

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.285 of 2019

(Against the judgment dated 19.06.2019 passed by learned District Judge-XIV, Dhanbad in Civil Appeal No.109 of 2018)

Niranjan Mahato, aged about 61 years, son of late Karmu Mahato, resident of Bhowra, P.O. & P.S. Bhowra, District Dhanbad, presently residing at Parghabad Colony, Qtr No. A4/12, P.O. & P.S. & District-Dhanbad Plaintiff/Appellant/Appellant.

Versus

1. Khedu Mahatain, wife of late Prahlad Mahato, resident of Gourkhuthi Basti, P.O. & P.S. Bhowra, District Dhanbad
2. Dino Bandhu Mahato, son of late Prahlad Mahato, resident of Gourkhuthi Basti, P.O. & P.S. Bhowra, District Dhanbad
3. Jag Bandhu Mahato, late Prahlad Mahato, resident of New Gourkhuthi Basti, P.O. & P.S. Bhowra, District Dhanbad

.... Defendants/Appellants/Respondents

For the Appellant : Mrs. Jasvindar Mazumdar, Advocate

P R E S E N T
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the learned counsel for the appellant.

2. This Second Appeal, filed under section 100 of the Code of Civil Procedure, 1908 has been preferred against the judgment of reversal dated 19.06.2019 passed by learned District Judge-XIV, Dhanbad in Civil Appeal No.109 of 2018 by which the learned first appellate court set aside the judgment and decree passed by the trial court being the Civil Judge (Senior Division)-III, Dhanbad in Title Suit No.113 of 2012 dated 29.06.2018 and allowed the said Civil Appeal.

3. The brief facts of the case is that the plaintiff/appellant filed Title Suit No.113 of 2012 in the court of learned Civil Judge (Senior Division), Dhanbad with a prayer for declaratin that the sale-deed No.2146 dated 21.03.1980 is a forged, fabricated, void and inoperative document, a decree for permanent injunction restraining the defendants, their men, agents and representatives from interfering with the possession of the plaintiffs over the schedule land, restraining the defendants not to interfere with the land of plot No.1183 under Khata No.33 over which the employer of the plaintiff No.2 started coal mining work and for the cost of the suit and other reliefs.

4. The case of the plaintiff in brief is that the suit land was recorded in the name of ancestors of the plaintiff. The father of the plaintiff namely Rijhu Mahto was an illiterate person and he used to put thumb impression on the documents executed by him. According to the plaintiff, Rijhu Mahto executed an agreement with the B.C.C.L for acquisition of more than two acres of land by putting his thumb impression on the agreement. The father of the defendant No.1 Prahlad Mahto got a forged sale-deed executed and registered by the father of the plaintiff bearing sale-deed No.2146 dated 21.03.1980. When B.C.C.L. intended to start mining over the plot No.1183 the same was resisted by the defendants and the plaintiff filed the said suit for the said reliefs.

5. In their written-statement, the defendants challenged the maintainability of the suit on various technical grounds. They claimed to be the owners of the plot No.1183 on the basis of the sale-deed No.2145 dated 21.03.1980 executed by Rijhu Mahto in favour of Prahlad Mahto.

6. On the basis of rival pleadings of the parties, the learned trial court settled the following six issues:-

- (I) *Whether the suit is maintainable in its present form?*
- (II) *Whether there is any valid cause of action for the present suit?*
- (III) *Whether the suit is barred by the Law of Limitation?*
- (IV) *Whether the suit is bad for mis-joinder and non-joinder of parties?*
- (V) *Whether the sale deed bearing no.2146 dated 21-03-1980 is forged, fabricated, void, and inoperative document?*
- (VI) *Whether the plaintiffs are entitled for any other relief/reliefs?*

7. In support of his case, the plaintiffs altogether examined two witnesses and proved the documents which have been marked Ext. 1, 1/1 and 2 while the defendants also examined two witnesses and the defendants also proved the documents which were marked Ext. A Series, Ext. B and Ext. C.

8. The learned trial court first took up issue No. (V) and after considering the evidence in the record on the analogy that Rijhu Mahto in the year 1975 had put his thumb impression on a deed marked Ext. 1/1 and about five years thereafter on 21.03.1980 he could not have signed the Ext. A/1 and A/2 and as the rent receipts filed by the defendants in respect of the suit land were only of the year 2014 and the mutation order on the basis of which rent was collected from the defendants in respect of the suit land, could not be produced by the defendants; the learned trial court decided the issue No.(V) in favour of the plaintiffs and against the defendants.

9. The learned trial court next took up the issue No. (III) and considered that as the cause of action for the plaintiff occurred on 08.05.2012 upon receiving the letter from the B.C.C.L., the suit is not barred by limitation.

10. Thereafter, the learned trial court took up the issue No. (IV) and considering the evidence that the defendants have not stated the names of the other legal representatives of Prahlad Mahto, came to the conclusion that therefore, the suit is not bad for non-joinder of necessary parties.

11. The learned trial court next took up the issue Nos. (I) and (II) together and held that the suit is maintainable and the plaintiffs have valid cause of action for filing the suit.

12. Lastly, the learned trial court took up issue No. (VI) and held that the plaintiffs are not entitled to any other relief and decreed the suit and declared that the sale-deed No.2146 dated 21.03.1980 is a void and inoperative document.

