C.BEHERA

Date of Hearing :11.12.2023 :: Date of Judgment :25.01.2024

1. This 2nd Appeal has been preferred against the confirming Judgment.
2. The appellant of this 2nd Appeal was the sole defendant in the suit vide Title Suit No.14 of 1985-I and he was the appellant in the 1st Appeal vide Title Appeal No.4 of 1987.

The predecessor of the respondents of this 2nd Appeal i.e. Ramswarup Ram was the sole plaintiff in the suit vide Title Suit No.14 of 1985-I. When that plaintiff Ramswarup Ram expired, after the Judgment of Title Suit No.14 of 1985-I and during the pendency of the 1st Appeal vide Title Appeal No.4 of 1987, the respondents of this 2nd Appeal were substituted in his place as respondent Nos.1(a) to 1(f) in that 1st Appeal.

The appellant of this 2nd Appeal i.e. Dinabandhu Behera was the defendant in the suit vide Title Suit No.14 of 1985-I and he was the appellant in the 1st Appeal vide Title Appeal No.4 of 1987.

The suit of the plaintiff vide Title Suit No.14 of 1985-I was a suit for declaration of title over the suit properties and recovery of possession of the suit properties from the defendant along with mesne profits.

3. The case of the plaintiff as per the averments made in his plaint against the defendant was that, on dated 19.03.1974, the defendant sold some properties to Binod Kumar Ram (who is the son of the plaintiff) by executing and registering a sale deed. When the sold land covered under the aforesaid deed dated 19.03.1974 was demarcated through Amin at the field, it was found that, the defendant has no such land. Therefore, a case under Section 420 of the IPC was instituted against the defendant. During the pendency of the said criminal case, the plaintiff and

defendant entered into a compromise and on the basis of such compromise, the defendant sold the suit properties to the plaintiff for a consideration of money of Rs.5,000/- by executing and registering the sale deed on dated 24.09.1977.

It was agreed between them that, if the defendant will pay Rs.5,000/- to the plaintiff on or before 30.01.1980, he will take back the suit properties from the plaintiff, for which, in view of such understanding, the plaintiff had not insisted the defendant for delivery of possession of the suit properties. But, when the defendant did not pay Rs.5,000/- on or before 30.01.1980 as per the aforesaid understandings, then the plaintiff requested for the same to defendant, but, the defendant did not pay any heed to the same, for which, the plaintiff filed the suit vide Title Suit No.14 of 1985-I against the defendant praying for declaration of his title over the suit properties and for recovery of possession of the suit properties from the defendant and also for mesne profits from the defendant.

4. Having been noticed from the court in Title Suit No.14 of 1985-I, the defendant contested the suit by filing his written statement without disputing to the execution and registration of the sale deed on dated 24.09.1977 in respect of the suit properties by him (defendant) in favour of the plaintiff by taking his stands *inter alia* therein that; *at the time of execution and registration of the sale deed on dated 24.09.1977 by him in*

favour of the plaintiff, it was agreed between them (defendant and plaintiff) that, the plaintiff shall return back the suit properties to him (defendant) on payment of Rs.5,000/- by him (defendant) to the plaintiff. But, though, the defendant is prepared to pay Rs.5,000/- to the plaintiff, but the plaintiff is not accepting the same. Therefore, he (defendant) had given a registered notice on 20.06.1978 to the plaintiff to receive the said amount i.e. Rs.5,000/- from him (defendant), but the plaintiff claimed interest, though there was no understanding between them for payment of interest. As the plaintiff refused to receive Rs.5,000/- as per their understandings, for which, the plaintiff has no cause of action for filing of the suit against him (defendant), because, the plaintiff is not in possession over the suit properties. Due to non-delivery of possession of the suit properties by him (defendant) in favour of the plaintiff in spite of execution and registration of the sale deed on dated 24.09.1977 for the same, the title of the suit properties is with him (defendant), for which, the plaintiff is not entitled for any relief as prayed for by him.

The further case of the defendant was that, the suit of the plaintiff is barred by law of limitation. The suit of the plaintiff is not maintainable in the present form. Therefore, the suit of the plaintiff is liable to be dismissed.

5. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 5 numbers issues were framed by the trial court in Title Suit No.14 of 1985-I and the said issues are:

Issues

(1) Whether the plaintiff has right, title and interest over the suit land and entitled to recover possession of the suit land along with the mesne profits?

(2) Whether there is any valid agreement between the parties to the effect that the defendant will return Rs.5,000/-, the sale consideration and to get back possession of the suit land and if so whether any other party violated the terms and conditions of the contract?

(3) Whether the suit is barred by law of limitation, waiver, estoppel and acquiescence?

