

CASE NO.:
Appeal (civil) 10576 of 1996

PETITIONER:
Ketaki Sahu & Ors.

RESPONDENT:
Laxmi Devi & Ors.

DATE OF JUDGMENT: 19/04/2004

BENCH:
R.C.LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

BHAN, J

Plaintiffs-respondents (hereinafter referred to as the 'respondents') being the daughters of Subarna who was the sole owner of the land in dispute filed the suit for declaration that the alleged sale deed executed by Subarna on April 05, 1972 for a consideration of Rs.1,000/- in favour of the original defendant No.1(now represented through legal representatives-appellants) (for short the 'appellant') was void and not binding on them and to declare their right, title and interest over the suit land. Prayer for eviction of the appellant as well as possession was also made. The land in question is homestead which is slightly more than 2/3rd of an acre. It was alleged in the plaint that the appellant taking advantage of the old age of Subarna, got sale deed executed without consideration by playing a fraud. Appellant denied the averments made in the plaint. It was specifically denied that the sale deed was got executed by the original defendant fraudulently. Appellant's case was that to maintain herself and for going on pilgrimage, Subarna knowingly sold the land to the appellant after receiving Rs. 1,000/- as consideration under a registered sale deed.

The Trial Court on the basis of pleadings of the parties framed issues regarding due execution of the sale deed, passing of the consideration and as to whether the suit was filed within limitation. Appellant produced the scribe and the two attesting witnesses of the sale deed as DW1 to DW3. Trial Court disbelieved the scribe and the two attesting witnesses on the ground that their testimony was inconsistent and contradictory to each other on certain particulars. It was also held that the contents of the sale deed were not read over to the vendee. The payment of the entire consideration was also held not to be proved.

After deciding these issues in favour of the respondents, trial court took up the issue regarding limitation. Appellant was found to be in possession from the date of the execution of the sale deed. Contention of the respondents that the sale was void ab-initio was not accepted. It was held to be voidable. It was found that the sale was valid unless it was adjudged void. Suit was filed in the year 1977. Since the suit was filed beyond three years from the date of possession the same was held to be beyond limitation and the suit was dismissed being barred by time.

Respondents, being aggrieved, filed an appeal before the Subordinate Judge, Bhadrak, District Balasore, which was accepted. It was held that the sale deed was void ab initio and, therefore, a declaration was not required for setting aside the sale deed and the prayer for such a declaration was surplus age. Respondents could claim possession of the land without such a declaration.

Appellant, being aggrieved, filed an appeal in the High Court which has been dismissed. Finding recorded by the First Appellate Court has been upheld. The sale was held to be void ab initio. It was held that the

respondents were entitled to seek possession of the suit land even without getting a declaration that the sale was void.

The finding recorded by the trial court that the sale deed was not read over to Subarna and she signed it without understanding the contents thereof and the sale was without consideration have been upheld by the first appellate court as well as by the High Court. We have doubts regarding the correctness of these findings. Contradictions pointed out by the trial court regarding the execution of the sale deed or passing of the consideration are insignificant but since these are findings of facts which have been upheld by the courts of facts, we refrain to go into these findings. Prima facie we are also of the view that the sale was not void ab-initio. It was prima facie valid unless it was adjudged void on the ground of improper execution or non passing of the consideration. We are not deciding this question finally and leave the question open to be decided in an appropriate case.

Appellant is admittedly in possession since 1972. He has built house on the land. The land is less than one acre and is situated in a remote area in Orissa. On inquiries made from the respective learned counsel for the parties, we are satisfied that the price of the land is not more than Rs.30,000/- as of today. To maintain the possession of the appellant as well as to compensate the respondents, we direct that the suit filed by the plaintiffs-respondents be dismissed but the appellant shall pay a sum of Rs.10,000/- over and above what has already been paid to the respondents as price of the land.

This order has been passed in the peculiar facts and circumstances of this case and to do complete justice between the parties and the same be not taken as a precedent for any future reference. The orders of the High Court and that of the first appellate court are set aside and the suit filed by the respondents is dismissed subject to the modification indicated above. There shall be no order as to costs.