

PETITIONER:
BISHUNDEO NARAIN RAI (DEAD) BY L.RS & ORS.

Vs.

RESPONDENT:
ANMOL DEVI AND ORS.

DATE OF JUDGMENT: 20/08/1998

BENCH:
K. VENKATASWAMI, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

QUADRI, J.

This appeal raises the question: whether on the facts and in the circumstances of the case, sale deed dated April 30, 1963 (Exhibit -C) executed by the first defendant group in favour of the plaintiffs conveyed absolute title to and interest in the suit property.

The facts which give rise to this question may be noticed here.

The plaintiffs (Predecessors -in-interest of the appellants, hereinafter referred to as 'the first purchasers') purchased land measuring 9 bighas 17 kathas and 12 dhors, (hereinafter referred to as 'the suit property') from Defendant No. 1 as Karta of H.U.F. and its members (predecessors-in-interest of Respondents 6,7,9, 10 and 11, hereinafter referred to as 'the vendors') under the registered sale deed dated April 30, 1963 (Exhibit-C). On the alleged ground of the first purchasers not paying the entire consideration amount the vendors by a registered document dated June 19, 1963, Exhibit-H, purported to cancel Exhibit-C, and on July 8, 1963 executed a second sale deed, Exhibit C/1, in favour of respondents 1 to 5 (hereinafter referred to as 'the second purchasers'). Coming to know of these facts, the first purchasers filed Title Suit No. 64/63 in the court of the Subordinate Judge, Samastipur, District Darbhanga. They claimed that under the sale deed dated April 30, 1963, Exhibit-C, they purchased the suit property for valuable consideration, and acquired absolute title thereunder and that out of sale consideration, only a sum of Rs. 235/- remained to be paid, which they deposited in the court to the credit of the vendors along with the plaint; that Exhibits H and C/1 were illegal, ineffective and not binding on the first purchasers. They prayed that the said Exhibits H and C/1 be declared illegal, invalid and not binding on them, decree be granted against the vendors to deliver the original sale deed dated April 30, 1963 and against the mortgagees for redemption of suit property.

The vendors resisted the suit; in their written statement it was pleaded that the parties agreed that if the first purchasers did not pay the entire amount of

consideration, they would not get title or possession of the suit property; the total sale consideration was Rs. 15,000/- , out of which Rs.6, 249/- were kept in deposit as being payable to the mortgagees under Sudhbarna bond dated July 29, 1946, Rs. 516/- were set off, being the amount payable to the first purchasers by the vendors, and that the balance consideration of Rs. 8,235/- was agreed to be paid in cash to the vendors on the date of registration. But the first purchasers paid only Rs. 5,000/- in the presence of the Registrar and promised to pay the balance of Rs. 3,235/- later; the registration receipt was kept with the vendors to be endorsed in favour of the first purchasers at the time of payment of the said amount. However, neither subhbarna bond amount of Rs. 6,249/- was paid to the mortgagees nor did the first purchasers endeavour to redeem the mortgage nor paid the balance of consideration of Rs. 3,235/- to the vendors, therefore, the vendors cancelled the sale deed Exhibit- C by executing Exhibits H on June 19, 1963 and sold the suit property in favour of the second purchasers under registered sale deed on July 8, 1963 (Exhibits C/1).

The mortgagees by filing a separate written statement supported the case of the vendors.

On these pleadings, the parties went on trial on the following, among other issues:

"Issue No. 4: Whether the plaintiffs derived a good while to the suit property under sale deed dated 30.4.1963 executed by defendants first party or whether that sale deed for want of payment of consideration was fraudulent and nominal one.

Issue No. 5: Whether sale deed dated 8.7. 1963 was true and binding on the parties.

Issue No. 6.: Whether the plaintiffs are entitled to decree to this effect that in precedence of the sale deed dated 30th March, 1963, the other sale dated 8th July, 1963 is invalid, ineffective and not binding on the parties."

