

SUPREME COURT OF INDIA**Before: V. Gopala Gowda & Arun Mishra, JJ.**

Civil Appeal No. 4816 of 2016

Decided on: 05.05.2016

[Arising out of SLP (Civil) No. 13076 of 2007]

Muddasani Venkata Narsaiah (D) Th. Lrs.

Appellants

Versus

Muddasani Sarojana

Respondent

For Appellant(s): Mr. K. Shivraj Choudhuri, Adv.

For Respondent(s): Mr. Sridhar Potaraju, Adv.

A. Code of Civil Procedure, 1908 (V of 1908), Order 8, Rule 5 – Execution of sale deed – Non-denial of -- Denial for want of knowledge is no denial at all -- Execution of the sale deed was not specifically denied in the written statement -- Once the execution of the sale deed was not disputed it was not necessary to examine Vendor to prove it.

(Para 14, 15)

B. Indian Evidence Act, 1872 (1 of 1872), Section 139 – Cross-examination -- Cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent -- Effect of non cross-examination is that the statement of witness has not been disputed – Party is required to put his version to the witness -- If no such questions are put the court would presume that the witness account has been accepted

(Para 16)

C. Sale deed – Non-passing of consideration -- Challenge to -- Passing of consideration under a sale deed cannot be questioned by third party.

(Para 17)

D. Revenue record entry – Right to possession -- Entry of possession in some revenue records simplicitor does not confer any right to retain the possession of the property.

(Para 18)

Cases referred:

1. Kurella Naga Druva Yudaya Bhaskara Rao v. Galla Jani Kamma (2008) 15 SCC 150.
2. Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594.
3. Jahuri Sah & Ors. v. Dwarika Prasad Jhunjhunwala AIR 1967 SC 109.
4. Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors. 1978 MPLJ 717.
5. Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors. AIR 1959 MP 305.
6. P.L.N.K.L. Chettyar Firm v. Ko Lu Doke AIR 1934 Rang 278.

7. Lakhmi Chand v. Ram Lal AIR 1931 All. 423.
8. Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906.
9. M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440.
10. Maroti Bansi Teli v. Radhabai w/o Tukaram Kunbi & Ors. AIR 1945 Nagpur 60.
11. A.E.G. Carapiet v. A.Y. Derderian AIR 1961 Cal. 359.
12. Kuwarlal Amritlal v. Rekhilal Koduram & Ors. AIR 1950 Nagpur 83.
13. Karnidan Sarda & Anr. v. Sailaja Kanta Mitra AIR 1940 Patna 683.
14. Pandit Ramjilal Tiwari v. Vijai Kumar & Ors. 1970 MPLJ 50.
15. Mt. Akli v. Mt. Daho AIR 1928 Patna 44.

JUDGMENT

ARUN MISHRA, J. –

1. Leave granted.

2. The plaintiff is in appeal before us aggrieved by reversal of the judgment and decree of first appellate Court by the High Court in Second Appeal and restoring the judgment and decree of the trial Court dismissing the suit filed by the plaintiff.

3. The plaintiff filed a suit before the trial Court for possession of disputed property and mesne profits based upon the title. It was averred in the plaint that Veeraiah and Balaiah were sons of late Rajaiah. Both the sons predeceased their father Rajaiah. Plaintiff is son of Veeraiah and Yashoda is wife of the said late Balaiah. After the death of Rajaiah, the property was given as widow's estate to Yashoda. It was to be reverted to the plaintiff after the death of Yashoda. Yashoda enjoyed the property in her lifetime. However, after her death, Smt. Gandla Buchamma, surviving sister of late Balaiah succeeded to the property and sold it to plaintiff vide registered sale deed dated 25.4.1981 and also delivered the possession. Thereafter on 12.6.1981 the defendants forcibly evicted the plaintiff from the property.

