IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.148 of 2012

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1. Uma Kant Singh S/O Late Mathura Singh.
2. Nagendra Singh.
3. Munendra Singh.
4. Ramesh Singh.
5. Subodh Singh.
6. Pappu Singh all son of late Mathura Singh all 1 to 6 resident of village-Hundrahi, P.S. Wazirganj, P.O. Hundrahi, District – Gaya.
7. Dilip Singh.
8. Sri Kant Singh.
9. Ananddeo Singh all are S/O Late Lakhan Singh R/O Village - Hundrahi, P.S. Wazirganj, P.O. Hundrahi, District – Gaya.

.... Appellant/s

Versus

1. Anugrah Singh S/O Sridem Singh.
2. Wakil Singh S/O Ramanand Singh.
3. Haridwar Singh S/O Lakhan Singh all are R/O Village - Hundrahi, P.S. Wazirganj, P.O. Hundrahi, District – Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Sinha No.3

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

10 19-08-2015 Heard the learned counsel for the appellants.

The defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance.

Before proceeding to consider the submissions on behalf of the appellants, it would be apt to here to take into notice the material facts as appearing from the judgments of both the courts below and not disputed by the appellants. Admittedly, the suit land originally belonged to Shiv Narayan Singh, who was the father of the vendor (Jugal Singh) of the plaintiff. The complaint case was filed by Jugal Singh, vendor of the plaintiff, against the defendant no. 1 Singar Singh and others under Section 419, 467 I.P.C. and Section 82 (c) Registration Act alleging that the sale deed 28.06.1967 for the suit land have been obtained by the defendant no. 1 Singar Singh fraudulently and by means of impersonation. In the trial that followed it was found that the sale deed dated 28.06.1967 had been created by committing forgery and ultimately all the accused persons including the defendant no. 1 Singar Singh were convicted. The said conviction was also upheld by the superior courts. The plaintiff purchased the suit land by registered sale deeds dated 02.04.1971 and was put in possession over the suit land by his vendor Jugal Singh. It is, however, the case of the plaintiff that the defendant no. 1 subsequently dispossessed the plaintiff and also deceitfully got the survey entry with regard to the suit land prepared in his name. The suit was, therefore, filed by the plaintiff for declaration that the sale deed dated 28.06.1967 was forged document and for declaration of his title and recovery of possession over the suit land after declaring the sale deed dated 02.04.1971 in his favour as legal and valid.

Earlier, the suit was decreed ex parte after the defendant no. 1 failed to appear in spite of service of summons. Subsequently, however, the said ex parte decree was set aside under Order 9 rule 13 C.P.C. at the instance of the defendant no. 1. However, the defendant no. 1 after filing his written statement did not contest the suit. The another defendant (purchaser from defendant no. 1), who was added later on, also did not appear even after the service of summons and ultimately the trial court proceeded to hear the suit ex parte and granted the decree to the plaintiff, as prayed for.

The appeal was fled by the defendant no. 1 Singar Singh, who after death, was substituted by his heirs and legal representatives. The appellate court below, after reappraisal of evidence, has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

The learned counsel for the appellants has firstly submitted that both the courts below have erred in law in relying upon the judgment passed by the criminal court convicting the defendant no. 1 for the offence of forgery. It has been canvassed that no other evidence was led on behalf of the plaintiff to establish the allegation of forgery in obtaining the sale deed dated

28.06.1967 and as the judgment of the criminal court is inadmissible in evidence, the findings by both the courts below on the issue of forgery is vulnerable. The reliance has been placed on the decision reported in **A.I.R. 1962 RaJ. 127 (Onkarmal Vs. Banwarilal)** and **A.I.R. 1966 Mad. 425 (Krishnan Asari Vs. Adakalam)** in support of this submission. While criticizing the impugned judgments, another submission has been made that the suit itself was barred by limitation but both the courts below have wrongly decided the said issue. It has, however, been accepted by the learned counsel for the appellants that the suit has not been contested by the defendant-appellants.