On consideration of oral and documentary evidence, the trial court held: (i) on execution of the sale deed, Exhibits C, title to the suit property had passed in favour of the first purchasers; (ii) the plea of payment of Rs. 3000/-, part of the sale consideration by the first purchasers, was not true; and (iii) the first purchasers were liable to pay Rs. 3, 235/- to the vendors; and (iv) permitted the first purchasers to deposit of 'bharna dues' and redeem the mortgage within three months from the date of the decree and decreed the suit accordingly on December 20, 1968. It is not in dispute that the first purchasers have deposited the mortgage amount and redeemed the mortgage. The mortgagee is no longer in the picture.

Aggrieved by the judgment and decree of the trial court, the vendors and the second purchasers filed Appeal from Original Decree No. 68/69 in the High Court of Patna. A Division Bench of the Patna High Court on re-appraisal of the evidence on record believed payment of Rs. 3,000/- under Exhibit -6 by the first purchasers and in that it reversed the findings of the trial court; however, it came to the conclusion that the major consideration had not been paid to the vendors; that there was agreement between the parties

that title would pass only on payment of full consideration and so the registration receipt was kept with the vendors. In that view of the matter it set aside the judgment and decree of the trial court and allowed the appeal on May 12, 1980. It is from that judgment and decree of the High Court, the appeal arises.

Mr. S. B. Sanyal, the learned senior counsel for the appellants, has submitted that under sale deed Exhibit- C, absolute title to the suit property was conveyed to the first purchasers and that the entire sale consideration was paid, except a paltry sum of Rs. 235/- which was refused to be accepted by the vendors and was deposited in court; the intention of the parties was to convey the property absolutely and that there is no contra-stipulation in the sale deed; mere retention of registration receipt would not show any contra-intention as such execution of Exhibit- H and Exhibit- C/1 was wholly illegal and they conveyed no title to the second purchasers. He added that even if any part of consideration remained unpaid, the remedy of the vendors was under Section 54 (4)(b) of the Transfer of Property Act.

Mr. Rakesh Dwivedi, the learned senior counsel appearing for the contesting respondents, invited our attention to the averments in para-4 of the plaint to support this contention that the intention of the parties was that the title would not pass to the first purchasers immediately on the execution and registration of the sale deed but would pass only on 'exchange of equivalent', namely, on handing over registration receipt by vendors after payment of (a) Rs. 3, 235/- by the first purchasers to Defendant No.1, and (b) Rs. 6, 249/- to the mortgagees; as the first purchasers neither paid Rs. 3235/- nor redeemed the mortgage nor deposited the sudhbharna bond money in the court along with the plaint thus the consideration remained unpaid. On this premise he argued that the High Court had rightly held that there was stipulation between the parties that the title would pass on payment of full consideration which not having been done, the plaintiffs got no title to the suit property.

Ms. Abha Sharma, the learned counsel appearing for the second purchasers, adopted the argument of Mr. Dwivedi.

Apropos the question noted above, a reference to Section 54 of the Transfer of Property Act will be apposite. While defining 'Sale', Section 54 sets out how sale is made. Sale is defined to mean a transfer of ownership in exchange for price paid or promised or part paid or part promised; it says, inter alia, in case of tangible immovable property of value of Rs. 100/- and upward or in case of a reversion or other tangible things, sale can be made only by a registered instrument. Section 8 of the Transfer of Property Act declares that on a transfer of property all the interests which the transferor has or is having at that time, capable of passing in the property and in the legal incidence thereof, pass on such a transfer unless a different intention is expressed or necessarily implied. A combined reading of Section 8 and Section 54 of the transfer of property Act suggests that though on execution and registration of a sale deed, the ownership and all interests in the property pass to the transferee, yet that would be on terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of the sale, deed, the ownership title and all interests in the property pass to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that

title has not passed on registration of the sale deed. Such intention can be gathered by intrinsic evidence, namely, from the averments in the sale deed itself or by other attending circumstances subject, of course, to the provisions of Section 92 of the Evidence Act.