4. The defendants in their written statements contended that Ballaiah was the absolute owner of the property and after his death Yashoda became the absolute owner of the property. She was in possession of the property. It was not to be reverted back to the plaintiff after the death of Yashoda. Yashoda after death of her husband, as per authority given by her late husband, had adopted defendant no. 3 Sarojana when she was aged 12 years and thereafter she resided in the house of Yashoda as her daughter. Thus, Buchamma did not succeed to the property. The adopted daughter defendant no. 3 succeeded to property by inheritance. Defendants had no knowledge of the registered sale deed. Buchamma was not in possession and had no authority to sell the property to the plaintiff.

5. The trial Court framed the issue as to the ownership of Yashoda and also on the question of factum of adoption of defendant no. 3 on 18.2.1959 and whether she became the owner by virtue of adoption after the death of Yashoda. A specific issue was also framed by the trial Court on the question

whether on death of Yashoda, Buchamma, who is the surviving sister of Yashoda's late husband Balaiah, became heir and owner of the said property and whether the plaintiff had acquired the title to the suit property vide registered sale deed dated 25.4.1981 executed by Buchamma in favour of the plaintiff.

6. The trial Court while dismissing the suit *inter alia* found that passing of consideration has not been proved under the sale deed and that it was a nominal document. The plaintiff ought to have filed suit for declaration of title. Defendant no. 3 was cultivating the suit land from the date of the death of Yashoda since 1981. However, it has not been proved that defendant no. 3 was adopted daughter of late Yashoda. The factum of adoption has not been established. The possession had not been delivered by Buchamma to the plaintiff on the date of the execution of the sale deed i.e. 25.4.1981. The plaintiff must succeed on the strength of his own case, not on the weaknesses of the defendants. The trial Court also found that it was not established that Buchamma was the sole surviving sister of late Balaiah.

7. On first appeal being preferred into the Court of 1st Additional District Judge, Karimnagar, it allowed the appeal and the suit of the plaintiff had been decreed. It found that the execution of the sale deed has been established. Yashoda was the absolute owner in possession of the property in her lifetime. There was no Class I heir of deceased Balaiah. Buchamma was a Class II heir being the only surviving sister of Yashoda's late husband Balaiah as such succeeded to the property. Since it was not denied in written statement that Buchamma is the only surviving sister of Balaiah, she was entitled to succeed to the property of late Balaiah/Yashoda. The adoption of defendant no. 3 has not been established. The case set up by defendant no.3 that Yashoda cultivated the suit land during her lifetime has not been found to be established in the absence of any document to that effect. Defendant no.3 had no title to the property, as such she had no right to retain its possession. Defendant no. 3 being third party could not question the sale deed and passing of consideration. The sale deed is valid and binding. Even if Buchamma has not delivered the possession to the plaintiff that would not affect his right to claim possession on the strength of his title conferred upon him under the sale deed. It was not necessary to examine Buchamma as she had never objected to the execution of sale deed. In the written statement only her authority to sell the property was questioned. It was not necessary to file a suit for declaration of title as Buchamma acquired the suit property by way of inheritance from the absolute owner and thereafter sold it to the plaintiff.

8. The High Court in the second appeal has not disturbed the concurrent findings that the adoption of defendant no.3 Sarojana by Yashoda has not been established. However, the High Court has held that the sale deed has not been proved for want of examination of Buchamma and in the circumstances it was necessary for the plaintiff to file a suit for declaration of title. The High Court observed that the suit for possession and mesne profits thus could not have been filed and allowed the second appeal. Aggrieved thereby, the plaintiff has come up in the appeal before us.

9. It was submitted on behalf of the appellant that the High Court has erred in law in reversing the judgment and decree passed by the first Appellate Court. It was not necessary to seek the relief for declaration of title as there

was no serious cloud on the title of the plaintiff. The authority of Buchamma to execute the sale deed had been put into question not factum of execution of sale deed. Thus it was not necessary to examine Buchamma and defendant No.3 being a third party cannot question the passing of consideration under the sale deed. Buchamma was the sole Class II heir left.

10. Per contra, the learned counsel for the respondents urged that no case of interference was made out. It was necessary for plaintiff to seek relief for declaration of title. The suit has rightly been dismissed. The defendant no. 3 was in possession even in the lifetime of Yashoda. It is submitted that even if her case of adoption has not been found to be established, the plaintiff has not been able to establish his entitlement to recover the possession.

