

THE HON'BLE MR.JUSTICE HN SARMA  
JUDGMENT AND ORDER (ORAL)

Being aggrieved by the judgment and decree passed by the learned District Judge, Hailakandi in TA No 7/04 dated 20.7.05 affirming the judgment and decree passed in TS No 11/97, the defendant has filed this Second Appeal.

2. I have heard Mr N Islam, learned counsel for the appellant and Mr N Choudhury, learned counsel for the respondent.

3. The plaintiffs instituted the aforesaid suit in the Court of the learned Civil Judge (Senior Division) Hailakandi, praying for a decree declaring the right, title and interest over the suit land described in the schedule 1 for khas possession and the suit land described in schedule 2 for evicting the defendant and other reliefs. The basis of the claim of the plaintiffs is that they are the owners of the suit land by purchasing the same vide Ext- 2 dated 3.6.97 from the predecessor in interest of the defendant and the defendant having dispossessed them from the schedule 2 suit land necessity arose for filing of the suit. The defendant resisted the suit by filing written statement. Apart from taking usual defence, it is pleaded by the defendant that while executing the sale deed, the plaintiffs did not pay the consideration money to the vendor. However, no counter has been filed challenging the sale deed. Both the parties adduced evidence, oral as well as documentary. The learned trial Court at the end of the trial in deciding the relevant issues regarding entitlement of the plaintiffs held that the consideration money in respect of the said sale deed was paid and decreed the suit vide judgment and decree dated 23.7.2004 which was carried into TA No7/2004. The learned first appellate Court also vide judgment and order dated 20.7.2005 dismissed the appeal and affirmed the judgment passed by the learned trial Court, which is the subject matter of the present appeal.

4. The learned counsel for the appellant has raised the following substantial questions of for decision of this appeal.

1) Whether the Court below erred in law in accepting the sale deed of the plaintiff which is hit by section 44 of the Transfer of Property Act ?

2) Whether the learned trial Court erred in law in Fixing the burden of proof upon the defendant and arrived at its own decision thereby ?

5. I have considered the submissions made by the learned counsel for the parties. In order to appreciate the contention of the learned counsel for the parties, I have perused the materials available before me and the pleading of the parties. The execution of the sale deed in favour of the plaintiffs is an admitted fact. It is also admitted in the pleadings and in evidence that the ground for challenging the sale deed is one without consideration money. Such a ground is not contemplated under section 44 of the Transfer of Property Act. That apart, both the Courts below in concurrent in finding that the sale deed is valid and the allegation of non-payment of consideration money has not been accepted.

In view of the above, I do not find the substantial question No 1 sought to be arose out of the materials on record. Coming to the second substantial question of law, it is the fundamental principle of law that the burden of proof lies on the party who brings the allegation. In the instant case the Ext- A, registered sale deed, the plea of non-payment of consideration amount in such a circumstances burden of proof lies on the defendant to prove the same which miserably failed. In that view of the matter the learned Courts below did not commit any irregularity or illegality in asking the defendant to discharge the said burden. According

dingly, the said substantial question of law does not come out of the materials on record and hence the second substantial question of law is answered in favour of the respondent and against the appellants. Consequently, this appeal fails and stands dismissed.