To ascertain the intention of the parties in this case, we shall read here the relevant portion of Exhibit-C :

"Whereas, we the executants stand in need of Rs. 6,249/- (Rupees six thousand and two hundred forty nine) under a registered Sudhbarna bond dated 29.7.46 due to Babu Damodar Rai and Babu Rameshar Rai residents of Shakarpura and also Rs. 516/- (Five hundred Sixteen) on calculation of account due to the claimant. Further at present I stand in need of Rs. 8,235/- (Eight thousand two hundred thirty five) for making payments to petty creditors and also for purchase of bullocks, cultivation work and legal necessities. But there is no way out to arrange for the money without selling the above mentioned land. Hence, we the executants of our own accord and free will, in the sound state of body and mind, without pressure and undue influence and instigation on the part of others absolutely sold and vended the properties mentioned in column No. 5, possessed by us, for a price mentioned in column No.4, to the vendees namely, Babu Brahamdeo Narain Rai and others, the purchasers, mentioned in column No.2. We have left in deposit with the said vendees a sum of Rs. 6,249/- out of the consideration money. They should pay the Sudhbarna money through themselves and keep the document with themselves along with the sale deed. We set of Rs. 516/- (Rupees five hundred sixteen) to the said vendees and they shall meet the aforesaid necessities and we put the said vendees in possession and occupation of the properties vended hereunder. It is desired that the said vendees should enter into and remain possession and occupation of the properties vended hereunder and get their names recorded in the office of the State of Bihar through the Hasanpur Anchal. They should continue to appropriate the produce on payment of rent to the landlord.

A plain reading of the recitals extracted above, shows that:

(1) The vendors sold and vended the property mentioned in Column 5 *(the suit property) for consideration mentioned in Column -4(Rs. 15,000/-) which was specified as

follows:

'(i) a sum of Rs. 6,249/- to be kept in deposit with the vendees for paying the 'sudhbarna bond money' due to Babu Damodar Rai and Babu Ramchander Rai of Shakarpura;

(ii) a sum of Rs. 516/- which was due by the vendors to the first purchasers to be adjusted as part of the sale consideration; and

(iii) a sum of Rs. 8,235/- to be paid in cash to the vendors.'

(2) The vendees were to keep the documents clearing the debt with themselves along with the sale deed;

(3) The vendors had put the vendees in possession and occupation of the property stating that they should enter and remain in possession and occupation of the property vended thereunder;

(4) The vendees may get their names recorded in the office of the State of Bihar, through the Hasanpur Anchal; and

(5) The vendees should continue to appropriate the produce on payment of rent to their landlord.

These averments unmistakably indicate conveying of title to the property absolutely for consideration as outlined; by virtue of the sale the purchasers were put in possession of the property conveyed, became entitled to the custody of the sale deed and other documents and enjoyment of the property by them. These factors satisfy all the requirements of absolute sale. No recital in Exhibit-C is brought to our notice to indicate any contra-intention. What is, however, argued is that out of the consideration, a sum of Rs. 3,235/- remained unpaid; that the mortgage loan under 'Sudhbarna bond dated 29.7.1946' was not discharged and that the registration receipt was retained by the vendors so it is manifest that the intention of the parties was that the title would not pass to the purchaser on execution and registration of Exhibit-C. We are not impressed by this submission. It appears that in the State of Bihar a practice is prevalent that when whole or part of sale consideration is due or any other obligation is undertaken by the vendee then on execution and registration of the sale deed by the vendor title to the property, subject matter of sale, does not pass 'Ta Khubzul Badlain', that is, Until there is 'exchange of equivalent' and in such a case registration receipt is retained by the vendor, which on payment of consideration due or on fulfillment of the obligation by the vendee is endorsed in his favour or if the sale deed has already been received by the vendor then the sale deed is delivered to the vendee. Even so, this only shows that such agreement are common in that part of the country but it is essentially a matter of intention of the parties which has to be gathered from the document itself but if the document is ambiguous then from the attending circumstances, subject to the provisions of Section 92 of the Evidence Act.

