IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1076 of 2017

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Radhe Yadav Son of Late Jagarnath Yadav Resident of Village-Bambar, P.S. Sangrampur (Tetiya Bumber), District-Munger.

... ... Petitioner

Versus

Prabhas Yadav, son of Genhari Yadav, Resident of Village-Bambar, P.S. Sangrampur (Tetiya Bumber), District-Munger.

... ... Respondent

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Appearance :
For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Respondent/s : Mr. Suman Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 26-06-2024

The present civil misc. petition has been filed by the petitioner under Article 227 of the Constitution of India for quashing the order dated 02.03.2017 passed by the learned Munsif-I, Munger in Misc. Case No. 05 of 2016 rejecting the petition dated 21.05.2016 filed by the petitioner for review of the order dated 22.04.2016 passed in Title Suit No. 23 of 2011 and also for quashing the order dated 22.04.2016 passed in Title Suit No. 23 of 2011 whereby and whereunder the petitioner was debarred from cross-examining the witness Prabhas Yadav, the respondent herein, on the point of contents of document.

02. Briefly stated, the facts leading to filing of the present petitioner, as it appears from the record, are that the petitioner has filed Title Suit No. 23 of 2011 for declaration of

the title of the plaintiff on the suit land and for confirmation of possession over the said property apart from recovery of possession in case the plaintiff was dispossessed during pendency of the suit and also for permanent injunction against the defendant. After service of notice, the respondent, who is defendant before the learned trial court, appeared and filed his written statement. While the evidence of the defendant was being recorded, the learned Munsif-I, Munger did not permit the learned counsel for the petitioner to cross-examine the defendant/respondent on the point relating to contents of the document specifically on the point of boundary mentioned in the sale deed executed by his vendor in favour of the petitioner. The learned Munsif-I, Munger vide order dated 22.04.2016 debarred the petitioner to cross-examine the witness on the point that evidnece could not be givent to change or alter the contents of the document as the same is not permissible under the provisions of Section 92 of the Indian Evidence Act (hereinafter referred to as 'the Act'). Against the order dated 22.04.2016, the petitioner filed review petition on 21.05.2016, which was registered as Misc. Case No. 05 of 2016, but the same was rejected by the learned Munsif vide order dated 02.03.2017. The aforesaid orders have been assailed before this Court in the

instant civil misc. petition.

03. Further case of the petitioner is that the suit property bearing *Khata No. 184, Plot No. 659,* measuring an area 2 ¼ *katha* originally belonged to one Ram Sahay Yadav (Gope). Out of said area of 2 ¼ *katha*, Ram Sahay Yadav sold 02 decimal land to one Jhagru Gope and accordingly, mutation was done in the name of Jhagru Gope. After death of Jhagru Gope, his wife Dhaniya Devi sold 02 decimal land in favour of the petitioner on 09.11.1949. However, at the time of registry, the deed writer mistakenly mentioned incorrect Plot No. 654 instead of correct plot no. 659 but boundary of Plot No. 659 was correctly mentioned in the sale-deed. The petitioner coming to know about the mistake committed by the deed writer, filed a petition for correction of plot number in the Registry Office on 04.07.1989 and accordingly, plot number was corrected and the name of the petitioner was entered into *Jamabandi* No. 184/258 existing in name of Jhagru Gope and thus new *jamabandi* was created in Mutation Case No. 04 of of 2001. The petitioner had also purchased 5 ¼ dhurs land of the said plot no. 659 from Genhari Yadav, son of late Ram Sahay Yadav, by way of registered sale deed dated 25.04.1980. Since wrong plot number was mentioned in earlier sale deed, following the same sale

deed, again incorrect plot number was mentioned and same mistake was committed by the deed writer. But despite repeated requests of the petitioner, Genhari Yadav, the father of the respondent, did not agree to file any petition for rectification of the said mistake committed by the deed writer and correction of the plot number. Further case of the petitioner is that in past when the dispute arose over plot number of earlier purchased 02 decimal land of the petitioner, a *panchayati* was held and Genhari Yadav accepted that the plot number has been wrongly mentioned and dispute over right to way (‘*Rasta’)* was settled. However, in the document of *panchanama,* it came to be wrongly mentioned that 02 decimal of land was purchased by the petitioner from father of Genhari Yadav whereas father of Genhari Yadav sold 02 decimal land to Jhagru Gope, whose wife later on sold it to the petitioner. Further, in the sale-deed dated 25.04.1980 executed by Genhari Yadav, by virtue of earlier purchased 02 decimal land, the petitioner has been shown as boundary *raiyat.* Further case of the petitioner is that the defendant/respondent, with an intention to grab the land purchased by the petitioner, filed a petition for correction of *jamabandi No.* 184/258 vide Case No. 01/2005-06. In the said case, the Deputy Collector Land Reforms, on the basis of wrong

