

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.272 of 2013

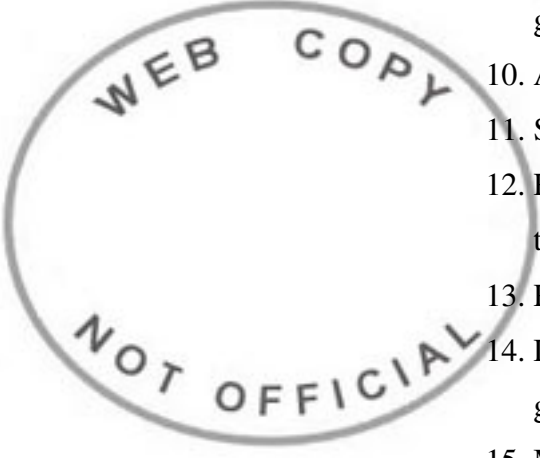
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1. Arti Devi wife of late Sachidanand Singh.
 2. Surendra Kumar.
 3. Shashi Ranjan Kumar, sons of late Sachidanand Singh.
 4. Manju Devi.
 5. Ranju Devi.
 6. Punam Devi.
 7. Reena Kumari @ Reema Kumari daughter of late Sachidanand Singh.
 8. Seema Kumari, daughter of Sachidanand Singh.
 9. Ganga Singh alias Ganga Pd. Singh.
 10. Basudeo Singh, sons of late deo Narain Singh.
 11. Sudha devi @ Sandhya Devi, wife of late Shekho Singh.
 12. Rajiv Kumar.
 13. Bulbul Kumar.
 14. Binod Kumar, sons of late shekho Singh.
 15. Pushpa Devi.
 16. Asha Devi, daughter of late Shekho Singh.
 17. Dina Singh.
 18. Shri Lal Singh @ Sri Lala Singh sons of Sri Ram Singh.
 19. Raj Nandan singh son of Deo Narain Singh.
 20. Surendra singh son of Sachidanand Singh.
 21. Brij Nandan Singh, son of Shekho Singh, all resident of village-Ramdiri, P.S. Matihani, District-Begusarai.

.... Appellant/s

Versus

1. Sunaina Devi daughter of late Brahmdeo Singh.
2. Ram Charitar Singh, minor.
3. Janardan Singh, minor.
4. Nawal Kishore Singh, minor.
5. Mahendra Singh, minor.
6. Pramod Singh, minor sons of Raghu Nandan Singh, Minors under the guardianship of their father Raghunandan Singh.
7. Ram Nagina Singh Alias Chano Singh, son of Ram Swarup Singh.

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8. Lalit Singh.
 9. Punit Singh, minors son of Janardhan Singh, Minor under the guardianship of their father Janardhan Singh.
 10. Anil Singh.
 11. Sunil Singh.
 12. Ram Kishore Singh, minor son of Ram Charitar Singh, minor under the guardianship of their father Ram Charitar Singh.
 13. Rajendra Singh son of Brahmdeo Singh.
 14. Dinesh Singh, minor son of Brahmdeo Singh minor under the guardianship of their father Brahmdeo Singh.
 15. Most. Manorma Devi, wife of Ram Narain Singh.
 16. Nanki Devi, wife of Ram Sagar Singh
 17. Chitra Lakha devi daughter of Ram Sagar Singh
 18. Budhani Devi daughter of Ram Sagar Singh
 19. Bhalo Devi daughter of Ram Sagar Singh
 20. Satrugan singh son of Nand Lal Singh.
 21. Ramashary Singh.
 22. Radhe Shyam Singh son of Nand Lal Singh.
 23. Bimla Devi wife of Late Balmiki Singh.
 24. Raj Kumar.
 25. Rajju Kumar.
 26. Nilesh Kumar sons of Balmiki Singh.
 27. Ram Prakash Singh.
 28. Ram Nandan Singh, minor son of Satrugan Singh, Minor under the guardianship of their father Satrugan Singh.
 29. Gyan Chand Singh, Minor.
 30. Bidhan Chand Singh, minor sons of Radhey Shyam Singh, minors under the guardianship of their father Ramdhe Shyam Singh, all resident of village Ramdiri tola Ram Nagar, P.O. Ramdiri, P.S. Matihani, District-Begusarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

9 13-10-2015 Heard Mr. Bhupendra Narayan Sinha, the learned
counsel for the appellants.