We have already referred to the findings of the courts below. Although the trial court found that Rs. 3,000/-, a part of the consideration, was not paid, the High Court relying upon receipt, Exhibit-6, held that it was paid on

May 5, 1963, as claimed by the first purchasers; the balance of consideration of Rs. 235/- was admittedly deposited by the first purchasers in court. Thus, the entire consideration was paid by the first purchasers. Further, the High Court expressed the view that not depositing the sudhbharna bond amount of Rs. 6,249/- in court would be fatal to the case of the first purchasers. That view is contrary to the judgment of a Division Bench of the Patna High Court in Shiva Narayan Sah & Ors. Vs. Baidya Nath Prasad Tiwary & Ors. (AIR 1973 Patna 383). We are in agreement with the opinion of the Patna High Court in Shiva narayan Sah's case that depositing the mortgage amount in court is one of the three ways available to the mortgagor before filing a redemption suit and that he was free to choose any mode; non-deposit of the rule mortgage money was not fatal to the suit. Further, as the first purchasers had deposited that amount in terms of the decree of the trial court, this point is not available to the vendors. Therefore, on that ground, it cannot be said that part of the the consideration was not paid. In any event, as sale of suit property under Exhibit-C was subject to mortgage, it was for the vendee to discharge the mortgage debt so any default or delay in payment the said amount cannot be construed as non-payment of consideration. On construction of Exhibit-C, we find that the recitals whereof are unambiguous and that the parties have expressed no intention that unless the sudhbharna bond amount is paid, the title to the suit property will not pass to the vendee. The only ground that remains is non-delivery of the registration receipt by the vendors to the first purchasers which appears to be due to subsequent developments, namely, execution of Exhibit-H and Exhibit- C/1, so it cannot be said to indicate an intention which interdicts passing of title to the first purchasers under Exhibit- C. We may observe that it was not open to the vendors to unilaterally cancel Exhibit-C by executing Exhibit -H. The trial court on interpretation of Exhibit -C came to the conclusion, in our view rightly, that (1) title to the suit property passed on to the first purchasers on execution and registration of Exhibit-C, but the High court reversed that finding for reasons which, as pointed out by us, are unsustainable.

In Panchoo Sahu vs. Janki Mandar & Ors. [AIR 1952 Patna 263], a Division Bench of the Patna High Court found that there was a recital in the sale deed which indicated that the title would pass only on payment of the entire consideration. So that was the case where intention of the parties was reflected in the sale deed itself. So also in Hara Bewa & Ors. vs. Banchanidhi Barik & Ors. [AIR 1957 Orissa 243], a Division Bench of the Orissa High Court found that the recitals in the sale deed were indecisive and ambiguous, therefore, the court took into consideration the surrounding circumstances including the fact of the custody of the document with the vendor and held on the facts and circumstances of that case that the intention of the parties to the first sale deed was that the vendee would not get title on the basis of the sale deed unless the consideration was paid.

The learned counsel or the parties invited our attention to the following judgments of the Patna High Court viz., [Kamta Prasad vs. Lachmi Sah & Ors. (AIR 1929 Patna 550); Umeshwar Prasad Sinha vs. Dwarika Prasad (AIR (31) 1944 Patna 5); Sarjug Saran Singh vs. Ramcharitar Singh (1968 (16) Bihar Law Journal Report 74); Shiva Narayan Sah & Ors. vs. Baidya Nath Prasad Tiwary & Ors. (AIR 1973 Patna 386); and the Judgment of the Orissa High Court in

Ramchandra Biharilal Firm vs. Mathuramohan Naik & Ors. (AIR 1964 Orissa 239). We have gone through those judgments and find that they are in conformity with the view expressed by us hereinabove.

In the result, we set aside the judgement and decree of the High Court under appeal to the extent indicated above, decree the suit of the first purchasers (plaintiffs) as prayed for and allow this appeal accordingly. The costs of the appellants in this appeal should be borne by the Respondents No.s 6, 7, 9, 10 and 11.

JUDIS