

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.270 of 2013**

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Kishori Prasad son of Somar Sao, resident of village Rajauli, P.S. Rajauli, district Nawada.

..... Plaintiff ..... Appellant

.... .... Appellant

Versus

1. Krishna Prasad
2. Mundrika Prasad
3. Sundrika Prasad
4. Pradeep Kumar All sons of late Girolal, resident of village and P.S. Rajauli, district Nawada.
5. Kanti Devi wife of Rajender Prasad, daughter of Girolal, resident of Mohalla Bharaopar, Biharsharif, P.S. Biharsharif, District Nalanda.
6. Shanti Devi wife of Govardhan Lal, resident of village and P.S. Rajauli District Nawada, at present village Koniapar, P.S. and District Nawada.

..... Defendants ..... Respondents

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. MADHURI KUMARI

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 13-10-2015**

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance. The suit had been filed by the plaintiff for declaration of his title and confirmation of possession on the basis of sale deed executed in favour of the plaintiff in the year 1996 by defendant No. 6 Shanti Devi. It is not in dispute that entire 1 decimal of land originally belonged to Kesho Sah and after his death his two daughters Sukhdei Devi and Shanti Devi inherited the same to the extent of half and half. The case of partition between the two daughters has also been mentioned in the plaint. Shanti Devi sold her half share by registered sale deed dated 5.6.1968, in favour of the contesting

defendant Giro Lal. The said Shanti Devi again sold part of the property of her share in favour of the plaintiff and when the plaintiff's prayer for mutation was refused by the Anchal Adhikari on objection by the contesting defendant Girolal, the present suit has been filed.

3. The contesting defendant Giro Lal has come out with a case that Shanti Devi by sale deed dated 5.6.1968 had already sold her entire  $\frac{1}{2}$  decimal of her share to him and she was left with no property in her share to again transfer it to the plaintiff by way of sale. The claim of exclusive possession on the basis of purchase by sale deed of the year 1968 has also been made.

4. The vendor of the plaintiff namely Shanti Devi was impleaded in the suit as defendant No. 6 and she also filed written statement supporting the case of the plaintiff on the ground that she sold only part of the land of her share in favour of the plaintiff.

5. The trial court returned the finding against the plaintiff. In the appeal by the plaintiff, the appellate court below after reappraisal of evidence concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

6. Learned Counsel for the appellant has mainly submitted that the sale deed dated 5.6.1968 executed by Shanti Devi in favour of the contesting defendant Girolal has not been properly considered by the courts below and, therefore, the findings by both the courts below in this regard is misleading. It has been posited by the learned Counsel that the said sale deed also mentions, besides mentioning that  $\frac{1}{2}$  decimal land out of 1 decimal has been sold, the part of the  $\frac{1}{2}$  decimal describing its measurement in feets and on this basis it has been contended that in fact

Shanti Devi did not alienate her entire  $\frac{1}{2}$  decimal of the suit land. Learned Counsel for the appellant has also argued that the plaintiff is in possession over the purchased land but the courts below have not considered the said fact.

7. After perusal of the judgments of both the courts below and consideration of the submission on behalf of the appellant, it is pellucid that the primary issue in the suit was as to whether Shanti Devi had transferred her entire  $\frac{1}{2}$  decimal land allotted to her in partition with her sister Sukhdei Devi. The evidence adduced on behalf of the parties have been considered along with the averments made in the sale deed dated 5.6.1968, wherein it has been specifically stated by the vendor that she had sold her share of  $\frac{1}{2}$  decimal out of 1 decimal in favour of Girolal. The mention of the area and measurement in feets therein has been unduly emphasised by the learned Counsel for the appellant who has also prayed to the Court for taking on record and consider the receipts with copy of the said sale deed itself at the second appellate stage.

8. In view of the findings recorded by both the courts below on the basis of evidence on record, this Court in its considered view declines to take into notice the recitals made in the copy of the sale deed produced on behalf of the appellant during the course of argument. The judgments by both the courts below demonstrate detailed scrutiny of the pleadings and evidence and pleadings the parties and the findings recorded on the said basis could not be established to be perverse or unreasonable. This Court, therefore, comes to the conclusion that no substantial question of law arises at the second appellate stage for consideration.

9. In the result, this Second Appeal is dismissed.

(V. Nath, J.)

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