After perusal of the judgments and considering the submissions, it is manifest that the claim of the defendant no. 1 over the suit land is on the basis of the sale deed dated 28.06.1967 said to have been executed by the father of the vendor of the plaintiff but the plaintiff has asserted that the said sale deed was obtained by forgery. The plaintiff has adduced oral and documentary evidence to establish his assertion and claim of title over the suit land on the basis of the sale deed dated 02.04.1971 (Ext. 1 to 1/B) in his favour. The spinal issue, therefore, was the issue of forgery with regard to the sale deed 28.06.1967. It has not been disputed that the defendant no. 1 in whose favour the said sale deed stood was convicted by the criminal court on the basis of finding of forgery against him in manufacturing the said sale deed. The judgment and order of conviction has been adduced in evidence by the plaintiff. There was, however, no evidence at all in rebuttal led by the defendants who admittedly did not contest the suit. In **Onkarmal** (supra) and **Krishnan Asari** (supra), it has not been held that the judgment of a criminal court would not be admissible in a civil action rather it has been laid down that a judgment of a criminal court would not be binding in a civil action and would be admissible for the limited purpose to show as to who were parties to the dispute and what order was passed. In the present case as there was no evidence adduced on behalf of the defendant no. 1 to deny the fact that he was convicted after the charge of forgery for the sale deed dated 28.06.1967 was proved against him, the courts below had no other option but to accept the said fact. In the written statement filed by the defendant no. 1, there is no denial of the fact that the allegation of forgery with regard to the sale deed in question was levelled against him by the vendor of the plaintiff, and the said forgery had been found by the criminal courts to have been committed by him. In this backdrop, the submission on behalf of the appellants that the courts below were required to record their finding on the issue of forgery even in absence of evidence in rebuttal by the defendant is clearly misconceived and contrary to the principle of *issue estoppel*. It would be profitable here to take into notice the observations made in **Hunter Vs. Chief Constable 1981 (3) All E.R. 727** as follows:

> *".....The initiation of proceedings in a court of justice for the purpose of mounting a collateral attack on a final decision adverse to the indenting plaintiff reached by a court of competent jurisdiction in previous proceedings in which the plaintiff had a full opportunity of contesting the matter was, as a matter of public policy, an abuse of the process of the court. The fact that the collateral attack was by means of a civil action raising an identical issue decided against the plaintiff in a competent court of criminal jurisdiction was immaterial, since if the issue had been proved against the plaintiff beyond all reasonable doubt in the criminal court it would be wholly inconsistent if it were not decided against him on the balance of probabilities in the*

civil action.....”

So far as the submission that the suit was barred by limitation is concerned, it is well settled that the issue of limitation is mixed question of law and fact. In the present case, the plaintiff has led evidence that the sale deed dated 28.06.1967 of the suit land in favour of the defendant was declared to be forged and fabricated document and defendant no. 1 was also convicted for the offence of forgery. It is also the case of the plaintiff that he was continuing in possession over the suit land before defendant no. 1 and his family members dispossessed him forcibly from the suit land. The defendant, on the other hand, has not led any evidence to deny the aforesaid facts asserted by the plaintiff. There is also no other evidence on behalf of the defendant to support the fact that the defendant no. 1 or his vendor had been in possession prior to the dispossession of the plaintiff. In this backdrop, the submission on behalf of the appellants that the limitation would start running from the date the sale deed i.e. 28.06.1967 itself cannot be accepted as under Article 58 the starting point of limitation is when the right to sue first accrues. As such, in absence of any evidence that the right to sue had accrued to the plaintiff at any point of time earlier than claimed, the courts below have committed no error in deciding the issue of limitation in favour of the plaintiff. The reliance on the decision in the case of **Sita Sharan Prasad Vs. Manorma Devi 2012 (2) PLJR 190** is clearly misplaced as the said decision has been rendered in a different setting of facts.

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

(V. Nath, J)

Devendra/-

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