

PETITIONER:
SMT. BHATORI

Vs.

RESPONDENT:
SMT. RAM PIARI

DATE OF JUDGMENT: 30/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (7) 210 1996 SCALE (5)752

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Heard counsel for the appellant.

Pursuant to notice issued on November 22, 1988, Mr. Uma Dutta had appeared for the respondent. Subsequently, he reported on January 6, 1995 that he was instructed not to appear in the matter. He sought for and was granted permission to withdraw from the case. Thereafter, none appeared for the respondent. Initially, the case was adjourned since consequent upon reference doubting correctness of Mithilesh Kumar & Anr. v. Prem Behari Khare [(1989) 2 SCC 95] decision by a three-Judge Bench was awaited. The controversy is no longer res judicata. In view of the judgment of three-Judge Bench in R. Rajagopala Reddy v. Padmini Chandrashekharan [(1995) 2 SCC 630], wherein it was held that the Benami Transaction Prohibition Act is prospective in operation, the question in this case is: whether the sale of the appellant's land to the wife of the second respondent, Ram Mehrar, holder of power of attorney of the appellant is valid in law?

It is seen that Ram Mehrar had general power of attorney not only to engage a counsel and conduct litigation on behalf of the appellant, but can also mortgage, alienate or transfer possession of the agricultural land to anyone whosoever after obtaining the exemption from the appropriate authorities. It is seen that notification under Section 4(1) of the Land Acquisition Act acquiring the land was published in January 1979. Notice, thereafter, was given to the appellant on March 28, 1979. When the appellant demanded from the second respondent in August 1979 the return of her Power of Attorney, he did not return it. On the other hand, he promised that he would not act detrimental to her interest. The second respondent appears to have filed a suit on August 23, 1979 in which he impleaded the appellant as party-defendant. It is the case of the appellant that the second respondent engaged two advocates, one Mr. Mitter Sain on behalf of himself and other Ram Kishan for the appellant.

The counsel appearing for her informed her had produced damage to the appellant depriving her of the valuable property denuding right, title and interest to claim compensation in respect of her lands acquired by the Government. Having been defrauded, she is entitled to lay to suit for declaration of title and other reliefs in the suit. It would, therefore, be a clear case of fraud played by the respondent upon the appellant. The fraud unveils the contract and it is void. The courts below have committed grave error by not appreciating the fraud played by the respondent in proper perspective.

The appeal is accordingly allowed. The judgments and decrees of the courts below are set aside. In the circumstances, the suit is decreed with exemplary costs throughout quantified at Rs. 10,000/- at each of the stages including in this Court.