

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.151 of 2013

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Devendra Mahato son of Muneshwar Mahato, resident of village Kusail, Police station+ Sub-Registry, Circle and Sub-Division Pupri, District-Sitamarhi.

.... Appellant/s

Versus

Yugeshwar Mahto, son of late Awadh Mahto, resident of village Kusail, P.S. + Sub-Registry Circle Sub-Division Pupri, District-Sitamarhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-02-2015

Heard Mr. Waliur Rahman, the learned counsel appearing on behalf of the appellant in support of this appeal.

The defendant in the suit is the appellant in this second appeal against the judgment and decree of affirmance.

The suit has been filed by the plaintiff for declaration of his title and confirmation of his possession over the suit land after declaring the sale deed dated 06.04.2004 executed by the plaintiff in favour of the defendant in respect of the suit land as void and without consideration.

The factual expose' are that the plaintiff has admittedly executed the registered sale deed for the suit land in favour of the



defendant on 06.04.2004. According to the terms of the agreement the registration receipt was to be handed over by the plaintiff to the defendant after receiving the entire consideration money but the defendant did not pay the consideration money in spite of several demands by the plaintiff. It is the case of the plaintiff that the original sale deed which had been obtained by the plaintiff from the registration office has been fraudulently taken from the defendant without payment of consideration money.

The case of the defendant is that he had paid the entire consideration money in presence of several witnesses before the writing of the sale deed by the scribe and has denied to have fraudulently taken back the original sale deed from the plaintiff without payment of consideration money. It is the case of the defendant that the original registration receipt was taken by him from the plaintiff on 06.04.2004 after the registration of the sale deed and he handed over the photo copy of the registration receipt to the scribe who, in breach of trust, handed over the said photo copy to the plaintiff.

The trial court has returned the finding that the payment of the consideration money by the defendant before the sale deed was scribed, could not be believed in view of the recital in the registered sale deed that the payment of consideration money would



be made at the time of exchange of the registration receipt. It has also been held that the defendant nowhere has pleaded that he obtained the original sale deed from the registry office rather in the information petition (Ext. 2) he had admitted that the scribe had handed over the original sale deed to the plaintiff. The trial court thus after the scrutiny of the evidence of the parties granted the decree as prayed by the plaintiff. In appeal by the defendant, the appellate court, on reappraisal of evidence, has affirmed the findings of the trial court and dismissed the appeal.

Calling in question the legal sustainability of the impugned judgment and decree, Mr. Rahman, the learned counsel for the appellant has submitted that both the court below have erred in not considering the fact that the original sale deed has been produced before the court by the defendant which fact would lead to the presumption in favour of the defendant that he paid the consideration money has and obtained the original sale deed thereafter in accordance with law. It has also been propounded by the learned counsel for the petitioner that the plaintiff has to succeed on the strength of his own case but in the present case the plaintiff has failed to establish the crucial fact that the original sale deed has been fraudulently taken back by the defendant. It has also been submitted that both the courts below have not approached the matter

in correct perspective and wrongly granted the decree to the plaintiff.

From the perusal of the impugned judgments of both the court below and consideration of the submissions on behalf of the appellant, it is limpid that the registered sale deed (Ext. B) contains the term in its recital that the consideration money would be paid at the time of exchange of the registration receipt. It is nowhere the case of the defendant that the said recital has been wrongly made rather in para 9 of the written statement the defendant had admitted that the contents of the sale deed have been read over and explained to him as well as to the plaintiff. In view of the said recital demonstrating one of the crucial terms of the sale transaction, the case of the defendant that the entire consideration money was paid before the sale deed in question was scribed has rightly been disbelieved by both the courts below as the defendant could not have been allowed to lead evidence varying and contradicting the said term in the sale deed itself by leading oral evidence. It has also been rightly held by both the courts below that the payment of consideration money was a necessary condition precedent for the transfer of title through the sale deed. As noticed by the courts below, the defendant has not made any averment in the written statement that he obtained the original sale deed from the



registration office. Both the courts below have also considered the
informatory petition (Ext. 2) filed by the defendant on 07.06.2004.
The defendant has accepted in his deposition that he had filed the
said informatory petition where in the statement had been made that
the scribe had handed over the original sale deed to the plaintiff after
obtaining the same from the registration office. Both the courts
below have rightly come to the conclusion that the defendant has
admitted the fact that the original sale deed reached to the plaintiff.
During the course of argument, no case or explanation on behalf of
the defendant could be pointed as to how the defendant could get the
original sale deed which was admittedly with the plaintiff. Both the
courts below have rightly found that the defendant has nowhere
pleaded that he got the original sale deed from the plaintiff after
payment of the consideration money.

In the backdrop of the admission by the defendant that
the original sale deed reached in the custody of the plaintiff and in
absence of further case by the defendant revealing the manner in
which he got the said sale deed, the submission on behalf of the
appellant that the presumption should have been raised in favour of
the defendant that he paid the entire consideration money as the
original sale deed was in his custody, cannot be countenanced. Both
the courts below, after considering the pleadings and deposition of

the defendant, have rightly come to the conclusion that the plaintiff has succeeded in establishing his case. This Court does not find perversity in any manner in the findings of both the courts below.

In the ultimate eventuate, it is held that no substantial question of law arises for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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