11. In the instant case, as per concurrent findings of all the courts, defendant no. 3 has failed to prove the factum of her adoption by deceased Yashoda in the year 1959. There was no corresponding document of adoption and other documentary evidence showing that defendant no. 3 had ever been adopted by the deceased Yashoda. True it is that in some of the revenue entries the name of defendant no. 3 has been shown as person in possession, but not in the capacity of adopted daughter. Yashoda was admittedly the owner of the property. The plaintiff has based his case to recover possession on the strength of the sale deed executed by Buchamma in his favour.

12. In the aforesaid background of facts, we come to the question whether it was necessary to seek relief or declaration of title. In our opinion, the plaintiff has filed the suit for possession on the strength for title and not only on the basis of prior possession. It was not a summary suit for ejectment filed under Section 6 of the Specific Relief Act, 1963. Thus, plaintiff could succeed in suit for possession on the strength of the title. The issue had been framed on the question of title of the plaintiff as well as on the question of adoption of defendant no.3. On the basis of title claimed in the suit, both the parties have adduced their evidence in support of their respective cases. The main plea of defendant no. 3 that she was an adopted daughter of Yashoda has not been found to be established by the trial Court, the first Appellate Court or by the High Court. Thus, in our opinion, there was no serious cloud on the title of the plaintiff so as to force him to seek the relief for declaration of title in the instant case which was in fact based on the strength of the sale deed executed by Buchamma, who was the sole surviving heir of Balaiah as such succeeded to the property and had the right to execute the sale deed in favour of the plaintiff.

13. We are fortified in our aforesaid conclusion by a decision in ***Kurella Naga Druva Yudaya Bhaskara Rao v. Galla Jani Kamma (2008) 15 SCC 150***, wherein this Court has examined the question of maintainability of suit for possession without prayer for declaration of title. This Court has referred to its earlier decision in ***Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594***, wherein the plaintiff had purchased the suit land under registered sale deed dated 10.4.1957 and the defendant did not claim the title with reference to any document but claimed to have perfected title by adverse possession. It was held by this Court that the said plea did not *prima facie* put any cloud over the plaintiff's title calling him to file suit for declaration of title. Unless there is serious cloud over the title of the plaintiff there is no need to file suit for declaration of title. The suit for possession was maintainable. This Court laid down as follows:

"16. The plaintiff had purchased the suit land under registered sale deed dated 10.4.1957. Defendant did not claim title with reference to any document but claimed to have perfected title by adverse possession. A mere claim by the defendant that he had perfected his title by adverse possession, does not mean that a cloud is raised over plaintiff's title and that the plaintiff who is the owner, should file a suit for declaration of title. Unless the defendant raises a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration. The plaintiff had title and she only wanted possession and therefore a suit for possession was maintainable. We are fortified in this view by the following observations of this Court in *Anathula Sudhakar v. P. Buchi Reddy* (2008) 4 SCC 594:

"14. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration."

14. Coming to the question whether execution of sale deed in favour of plaintiff has been proved, the High Court has held that the sale deed has not been proved for want of examination of Buchamma. The High Court has ignored the pleadings of the parties and the evidence on the question of execution of sale deed which establishes that sale deed had been executed by Buchamma in favour of the plaintiff. In the written statement filed on behalf of the defendants, the sale deed was denied for want of knowledge. A perusal of same indicates that the authority of Buchamma to execute the sale deed in favour of the plaintiff was put into question. Defendant no. 3 Sarojana in her deposition in court did not deny the fact that sale deed was executed by Buchamma in favour of the plaintiff. She has stated that she was not aware whether Buchamma has executed any sale deed in favour of the plaintiff. She only asserted that she was the adopted daughter of Yashoda.

15. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in *Jahuri Sah & Ors. v. Dwarika Prasad Jhunjunwala* AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in *Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors.* 1978 MPLJ 717. The High Court of Madhya Pradesh in *Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors.* AIR 1959 MP 305 relying on *P.L.N.K.L. Chettyar Firm v. Ko Lu Doke* AIR 1934 Rang

278 and *Lakhmi Chand v. Ram Lal* AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.

16. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW-2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal & Ors. v. Debnath Bhagat & Ors.* AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in *M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr.* AIR 1958 Punjab 440. In *Maroti Bansi Teli v. Radhabai w/o Tukaram Kunbi & Ors.* AIR 1945 Nagpur 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian* AIR 1961 Cal. 359 has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of Nagpur High Court in *Kuwarlal Amritlal v. Rekhilal Koduram & Ors.* AIR 1950 Nagpur 83 has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of Patna High Court in *Karnidan Sarda & Anr. v. Sailaja Kanta Mitra* AIR 1940 Patna 683 has laid down that it cannot be too strongly emphasized that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first Appellate Court as to the factum of execution of the sale deed in favour of the plaintiff.

17. It is also settled law that passing of consideration under a sale deed cannot be questioned by third party. Defendant no. 3 has not been able to establish her case that she is an adopted daughter of the deceased Yashoda and thus, she being the third party, could not have questioned the execution of the sale deed by Buchamma on the ground of passing of consideration as rightly laid down by the High Court of M.P. in *Pandit Ramjilal Tiwari v. Vijai Kumar & Ors.* 1970 MPLJ 50. The High Court of Patna has also held that passing of consideration can be questioned by a party or his representative in *Mt. Akli v. Mt. Daho* AIR 1928 Patna 44. Similar is the view of the High Court of Nagpur in *Maroti Bansi Teli* (supra). Thus, the High Court has erred in law on this ground also in dismissing the suit.

18. Coming to the question whether the plaintiff was placed in possession by Buchamma, in our opinion, it is apparent that Yashoda was enjoying the property in her lifetime, though it appears that defendant no. 3 was residing with Yashoda, but she has not claimed any derogatory title to Yashoda nor has claimed adverse possession. Her claim of an adopted daughter of Yashoda has not been found established. The entry of possession in some revenue records simplicitor does not confer any right to defendant no. 3 to retain the possession of the property. The property on the death of Yashoda had been passed on to Buchamma being class IInd heir, as such she had the right to sell the property to plaintiff. Even if Buchamma had not placed plaintiff in possession of property on strength of his title conferred by way of sale deed in question he had right to recover possession. The first appellate Court was thus right in decreeing the suit. The High Court has erred in allowing appeal.

19. In the circumstances, appeal is allowed, the impugned judgment and order passed by the High Court dismissing the suit is set aside and the judgment and decree passed by the first Appellate Court is restored. The parties to bear their own costs.

Appeal allowed.

SUPREME COURT OF INDIA

Before: Ranjan Gogoi & Prafulla C. Pant, JJ.

Civil Appeal No. 4683 of 2016

Decided on: 02.05.2016

(Arising out of S.L.P. (Civil) No. 9513 of 2013)

Patel Ravjibhai Bhulabhai (D) Thr. LRS.

Appellants

Versus

Rahemanbhai M. Shaikh (D) Thr. LRS. & Ors.

Respondents

Transfer of Property Act, 1882 (4 of 1882), Section 58(c) -- Mortgage by conditional sale – Sale with option to re-purchase -- Condition in sale instrument that “In this deed condition is that the said amount of Rs.10,000.00 when we pay back to you within five years from today, you shall give back the said property to us with possession. And in the same manner, we shall have no right to ask back the same after expiry of the time limit.” – It reflects that the actual transaction between the parties was of a loan, and the relationship was of debtor and creditor existed -- As such deed in question is a mortgage by way of conditional sale.

(Para 14)

Cases referred:

1. Tulsi and Others vs. Chandrika Prasad and Others 2006(2) L.A.R. 482 (SC).
2. P.L. Bapuswami vs. N. Pattay Gounder [AIR 1966 SC 902].
3. Vishwanath Dadoba Karale vs. Parisa Shantappa Upadhya [(2008)11 SCC 504].
4. C.Cheriathan vs. P. Narayanan Embranthiri [(2009) 2 SCC 673].