

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.252 of 2013

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1. Ram Ayodhya Rai S/o Late Mala Rai
 2. Kailash Rai S/o Late Mala Rai
 3. Sipahi Rai S/o Late Sakal Rai @ Sakaldeo Rai
 4. Lila Devi D/o Late Sakaldeo Rai
 5. Dharmashila Devi D/o Late Sakaldeo Rai
 6. Koshila Devi D/o Late Sakaldeo Rai
 7. Usha Devi D/o Late Sakaldeo Rai, All resident of Nil Kanth Tola,
Goria Asthan, P.S. - Maner, District - patna.

.... Appellant/s

Versus

1. Sri Udai Nandan Sahai S/o Late Ramanuj Prasad Rai .
2. Srimati Ram Kali Devi W/o Udai Nandan Sahai Both resident of
village - Nil Kanth Tola, Goraia Asthan, P.S. - Maner, District - Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suraj Narain Yadav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 01-09-2015 Heard the learned counsel appearing on behalf of the

appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance granting the decree
to the plaintiffs. The plaintiffs filed the suit for declaration of their
title and for confirmation of possession over the suit land.

The brief facts of the case are that the suit land



admittedly belonged to the family of the Judagi Dusadh. The genealogy of the family has been given in the plaint and also mentioned in the judgment of the trial court. The plaintiffs have claimed their title and possession over the suit land on the basis of registered sale deed dated 24.05.1984 with regard to 4 katha 2 dhur of land. The said sale deed has been executed in favour of the plaintiffs by Butai Paswan and Ram Das Paswan who are admittedly the descendants of Judagi Dusadh. The defendants, on the other hand, has resisted grant of the relief to the plaintiffs on the basis of their claim of title over the suit land on the basis of unregistered sale deed dated 02.03.1972 which they claim to have been executed by Butai Paswan.

Both the courts below have returned the findings in favour of the plaintiffs. The suit was decreed and thereafter the appeal has also been dismissed.

The learned counsel for the appellants has submitted that both the courts below have not correctly considered the material evidence on record. It has been canvassed that the plaintiffs have come out with the case that unregistered sale deed dated 02.03.1972 (Ext. E/4) was a forged and fabricated document but have not led any evidence to establish the same. It has been pointed out by the learned counsel for the appellants that the trial



court has proceeded on the basis of misreading of the depositions of the witnesses with regard to the possession of the plaintiffs over the suit land. It has also been posited that the appellate court below has wrongly held that the valuation of the suit land was deliberately shown to be less than Rs. 100/- in order to advance the claim on the basis of unregistered sale deed. The learned counsel for the appellants has further also argued that the defendants have been coming in possession over the suit land since after 1972 and thereby they have perfected their title by adverse possession over the same. It has been finally submitted that this appeal involves substantial questions of law which are required to be considered and determined.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the spinal issues between the parties is with regard to the validity of the unregistered sale deed on the basis of which the defendants have resisted the claim of the plaintiffs. The plaintiffs have obtained the registered sale deed in their favour with regard to the suit land on 24.05.1984 by Butai Paswan and Ram Das Paswan. However, it is the case of the defendants that Ram Das Paswan did not get any share in the property allotted to his father Ganesh Paswan rather his two brothers alone got the entire property. There does not



appear to be any cogent evidence led on behalf of the defendants to substantiate this fact although the burden of proof squarely was upon them to establish the fact of the exclusion of one brother from his share in the father's property. The vendor of the defendant Butai Paswan has been examined in the suit and in his deposition he has categorically stated that he has not executed any sale deed in favour of the defendants. The appellate court below, on the basis of scrutiny of evidence, has recorded the finding that even in the year 1972 when the alleged unregistered sale deed is said to have been executed the value of the land was more than Rs. 100/-. So far as the submission on the basis of the adverse possession is concerned, in view of the case and claim of the defendants that they have entered into possession over the suit land after acquiring title through an unregistered sale deed, the plea of adverse possession on their behalf cannot be entertained as once after accepting their entry upon the suit land in a legal manner they cannot subsequently claim adverse possession over the same. Both the courts below have recorded the findings on appreciation of evidence and this Court is not persuaded to find perversity or unreasonableness in any manner in those findings. The issues arising between the parties are now concluded by concurrent findings of fact.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Devendra/-

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(V. Nath, J)

