

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.236 of 2013

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1. Rahul Kumar.
2. Rajiv Kumar. Both Sons of Late Ram Krishna Prasad Singh, resident of Village - Bhagatpur, P.S. - Balia Begusarai, District - Begusarai at present residing at Mohalla - Mirganj Begusarai, P.S. - Begusarai Town, District - Begusarai.

.... Appellants

Versus

1. Rahul Sharma.
2. Rohit Sharma. Both Sons of Late Nawal Kishore Sharma.
3. Lakshmi Sharma, daughter of Late Nawal Kishore Sharma.
4. Manju Sharma, wife of Late Nawal Kishore Sharma.
5. Sharda Devi, wife of Late Kunj Bihari Sharma. All residents of Mohalla - Marwari Minachak, Begusarai, P.S. - Town Begusarai, District - Begusarai.....Opposite 1st Party/ Respondent 1st Party/ Decree holders.

6. Manoj Sah.

7. Subodh Sah. Both Sons of Late Harilal Sah, residents of Mohalla - Mirganj Begusarai, P.S. - Town Begusarai, District - Begusarai...Opposite party 2nd Party/ Respondent 2nd Party/Judgment Debtor.

8. Arti Devi, daughter of Late Ram Chandra Sah and wife of Sri Umesh Prasad @ Umesh Sah, resident of Village - Chakbijulwa, P.S. - Bibhutipur, District - Samastipur, presently residing at and P.S. Dalsingsarai, District - Samastipur.

9. Bharti Devi, daughter of Late Ram Chandra Sah and wife of Sri Chandra Sekhar Sah, resident of Village - Dahiya, P.S. - Bhagwanpur, District - Begusarai.

Opposite Party 3rd/Respondent 3rd Party.

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Appearance :

For the Appellants : M/S. Dronacharya & Shambhu Sharan Kumar, Advocates.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 07-04-2015 Heard Mr. Dronacharya, the learned counsel appearing for the appellants.

The appellants are the applicants who filed the petition under Order 21 Rule 97 C.P.C. in the execution case claiming



their right, title and possession over the suit land subject matter of the execution. By the order passed under Order 21 Rule 101 C.P.C. the application was dismissed by the Executing Court holding that the applicants had failed to establish their right, title and possession over the suit land. The applicants, thereafter, challenged the said order by filing the appeal. The Appellate Court, on reappraisal of pleadings and evidence on record concurred with the findings of the executing court and dismissed the appeal by the impugned judgment and order in this second appeal.

The necessitous facts are that admittedly, the property in question measuring an area of 02 Kathas of land originally belonged to two brothers, namely, Hari Lal Sah and Ram Chandra Sah. It is also not in dispute that Ram Chandra Sah died leaving behind his widow Mostt. Sakunti Devi and two daughters, namely, Aarti Devi and Bharti Devi. The Title Suit No. 165 of 1986 was filed praying for a decree for specific performance of contract for sale of two Kathas of land in question against Hari Lal Sah and Mostt. Sakunti Devi. The said suit was decreed ex-parte. The petition filed under Order 9 Rule 13 C.P.C. by the defendants Hari Lal Sah and Mostt. Sakunti Devi for setting aside the ex-parte decree was also dismissed and the said dismissal remained

affirmed up to the Hon'ble Supreme Court. The aforesaid decree-holders thereafter have filed the execution case seeking the enforcement of the decree for specific performance of contract.

The appellants have claimed to have purchased the part of the suit land by a registered sale deed executed by Aarti Devi and Bharti Devi on 02.07.1996 and on that basis they have claimed their title and possession over the purchased 01 Katha of land. It is the case of the appellants that there was a partition between Hari Lal Sah and Mostt. Shakunti Devi in the year 1984 in which Hari Lal Sah did not get any share in 02 Kathas of land which was allotted in the share of the widow Mostt. Shakunti Devi and her two daughters, namely, Aarti Devi and Bharti Devi of late Ram Chandra Sah. It is further case of the appellants that there was a subsequent partition also between Mostt. Shakunti Devi on one hand and her two daughters on the other hand. Mostt. Shakunti Devi was allotted 15 dhoors of land and the remaining area of land was allotted in the share of two daughters. The appellants in this manner have traced the validity of their title and possession asserting that their vendors Aarti Devi and Bharti Devi after partition had acquired specific rights over the land sold to them.

The courts below have come to the finding that the



appellants have failed to establish the crucial fact of partition between Hari Lal Sah, Mostt. Shakunti Devi and her two daughters Aarti Devi and Bharti Devi. It has also been found by both the courts below that the vendors of the appellants did not come before the court to support the case of the appellants and further more the vendors have also not chosen to assail the agreement of sale for transfer made by Hari Lal Sah and Mostt. Shakunti Devi.

Mr. Dronacharya, the learned counsel appearing for the appellants submits that Exhibit-1/C (sale deed dated 11.04.1986) has not been properly considered by both the courts below which show that there had been partition as claimed by the appellants.

After perusal of the judgments of both the courts below and considering the submissions, this Court does not find any substance in the submissions on behalf of the appellants. It transpires that both the courts below have elaborately discussed the evidence on record and thereafter have recorded the findings disbelieving the case set up by the appellants that there had been partition between Hari Lal Sah, Mostt. Shakunti Devi and daughters in the year 1984 and that there had further been partition in between Mostt. Shakunti Devi and her two daughters. The trial court has found that the sale deed (Ext. 1/C), has no concern with

the present case. On behalf of the appellants, it could not be shown as to how the sale deed dated 11.04.1986 has bearing upon the issue arising in the proceeding. The fact of partition was within the specific knowledge of the vendors of the appellants but they did not turn up to support the case of the appellants during the hearing nor did they challenge the decree under execution asserting their independent right and title over the suit land. The courts below have elaborately considered the facts and evidence on record and this Court has not been persuaded to find illegality or perversity in any manner in the findings of both the courts below.

In the ultimate eventuate, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

U.K./-

(V. Nath, J)

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