13. Being aggrieved by the judgment and decree passed by the learned trial court, the defendants filed Civil Appeal No.109 of 2018 in the court of learned District Judge-XIV, Dhanbad which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment as already indicated above.

14. The learned first appellate court on the basis of the materials available in the record and the submissions made before it, formulated the following sole point for determination:-

“. Whether sale deed no.2146 dated 21-03-1980 is forged, fabricated, void and inoperative document?”

15. The learned first appellate court first considered that the plaintiffs have not filed any document to show that Rijhu Mahto has sold the land of plot No.1183 to B.C.C.L. nor the plaintiff filed the agreement claimed to have been entered into between B.C.C.L. and Rijhu Mahto for two acres of land. The learned first appellate court considered that consequent upon purchase of the suit land by Prahlad Mahto, Prahlad Mahto got his name mutated. The learned first appellate court found fault with the trial court, as the trial court failed to consider that title acquired by a sale-deed cannot be extinguished for the delay

in mutation of the name of the purchaser in the revenue records. The learned first appellate court also considered the settled principle of law that to declare a registered sale-deed to be void and inoperative, the party claiming the registered sale-deed to be void and inoperative has to adduce cogent and believable evidence to the effect that the vendor has not executed the sale-deed.

16. The learned first appellate court also considered that the sale-deed executed in the year 1980 was challenged for the first time thirty two (32) years after such execution in the year 2012 and the learned first appellate court went on to hold that the trial court has erred in deciding the issue No. (V) and went on to hold that the sale-deed No.2146 dated 21.03.1980 is not a forged and fabricated document and that the trial court erred in decreeing the said Title Suit No.113 of 2012 and set aside the said judgment and decree.

17. Learned counsel for the appellant submits that the learned first appellate court has committed a grave illegality in appreciating the evidence in the record. It is next submitted that the learned first appellate court has failed to consider that the possession of the plot No.1183 of area 13 decimals along with other plots having been delivered to B.C.C.L prior to 1991 but no whisper having been made by the defendants in objecting the same; the defendants are debarred from raising the claim over the suit land after thirty two (32) years of the occupation of the same by the B.C.C.L. Hence, it is submitted that the judgment and decree passed by the learned first appellate court be set aside after formulating appropriate substantial question of law and the judgment and decree passed by the trial court in Title Suit No.113 of 2012 be restored.

18. Having heard the submissions of the learned counsel for the appellant made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt as has been reiterated by the Hon'ble Supreme Court of India in the case of **Union of India vs. M/s Chaturbhai M. Patel & Co.** reported in AIR 1976 SC 712 paragraph-7 of which reads as under:-

"7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt: per Lord Atkin in A. L. N. Narayanan Chettyar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction. In these circumstances, therefore, going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High Court. As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff." (Emphasis supplied)

19. Now, coming to the facts of the case, the plaintiff seeks relief of declaration that the sale-deed is forged on the ground that in one of the earlier sale-deed not connected with this case, his father Rijhu Mahto has put thumb impression and there are some differences in the signature of Rijhu Mahto in two other sale-deeds. It is needless to mention that it is a settled principle of law that the plaintiff has to prove its own case and cannot get any advantage from the weakness of the defendant. Though it was submitted by the learned counsel for the appellant that the learned first appellate court has failed to

consider that the possession of plot No.1183 was delivered to B.C.C.L. prior to 1991 and B.C.C.L. has been in possession for 25-30 years thereon but the undisputed fact remains that the plaintiff has failed to file any document to show that Rijhu Mahto has sold the land of plot No.1183 to B.C.C.L. and without any plausible reason, the plaintiff could not establish that Rijhu Mahto executed any deed of agreement in favour of B.C.C.L. in respect of plot No.1183. The agreement claimed to have been entered into between Rijhu Mahto and B.C.C.L. in respect of two acres of land has not been brought on record of this suit by the plaintiff; without any plausible explanation.

20. Under such circumstances, there was no material before the learned first appellate court to be satisfied that Rijhu Mahto delivered plot No.1183 to B.C.C.L. In the absence of any such evidence the only evidence which remains in record was the registered sale-deed executed by Rijhu Mahto in favour of Prahlad Mahto. As already indicated above, since the grounds upon which the plaintiff assailed the sale-deed was that the sale-deed is actuated with fraud so, the same was to be proved beyond reasonable doubts. But except some minor discrepancies in the signature of Rijhu Mahto, in some other documents or Rijhu Mahto putting thumb impression in some other documents instead of signing the same, in the considered opinion of this Court, the same cannot be termed as sufficient to arrive at the conclusion beyond reasonable doubt that, Rijhu Mahto has not executed the sale-deed concerned, that too without any cogent evidence in this regard being brought on record, as to who else than Rijhu Mahto executed the said sale-deed, when the said sale-deed is a registered sale-deed and the same was challenged for the first time thirty two (32) years after the same was executed.

21. Under such circumstances, this Court do not find any perversity in the finding of fact arrived at by the learned first appellate court; as such finding has not been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or the finding does not so outrageously defy the logic so as to suffer from the vice of irrationality, incurring the blame of being perverse.

22. In view of the discussions made above, this Court is of the considered view that there is absolutely no substantial question of law involved in this Second Appeal.

23. Accordingly, this appeal, being without any merit, is dismissed but under the circumstances without any costs.

24. Let a copy of this judgment be sent to the courts concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 29th of November, 2024
AFR/ Animesh