(4) Whether the suit is maintainable and plaintiff has cause of action?

(5) To what relief, the plaintiff is entitled?

6. In order to substantiate the aforesaid reliefs sought for by the plaintiff against the defendant, he (plaintiff) examined 3 witnesses from his side including him as P.W.1 and relied upon series of documents on his behalf vide Exts.1 to 12.

But, on the contrary, the defendant examined himself as D.W.1 and proved one document vide Ext.A.

7. After conclusion of hearing and on perusal of the materials, documents and evidence available on the record, the trial court answered all the issues in favour of the plaintiff and against the defendant and basing upon the findings and observations made by the trial court in all

the issues in favour of the plaintiff and against the defendant, the trial court decreed the suit of the plaintiff vide Title Suit No.14 of 1985-I on contest against the defendant vide its Judgment and decree dated 15.12.1986 and 23.12.1986 respectively and declared the right, title and interest of the plaintiff over the suit properties and also passed the decree for recovery of possession of the suit properties from the defendant along with recovery of Rs.12,000/- towards mesne profits from the defendant by assigning the reasons that, as the defendant (D.W.1) himself has admitted in his pleadings and evidence by stating about the execution and registration of the sale deed in respect of the suit properties by him in favour of the plaintiff on dated 24.09.1977 vide Ext.1 for a consideration of amount of Rs.5,000/-. When, undisputedly the sale deed vide Ext.1 in respect of the suit properties has been executed by the defendant in favour of the plaintiff and when the execution of the said sale deed vide Ext.1 has been duly proved then, at this juncture, mere non-delivery of possession of the suit properties by the defendant after selling the same to the plaintiff through R.S.D. dated 24.09.1977 vide Ext.1 cannot nullify or defeat the right, title and interest of the plaintiff over the suit properties. For which, the plaintiff is lawfully entitled for the decree for declaration of his right, title and interest over the suit properties in his favour and also, for recovery of possession of the suit properties from the defendant along with realization of the mesne profits.

8. On being dissatisfied with the aforesaid Judgment and decree dated 15.12.1986 and 23.12.1986 respectively passed in Title Suit No.14 of 1985-I in favour of the plaintiff and against the defendant, he (defendant) challenged the same by preferring the 1st Appeal vide Title Appeal No.4 of 1987 being the appellant against the plaintiff by arraying him (plaintiff) as respondent. But, when during the pendency of the 1st Appeal vide Title Appeal No.4 of 1987, the plaintiff (who was the respondent in the 1st Appeal) expired, then his LRs were substituted in his place, those are the respondents in this 2nd Appeal.

After hearing from both the sides, the 1st Appellate Court dismissed the 1st Appeal vide T.A. No.4 of 1987 of the defendant accepting the findings and observations made by the trial court in Title Suit No.14 of 1985-I in full in favour of the plaintiff and against the defendant vide its Judgment and decree dated 13.02.1992 and 25.02.1992 respectively.

9. On being aggrieved with the aforesaid Judgment and decree of dismissal of the 1st Appeal vide T.A. No.4 of 1987 of the defendant, he (defendant) has challenged the same by preferring this 2nd Appeal being the appellant against the successors of the plaintiff by arraying them as the respondents.

10. This 2nd Appeal was admitted on formulation of the following substantial questions of law, i.e.

Substantial Questions of Law

- (i) *Whether the transaction under Ext.1 conveyed valid title in view of the admitted fact that, the same was executed to avoid prosecution against the defendant, in other words whether it is hit by principle underline in Section 23 of the Contract Act?*
- (ii) *Whether there was transfer of title in favor of the vendee in view of the recitals in Ext.1, possession was retained with the vendor with further stipulation to re-transfer the title on payment of Rs.5,000/- by 30.01.1980?*

11. I have already heard from the learned counsels of both the sides.

12. The plaintiff has prayed for declaration of his right, title and interest over the suit properties on the basis of the sale deed vide Ext.1 executed by the defendant in his favour on dated 24.09.1977.

The plaintiff has specifically pleaded and as well as he (plaintiff) has adduced evidence during the trial of the suit that, though the defendant had executed and registered the sale deed vide Ext.1 in his favour in respect of the suit properties for a consideration amount of Rs.5,000/-, but the defendant had not delivered the possession of the suit properties.

13. In the pleadings of the defendant, he (defendant) has not disputed to the aforesaid pleadings and evidence of the plaintiff regarding the execution and registration of the sale deed vide Ext.1 in respect of the suit properties by him (defendant) in favour of the plaintiff.