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

The suit has been filed by the plaintiffs for
declaration of title and confirmation of possession over the suit
land and further for declaration that the defendants have acquired
no title over the suit land on the basis of the sale deeds in their
favour which have remained ineffective.

The plaintiffs' predecessor had executed two sale
deeds dated 16.08.1929 for the suit land in favour of the
defendants. It is not the case of the plaintiffs that they had no
knowledge of those two sale deeds. However, the plaintiffs have
come out with the case that those two sale deeds were farzi
transactions and no title passed to the defendants on the basis of
those sale deeds. The defendants have denied the case of the
plaintiffs and have asserted that they have acquired title and
possession over the suit land on the basis of the two sale deeds.

Both the courts below have returned the findings that
the plaintiffs have failed to establish their case that those two sale
deeds executed by their predecessor in favour of the defendants

were farzi transactions. It has also been held by both the courts below that the suit was barred by limitation. Accordingly, the suit was dismissed and thereafter the appeal has also been dismissed.

Mr. B.N. Sinha, the learned counsel appearing on behalf of the plaintiff-appellants has submitted that both the courts below have committed error in not appreciating the fact that the plaintiffs have adduced sufficient evidence including documentary evidence to establish their case that two sale deeds were farzi transactions and no right, title or interest in the lands subject matter of those sale deeds ever passed to the defendants. It has been canvassed that the plaintiffs have remained in continuous possession over the suit land and have also acquired title by adverse possession. Elaborating his submissions, the learned counsel has further propounded that the appellate court below has not given its own reasonings while affirming the findings of the trial court and therefore the impugned judgment and decree is vitiated in view of the provision of Order 41 Rule 31 C.P.C. It has also been argued that though the prayer for setting aside the sale deeds has not been made but the plaintiffs have sought the declaration that the defendants have not acquired right, title, interest and possession over the suit lands as those two sale deeds remained ineffective. It has, thus, been submitted that the

substantial questions of law arise for consideration in this appeal.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiffs have accepted the execution of the two sale deeds dated 16.08.1929 by their predecessor in favour of the predecessor of the contesting defendants with regard to the suit land. However, it is the case of the plaintiffs that those sale deeds were farzi transactions and no title and possession with regard to the land subject matter of those sale deeds were ever conveyed to the defendants. This issue has been decided against the plaintiffs by both the courts below after scrutiny of the oral and documentary evidence. The courts have taken into consideration the fact of filing the money suit by the plaintiffs against the defendants for realization of the rent on the ground that the defendants were in possession over the suit land but had omitted to pay the rent. The stand of the plaintiffs in the certificate case as well has also been taken into notice by the courts below where the plaintiffs had made the statement that the contesting defendants were in possession over the suit land and they were required to be made party in the certificate case. The findings by the courts below are based upon appreciation of evidence and this Court has not been persuaded to find perversity or unreasonableness in any manner in

the same.

The submission on behalf of the appellants with regard to the provision of Order 41 Rule 31 C.P.C. has also no substance in view of the fact that the appellate court below has elaborately taken into notice the findings of the trial court before arriving at its own conclusion. The provision for framing of points for determination is not to be taken in pedantic manner. It is by now well settled that while passing the judgment of affirmance, the appellate court below is not required to deal with each and every evidence and reiterate reasons. The material requirement is that the judgment must show that the appellate court below was alive to the issues arising in the suit and the evidence on record and has applied its reasoning. This Court, therefore, does not find that the judgment of appellate court below is vitiated for the said reason.

Both the courts below have also found that that suit filed by the plaintiffs was barred by limitation. In view of the fact that the plaintiffs have accepted the execution of the two sale deeds in favour of the defendants and have further also accepted to have knowledge of the same, the provision of Article 59 would be clearly attracted in the facts and circumstances of the case. The plaintiffs or the predecessor were required to file suit with

appropriate relief against the two sale deeds in favour of the defendants within the prescribed period of limitation under Article 59 of the limitation Act or in any view of the matter under the residuary Article 58 of the Limitation Act. The learned counsel for the appellants has tried to explain the position by submitting that the plaintiffs have been continuing in adverse possession over the suit land and have perfected their title over the suit land. This Court is not impressed with this submission in view of the own pleading by the plaintiffs that their title over the suit land has remained unaffected by the sale deeds which rules out the presence of necessary animus with the plaintiffs to possess the land of other person and to profess hostile possession over the same. This Court, therefore, does not find substance in this submission also.

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

(V. Nath, J)

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