

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.244 of 2013

=====

Smt. Taluka Devi Wife Of Sri Nagina Singh Resident Of Village - Gangti, P.O.
And P.S. Aurangabad, District - Aurangabad

..... Defendant Appellant

.... Appellant

Versus

1. Smt. Urmila Devi Wife Of Sri Ugrah Narayan Singh
2. Sri Ugrah Narayan Singh Son Of Sri Yadunandan Singh Both Are Resident Of Village - Gangti, P.O. And P.S. Aurangabad, District - Aurangabad
3. Sri Arun Kumar Singh Son Of Late Tribeni Singh Resident Of Village - Gangti, P.O. And P.S. Aurangabad, District – Aurangabad

..... Plaintiffs Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. RADHA KRISHNA SINGH

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-05-2015

Heard Mr. Singh, learned Counsel appearing on behalf of the appellant. Mr. Sukumar Sinha, appearing for the plaintiffs – respondents is also present.

2. Defendant no. 2 in the suit is the appellant in this appeal against the judgment and decree of affirmance.

3. The plaintiffs filed a suit for a direction to the defendant no. 1 to execute a deed of rectification, stating that Plot no. 510 should have been there in place of Plot no. 150 in the sale deed dated 6.7.1990 executed by him in favour of the plaintiffs. The plaintiffs also impleaded the present appellant as defendant no. 2 on the ground that after execution of the sale deed in favour of the plaintiffs for Plot no. 510 area



62 ½ decimals, the defendant no. 1 transferred the said plot in favour of defendant no. 2 by registered sale deed dated 6.11.1990. A relief for permanent injunction against this defendant no. 2 was sought restraining defendant no. 2 from interfering in possession of the plaintiffs over the lands purchased by the plaintiffs in Plot no. 510.

4. The factual matrix reveals that defendant no. 1 admittedly executed a sale deed in favour of the plaintiffs on 6.7.1990 transferring areas from Plot no. 150 and Plot no. 27. The plaintiffs' case is that this Plot no. 150 had been wrongly and fraudulently mentioned in the sale deed by defendant no. 1 in collusion with the scribe in place of Plot no. 510 for which the negotiations and sale transaction had taken place. The defendant no. 1 contested the claim of the plaintiffs on the ground that he intended only to sale Plot no. 27 and he never intended to sale any other plot much less Plot no. 510. The stand taken by defendant no. 2 was that the land of Plot no. 510 was purchased by her without notice of the earlier sale transaction and therefore the said sale transaction in favour of the plaintiffs, even if it is there, would not be binding on defendant no. 2.

5. Both the courts below after scrutiny of the pleadings and evidence of the parties have come to the concurrent finding firstly that Plot no. 150 did not belong to the defendant no. 1 and secondly that in fact Plot no. 150 has been wrongly mentioned in the sale deed of the plaintiffs in place of Plot no. 510 area 62 ½ decimals. It has been further found by both the courts below that defendant no. 2 had the knowledge of the sale of Plot no. 510 in favour of the plaintiffs by sale deed dated 6.7.1990 by defendant no. 1 and therefore the case of defendant no. 2

that she had no knowledge of the sale of the plaintiffs has been categorically negated. The suit was decreed and thereafter the appeal, preferred by defendant no. 1 and defendant no. 2 separately, have been dismissed by the impugned judgment and decree. Defendant no. 2 alone has preferred this appeal, as mentioned above.

6. Mr. Singh, learned Counsel for the appellant has made two submissions. Firstly that the judgments of both the courts below are vitiated due to non consideration of documentary and oral evidence of both parties and secondly that the judgments of both the courts below are vitiated due to the reason that the plaintiffs have not sought any relief with regard to the sale deed of defendant no. 2. Learned Counsel while pressing this Second Appeal on the aforesaid substantial questions of law has placed the judgment of the appellate court below to persuade this Court that evidence of the parties have not been properly considered. No other submission has been made on behalf of the appellant.

7. From perusal of the judgments of both the courts below and after considering the submissions it is pellucid that both the courts below after elaborate analysis of the evidence of the parties have reached to the finding that Plot no. 150 never belonged to defendant no. 1 and in fact it was by mistake that Plot no. 150 came to be mentioned in the sale deed of the plaintiffs in place of Plot no. 510. Both the courts below have also taken into notice in detail the deposition of the husband of the defendant no. 2 who filed a preemption case against the plaintiffs for Plot No. 510 on the ground that he was part purchaser of the plot. It has been found by the courts below that the husband of defendant no. 2

was in fact a part purchaser of Plot no. 510 from the uncle of defendant no. 1 and on that basis he filed the preemption case. Defendant no. 2 herself was not examined in the suit in support of the stand of her husband. After appreciating the documentary and oral evidence the courts have come to the finding that the defendant no. 2 had the knowledge of the sale of Plot no. 510 area 62 ½ decimals in favour of the plaintiffs by defendant no. 1.

8. During course of submission nothing substantial could be pointed out to satisfy and persuade this Court to take the view that the findings recorded by both the courts below are perverse or unreasoned in any manner. In fact entire submission on behalf of the appellants centers around reappraisal of evidence even at the second appellate stage.

9. For the aforesaid reasons and discussion, this Court does not find any substantial question of law arising for consideration in this appeal. This appeal is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

U			
---	--	--	--