The contents of the sale deed dated 24.09.1977 vide Ext.1 are clearly and unambiguously going to show that, the defendant has sold the suit properties to the plaintiff for Rs.5,000/-. In the evidence of the defendant (D.W.1), he (defendant) has admitted the execution and registration of the sale deed vide Ext.1 in respect of the suit properties by him (defendant) in favour of the plaintiff for a consideration amount of Rs.5,000/-.

14. Now, the question arises, when after execution and registration of the sale deed vide Ext.1 by the vendor (defendant) in respect of the suit properties in favour of the vendee (plaintiff), the title of the sold properties (suit properties) have been transferred from the defendant to the plaintiff or not, when possession of the suit properties is with the vendee (defendant) even after selling of the suit properties by him (defendant).

On this aspect, the propositions of law has already been clarified by the Honourable Courts and Apex Court in the ratio of the following decision:

- I) **AIR 1998 S.C. 3006—Bishnudeo Narain Rai & Others Vs. Anmol Devi & Others and 1990 (2) CCC 216 (Karnataka) Smt. Therojamma Vs. D.H. Sadasivaiah—T.P. Act 1882—Section 54—“For a valid sale is the registration of document by a person holding title. Indirectly, it suggests that, delivery of possession is not a sine qua non for the transfer of title.”**

II) 2009 (3) Civ.C.C (SC) 220 & 2009 (2) Apex Court Judgments (SC) 544— **Vimal Chand Ghevarchand Jain & Ors. vs Ramakant Eknath Jajoo**—“*T.P. Act 1882, Section 54— As soon as sale deed is registered, title passes to the vendee. The vendor in terms of the stipulations made in the deed of sale is bound to deliver possession of the property sold. If he does not do so, he makes himself liable for damages. Registered sale deed carries a presumption that, transaction was genuine.*”

III) 2020 (2) Civ.C.C. 203 (Gauhati) **Md. Abdul Latif Vs. Laloi Mia & Others (Para No.8)**—“*T.P. Act 1882—Section 54— Sale—Delivery of possession-Not an essential condition for sale.*”

IV) 2019 (1) CLR 31—**Babu Khan Vs. Salim Mahammad & Others (Para No.12)**— *T.P. Act 1882—Section 54—“For sale transaction to be complete, delivery of possession of the immovable property is not the sine qua non.”*

V) 2011 (III) Civ.L.T. 292 (Mad.) **Latif Estate Line India Ltd. Vs. Hadeeja Ammal & Others (Para No.48)**— *T.P. Act 1882, Section 54—“Sale”—“Meaning of”—“Transfer of ownership by one person to another—Once vendor is divested himself of his ownership of property, he retains no control or right over said property.”*

15. Here in this suit at hand, when the defendant is admitting about the execution and registration of the sale deed vide Ext.1 on dated 24.09.1977 regarding the selling of the suit properties by him in favour of the plaintiff, then, at this juncture, in view of the principles of law enunciated by the Hon'ble Courts and Apex Court in the ratio of the decisions referred to *supra*, after execution and registration of the sale deed in selling the suit properties by the defendant to the plaintiff, title of the suit properties has been passed from him (defendant) to the plaintiff. Therefore, the defendant being the vendor of the sale deed vide Ext.1 was bound to deliver possession of the sold properties i.e. the suit properties to the plaintiff. As, he (defendant) has not delivered the possession of the sold properties i.e. suit properties to the plaintiff, for which, he (defendant) himself is liable for the damages for the retention of possession of the sold properties with him illegally. Because, the plaintiff is owner of the suit properties since the date of purchase of the suit properties from him through the sale deed vide Ext.1.

16. As per the discussions and observations made above, when it is held that, the plaintiff is the owner of the suit properties and the defendant has no interest in the same and the defendant is in illegal possession over the suit properties, then, at this juncture, the Judgment and Decree passed by the trial court in Title Suit No.14 of 1985-I declaring the right, title and interest of the plaintiff over the suit properties and entitling him

(plaintiff) for recovery of possession of the suit properties from the defendant along with realization of mesne profit from him (defendant) and confirmation to the same by the Judgment and Decree of the 1st Appellate Court in Title Appeal No.4 of 1987 cannot be held as erroneous. For which, the question of interfering with the same through this 2nd Appeal filed by the defendant (appellant) does not arise.

17. Therefore, there is no merit in the 2nd Appeal of the appellant (defendant). The same must fail.

18. *In the result, the 2nd Appeal filed by the appellant/defendant is dismissed on contest, but without cost.*

19. The Judgments and Decrees passed by the trial court in Title Suit No.14 of 1985-I and by the 1st Appellate Court in Title Appeal No.4 of 1987 are confirmed.

**(A.C. Behera),
Judge.**

Orissa High Court, Cuttack.
25th of January, 2024//Rati Ranjan Nayak//
Senior Stenographer