and fictitious report of *Halka Karmachari* and Circle Inspector, included the said land in Original jamabandi No. 184 and against the said order, the petitioner preferred an appeal before the learned Collector, Munger vide Appeal No. 07 of 2005-06. However, in the appeal, learned Collector, Munger vide order dated 18.01.2010 directed the parties to approach the competent civil court for resolution of the issue and thus, Title Suit No. 23 of 2011 came to be filed by the petitioner.

04. Learned counsel further submitted that the learned trial court committed an error when it ordered for debarring the petitioner from cross-examining the respondent on the point of change in the contents of the document under the provisions of Section 91 and 92 of the Act. The learned trial court lost sight of the fact that the whole suit was based on the issue whether incorrect plot number has been mentioned in the sale-deed. Furthermore, the petitioner has not been trying to contradict or add or subtract the terms of the sale-deed and just wanted to clarify the point regarding boundary of plot no. 659 since in the earlier sale-deed plot number has been corrected and boundary remained the same. Only this aspect of the matter was tried to be clarified in the cross-examination by the petitioner, so as to compare the boundary of two sale-deeds. The learned trial court

did not consider this fact and wrongly relied on Sections 91 and 92 of the Act and has not appreciated the fact that the petitioner was neither trying to prove the document through oral evidence nor he want to change or add to the contents of the sale-deed. In support of his submission, learned counsel relied on the decision of Hon'ble Supreme Court in the case of ***Sheodhyan Singh v. Musammat Sanichara Kuer*****,** reported in ***AIR 1963 SC 1879*** regarding misdescription of plot number though *khata* number and boundary referred to different plot numbers specially para-7 of the said decision which reads as under:-

> *"**7.** We are of opinion that the present case is analogous to a case of misdescription. As already pointed out the area, the khata number and the boundaries all refer to Plot No. 1060 and what has happened is that in writing the plot number, one zero has been missed and 1060 has become 160. It is also important to remember that there is no plot bearing No. 160 in Khata No. 97. In these circumstances we are of opinion that the High Court was right in holding that this is a case of misdescription only and that the identity of the property sold is well established, namely, that it is Plot No. 1060. The matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and only the plot number was mentioned. But where we have both the boundaries and the plot number and the circumstances are as in this*

> *case, the mistake in the plot number must be treated as a mere misdescription which does not affect the identity of the property sold. The contention of the appellants therefore with respect to this plot must fail."*

Learned counsel further relied on the decision of Hon'ble Supreme Court in the case of ***Jahuri Sah & Ors. Vs. Dwarka Prasad Jhunjhunwala & Ors.***, reported in ***AIR 1967 SC 109*** wherein the Hon'ble Supreme Court made certain observation with regard to existence of a deed of adoption and of its non-production in the court and oral evidence not becoming inadmissible with regard to factum of adoption. The Hon'ble Supreme Court held that admission of existence of a deed of adoption and its non-production in the court would not render oral evidence inadmissible because it is not by virtue of a deed of adoption that a change of status of a person can be effected. The Hon'ble Supreme Court further held that a deed of adoption merely records the fact that an adoption had taken place and nothing more. Such a deed cannot be likened to a document which by its sheer force brings a transaction into existence. It is no more than a piece of evidence and the failure of a party to produce such a document in a suit does not render oral evidence in proof of adoption inadmissible.

Learned counsel also referred to a decision of Karnataka High Court in the case of ***M. D. Gopalaiah Vs. Smt. Usha Priyadarshini and Ors.*** reported in ***AIR 2002 KARNATAKA 73*** to stress the point that though any oral evidence in contradiction with terms of the written document are not admissible, but the reading of the aforesaid authorities go on to show that even if terms or contents as such could not be challenged and oral evidence is inadmissible to that extent but wrong mentioning of digit or numbers are open to challenge. Thus, learned counsel submitted that in the aforesaid facts and in terms of settled legal proposition of law, the impugned orders passed by the learned Munsif-I, Muger are not sustainable and fit to be set aside.

