

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.180 of 1982

Against the judgment and preliminary decree dated 29.01.1982 passed by 1st
Additional Subordinate Judge, Hajipur in Title Suit No.15 of 1973/22 of 1976.

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Kamata Choudhary & Ors.

.... Defendants-Appellants

Versus

Brahmdeo Kuer & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellants : Mr. Uma Kant Shukla, Advocate.

Mr. Arun Kumar Prasad, Advocate.

For the Respondents : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL JUDGMENT

Date: 06-04-2015

The defendants have filed this first appeal against the judgment and preliminary decree dated 29.01.1982 passed by the learned 1st Additional Subordinate Judge, Hajipur in Title Suit No.15 of 1973/22 of 1976 whereby the court below decreed the plaintiffs-respondents' suit for partition.

2. It appears that the plaintiffs-respondents filed the aforesaid suit praying for declaration of title over the Schedule-2 land and in the alternative claimed partition of Schedule-1 land.

3. According to the plaintiffs, Matukdhari Choudhary had three sons, Ram Chandra Choudhary, Bharat Choudhary and Devendra Choudhary. There had been partition between three

brothers. Bharat Choudhary died leaving behind his widow Parmeshwari Kuer. The plaintiff purchased the Schedule-2 property from Parmeshsari Kuer by registered sale deed dated 16.09.1964 and came in possession of the said property. It may be mentioned here that for deciding this first appeal the other facts in detail are not necessary. Therefore, the same is not dealt with *in extenso*.

4. The defendants-appellants filed contesting written statement alleging that there had been no partition between the three brothers and the property is joint. Therefore, Parmeshwari Kuer had no right to transfer the joint family property, as such the transferee did not derive any title through the registered sale deed. Moreover the sale deed is forged and fabricated and was never executed by Parmeshwari Kuer. No consideration was paid to Parmeshwari Kuer, therefore, also the sale deed is void sale deed.

5. On the basis of the above pleadings of the parties the learned court below framed the following issues:

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got any cause of action or right to sue?
- (iii) Is the suit bad for defect of parties?
- (iv) Has there been a partition among the three sons of Matukdhari Chaudhary as claimed by the plaintiff?
- (v) Has the plaintiff got any title or possession over the suit land?
- (vi) Is the plaintiff entitled to get a decree as prayed for?
- (vii) To what other relief or reliefs if any, the plaintiff is entitled?



6. The trial court on the basis of the materials available on record came to the conclusion that there had been no partition between the parties. The court below also recorded the finding that the sale deed executed by Parmeshwari Kuer, who has been examined as P.W.10, is genuine sale deed and that consideration was paid to her. The court below also recorded the finding that the plaintiff failed to prove that there had been partition between the three sons of Matukdhari Choudhary and accordingly did not grant the first relief but granted the relief for partition to the extent of 2/35 share in the Schedule-1 property. The court below also came to the conclusion that transfer of specific property could not have been made by Parmeshwari Kuer.

7. The learned counsel Mr. Shukla appearing on behalf of the appellants submitted that the court below has wrongly decided that the sale deed is genuine sale deed. According to the learned counsel, the consideration amount was inadequate so as to indicate that in fact this sale deed was showy sale deed. Therefore, the purchaser did not derive any title but the court below without considering this fact has recorded the finding against the defendants-appellants. The learned counsel further submitted that in view of the finding by the trial court to the effect that there had been no partition between the three brothers, i.e. three sons of Matukdhari, no particular partition could



have been sold by Parmeshwari Kuer but the plaintiff after purchasing the property again transferred to unknown persons and thereby they are harassing the appellants. It appears that during the pendency of the first appeal the injunction application being I.A. No.6601 of 2014 was filed and on 05.02.2015 it was directed that this injunction application filed by the appellants shall be considered at the time of final hearing of the first appeal. The learned counsel in support of his contention submitted that the respondents have no authority or title to transfer particular property in spite of the fact that this Court earlier restrained the respondents from transferring the property.

8. Nobody appeared on behalf of the respondents.

9. In view of the above contentions of the learned counsel for the appellants, the point arises for consideration is as to whether Parmeshwari Kuer had the authority to transfer the particular property in Schedule-2 in favour of the plaintiff-respondent by registered sale deed dated 16.09.1964 (Exts.2 and 2/A) and whether the judgment and decree passed by the court below is sustainable in the eye of law.

10. According to the defendants, there had been no partition between three sons of Matukdhari. This is the finding of the trial court also. Now the question is if there had been no partition, all the properties were in joint possession of the three brothers. Admittedly Bharat Choudhary died and his share devolved on the

widow, Parmeshwari Kuer. She has sold the Schedule-2 property in favour of the purchaser-plaintiff. So far the submission of the learned counsel that the sale deed is forged and fabricated and that no consideration passed is concerned, it may be stated here that Parmeshwari Kuer, the vendor of the plaintiff, herself has been examined as P.W.10. She has clearly admitted in her evidence that she had executed the sale deed in favour of the plaintiff-respondent and that she has received the consideration amount. In such view of the matter, the defendants-appellants being the third party to the transaction cannot be allowed to challenge the passing of consideration. It is admitted fact that the share of Bharat Choudhary devolved on Parmeshwari Kuer. Therefore, after coming into force of the Hindu Succession Act, 1956, according to Section 14, the widow became the absolute owner thereof and had the title to transfer the property and accordingly she transferred but the Hon'ble Supreme Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble & Ors., 2009 (4) P.L.J.R. 225 SC** held that a purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property. Therefore, this question regarding the right of purchaser of undivided interest has already been settled by the

Hon’ble Supreme Court in the aforesaid decision.

11. From perusal of the judgment of the court below, it appears that the court below has decided the dispute between the parties in the light of the aforesaid decision and, therefore, the finding of the court below is hereby confirmed and it is made clear that the purchaser cannot claim a particular property, which he has purchased. He has the right only to claim partition of the property, which he has claimed in the present suit as alternative remedy. The court below has granted this alternative remedy, therefore, he had no right to sell any particular property to other persons. Even if it has been sold, it will not create any title in favour of the purchaser on the particular property.

12. In view of the above facts and circumstances of the case and finding of the court below, which has already been confirmed, I find no reason to interfere with the findings of the trial court.

13. In the result, this first appeal is dismissed with the aforesaid observations.

14. The injunction application filed by the appellants is, thus, disposed of in terms aforesaid.

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(Mungeshwar Sahoo, J)