05. *Per contra,* learned counsel appearing on behalf of the respondent vehemently contended that there is no infirmity in the impugned order and the same needs to be sustained. Leaned counsel for the respondent submitted that the learned trial court has rightly debarred the petitioner from asking questions with regard to contents of a registered document, which is not admissible under the provisions of Sections 91 and 92 of the Act. The father of the respondent did not sell any land to the petitioner and a fraudulent document has been brought

into existence by the petitioner since the father of the respondent died on 07.06.1977 and it was not possible for him to execute sale deed on 25.04.1980. The claim of the petitioner about mentioning of wrong plot number, i.e., Plot No. 654 in the sale deed of 1949 instead of Plot No. 659, is not correct since the respondent has been in possession of the suit land of Plot No. 659 and considering this fact, *Jamabandi* created in favour of the petitioner was cancelled and it was opened in the name of the respondent. Late Ram Sahay Yadav never sold the land of Plot No. 659 to Jhagru Gope and for this reason Dhaniya Devi wife of Jhagru Dope had no right to execute the correction deed in favour of the petitioner changing the Plot No. from 654 to 659. Considering all these facts, the learned Collector also dismissed the appeal against the *Jamabandi* created in favour of the respondent. Learned counsel further submitted that the authorities cited by the petitioner are of no help to the cause of the petitioner since facts are not similar with the present case. On the aforesaid grounds, the present petition is not sustainable and the same be dismissed.

06. I have given my thoughtful consideration to the rival submission of the parties. Basically, the issue involved in the present case is whether the respondent could be put to cross-

examination on the point of correctness of the plot number and the boundary as mentioned in two sale deeds since the learned trial court disallowed the cross-examination under the provisions of Section 91 and 92 of the Act.

07. Now, Sections 91 and 92 of the Act read as under:-

> *"**Section 91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.***
>
> *When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.*
>
> *Exception 1.-- When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.*
> *Exception 2. -- Wills [admitted to probate in [India]] may be proved by the probate.*
> *Explanation 1.-- This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which*

they are contained in more documents than one.

Explanation 2. -- Where there are more originals than one, one original only need be proved.

Explanation 3. -- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Section 92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or ***mistake in fact*** *or law.*

Proviso (2). -- ……..

Proviso (3). -- ……..

Proviso (4). -- ……

Proviso (5). ……..

Proviso (6). -- ……..”

08. Reading of the aforesaid two sections of the Act, makes it clear that these two sections are supplementing each other. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be described as disposing of right. Section 91 applies to documents which could be bilateral or unilateral, but the application of Section 92 is confined only to bilateral documents. The provisions of the aforesaid two sections are based on “best evidence rule” that when a transaction has been reduced to writing, it becomes the exclusive memorial thereof, and no external evidence is admissible either to prove independently the transaction or to contradict vary, add to or subtract from, the terms of the documents, though the content of the document may be proved either by primary or secondary evidence. The law always requires that only the best evidence be laid and hence to admit inferior evidence when the law requires superior would be to nullify the law.

09. Now, coming back to the facts of the case, the learned trial court disallowed the question put by the learned counsel for the petitioner to the respondent in his cross-examination regarding boundary of Plot Nos. 659 and 654. No doubt, the contents of a document with regard to disposition of

property cannot be given under the provisions of Section 91 of the Act, but the suit has been brought for declaration of title and possession of the petitioner on the suit property purportedly of Plot No. 659 and it has been claimed by the petitioner that plot number has been wrongly mentioned. Now, Proviso (1) of Section 92 of the Act allows any fact to be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. The mistake contemplated under the Proviso must be genuine and accidental mistakes like misdescription of property. Evidence can be allowed to know whether a particular land was conveyed under the document as held in the case of ***Rikhiram and Anr. Vs. Ghasiram,*** reported in ***AIR 1978 MP 189***, wherein it has further been held that oral evidence was admissible to prove that the expression of the contract was contrary to the concurrent intention of all the parties due to a common mistake. In the case of ***Ram Jiwan Rai and Ors. vs Deoki Nandan Rai and Ors.,*** reported in ***AIR 2005 PAT 23*** [relying on the decision in the case of ***Sheodhyan Singh*** (supra)], it has been held that where there was intrinsic evidence

to prove that the vendor intended to convey the right, title and interest in respect of the suit property in favour of the plaintiff, the mistake in the plot number must be treated as a mere misdescription which does not affect the identity of the property sold.

10. Furthermore, in the case of ***Abdul Hakim Khan Vs. Ram Gopal and Ors.***, reported in ***AIR 1922 All 42,*** it has been held that in proviso (1) to Section 92 of the Act it is laid down that any fact may be proved such as…mistake in fact or law which would entitle any person to any decree or order relating to a document and thus it has further been held that it cannot be doubted that it was open to the plaintiffs to prove this mistake and the evidence which they produced to prove that fact was certainly admissible. It is pertinent to mention here that certain mistake was found in description of property in a mortgage deed and findings were challenged on the ground of admissibility of the evidence.

In the case of ***Chimanram Motilal Vs. Divnchand Govidram***, reported in ***AIR 1932 Bom 151,*** it has been held that for the purpose of determining the existence of mistake in a written document oral evidence is admissible when the circumstances are appropriate.

In the case of ***Rajaram Vs. Manik & Ors.***, reported in ***AIR 1952 Nag 90,*** it has been held that in Proviso (1) to Section

92 of the Act, it is laid down that any fact may be proved such as ……mistake in fact or law which would entitle any person to any decree or order relating to a document. Oral evidence is, thus admissible to prove that the expression of the contract is contrary to the concurrent intention of all parties due to a common mistake. The Court further held that oral evidence was thus admissible to prove that the properties described in the sale-deeds Exhibits P-7 and D-1 were not correctly stated due to common mistake.

In the case of ***Tulsiram Rajaram Brahman and Anr. Vs. Durgaprasad Ramprasad Brahman and Ors.***, reported in ***2001 SCC OnLine MP 260***, the learned Single Judge held in paragraph Nos. 8, 9 and 10 as under:-

> *"**8.** The general rule is that there is exclusion of oral evidence by documentary evidence. The terms of a document should not be allowed to be varied, contradicted, added or subtracted from. But there are exceptions incorporated in the provisos to section 92 of the Evidence Act. Under the Proviso (1) oral evidence can be given to show that due to mistake in fact or law the written instrument does not correctly express the agreement which the parties had really entered into. The law permits in such a case to prove the mutual mistake. It can be shown that the contract is contrary to the concurrent intention of the parties. The oral evidence, in case of mutual mistake, can be led to vary the written contract. The mistakes contemplated in this proviso are genuine and accidental mistakes, just as the mis-*

description of the property.

9. *If there is a mutual mistake as to the description of a piece of land in a registered mortgage-deed, oral evidence is admissible, Kota China v. Kannekanti, 31 IC 671. Such a mistake can be pleaded by way of defence also. Janardan v. Venkatesh, AIR 1939 Bom. 151. The combined effect of section 92 proviso (1) and section 26 of the Specific Relief Act, 1963 is to enable either party to prove a mistake without prior rectification of an instrument. A mistake relating to a survey number in a sale-deed can be permitted to be proved. Rajaram v. Manik, 1954 NLJ 12 : AIR 1952 Nag. 90, Bala Prasad v. Asmabi, 1954 NLJ 573 : AIR 1954 Nag. 328 and Rikhiram Pyarelal v. Ghasiram, 1978 MPLJ 527 : AIR 1978 M.P. 189.*

10. *In the present case the plaintiff could be legally permitted to prove that in the sale-deed Khasra No. 98 was wrongly written in place of Khasra No. 93 and the finding of the fact of the two Courts being in his favour there cannot be any interference by this Court."*

11. Taking into consideration the discussion of law as it has evolved, it could be safely concluded that when there is allegation about misdescription of *khesra* number in the sale deed, oral evidence as to its contents is admissible. Further, if there is any misdescription of the property or the *khesra* number has been wrongly mentioned, in my view, the same would come under the purview of Proviso (1) of Section 92 of the Act. However, the mistake sought to be proved by oral evidence under this proviso,

must be one which could sustain a claim for rectification or cancellation of the instrument.

12. In the present case, it is a pertinent fact to take note of that the first vendor admitted the mistake in *khesra* number and subsequently got a rectification deed which is in tune with the case of the petitioner about misdescription of the property regarding mentioning of wrong plot number. Hence, I am of the considered opinion that the plaintiff/petitioner could be allowed to adduce oral evidence with regard to wrong plot number or boundary of correct plot number and in order to prove his contention, it is open to the plaintiff/petitioner to bring evidence for determining the existence of mistake and plaintiff could put such questions in cross-examination to the defendant/respondent. Such oral evidence is covered under Proviso (1) of Section 92 of the Act relating to mistake of fact and would not run counter to the provisions of Sections 91 and 92 of the Act.

13. In the light of discussion made here-in-before, I am of the view that the learned trial court erred in passing the orders dated 22.04.2016 and 02.03.2017 and committed an error of jurisdiction in rejecting the question put to the respondent in cross-examination with regard to boundary of Plot Nos. 654 and 659 and hence, the orders dated 22.04.2016 and 02.03.2017 are set aside.

14. Accordingly, the instant Civil Misc. Petition stands

allowed.

15. This Court has not expressed any opinion on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
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