

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.345 of 2000

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Abdul Hamid @ Md.Hamid son of late Noor Mahammad resident of village and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar), District-Siwan.

.... Appellant/s

Versus

1. Abdul Gaffar.
2. Abdul Sattar, Son of late Iltaf Hussain, both residents of village-and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan.
3. Thakur Dusad son of late Mahagu Dusad, resident of village and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan, at present residing at village-Bathua, Pargana Sipah, P.S. Majhagarh, District-Gopalganj.
4. Md. Idris.
5. Md. Amin, sons of late Iltaf Hussain.
6. Bibi Jainul Khatoon
7. Bibi Maimun Khatoon.
8. Bibi Saibun Khatoon, daughter of late Iltaf Hussain, residents of village-and P.O. Chauki Hassan, P.S. Barharia (Gautam and Budh Nagar) District-Siwan.

.... Respondent/s

with

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Second Appeal No. 346 of 2000

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Ali Hussain son of late Sahid Mian, resident of village and P.O. Chauki Hassai, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan.

.... Appellant/s

Versus

1. Abdul Gaffar.
2. Abdul Sattar, Son of late Iltaf Hussain, both residents of village-and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan.
3. Md. Hatim son of late Suhawan Ansari, resident of village and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan.
4. Thakur Dusad son of late Mahangu Dusad, resident of village and P.O. Chauki Hassan, Pargana Bara, P.S. Barharia (Gautam Budh Nagar) District-Siwan, at

present residing at village-Bathua, Pargana Sipah, P.S. Majhagarh, District-Gopalganj.

- 5. Md. Idris.
 - 6. Md. Amin, sons of late Iltaf Hussain.
 - 7. Bibi Jainul Khatoon
 - 8. Bibi Maimun Khatoon.
 - 9. Bibi Saiboon Khatoon, daughters of late Iltaf Hussain, residents of village-Chauki Hassan, P.S. Barharia (Gautam and Budh Nagar) District-Siwan.....
- Respondent/s

Appearance :
(In SA No. 345 of 2000)

For the Appellant/s : Mr. Syed Firoz Raza
Mr. S.Qaisar Hasan
Mr. Md.Kamil Akhtar
Mr. Md.Ataul Haque
Mr. Abbas Haider
For the Respondent/s : Mr. Mahendra Prasad Bhartee

(In SA No. 346 of 2000)

For the Appellant/s : Mr. S.Qaisar Hasan
Mr. Md.Kamil Akhtar
Mr. Md.Ataul Haque
Mr. Syed Firoz Raza
Mr. Md.Abbas Haider
For the Respondent/s : Mr. Mahendra Prasad Bhartee

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 07-01-2015

Heard Mr. Abbas Haider, the learned counsel appearing on behalf of the appellants in both the appeals. The learned counsel for the plaintiff-respondents in both the appeals is also present.

The learned counsel for the parties have agreed that the common questions of law and fact are involved in both the appeal. As such both the appeals have been heard analogously and are being disposed of by this judgment.



The suit land admittedly belonged to Thakur Dusadh who had the transferable title over the same. The plaintiff claims to have purchased the suit land from Thakur Dusadh by registered sale deed dated 26.06.1952 and on that basis the plaintiffs have further claimed to be continuing in possession. The defendants, on the other hand, claim to have acquired the suit land from Thakur Dusadh by subsequent sale deeds dated 01.04.1982 and have asserted their title and possession over the suit land on that basis. The three suits i.e. Title Suit Nos. 272 of 1982, 273 of 1982 and 274 of 1982 were filed by the plaintiffs assailing the three sale deeds executed by Thakur Dusadh in favour of the defendants respectively and the relief was for declaration of those sale deeds as not binding upon the plaintiffs. The defendants came out with the case that in the year 1952 Thakur Dusadh was minor and therefore the sale deed executed by him on 26.06.1952 in favour of the plaintiffs was void ab initio and not capable to confer title on the plaintiffs. It is admitted fact that in all the three suits Thakur Dusadh was also impleaded as defendant. The Title Suit No. 274 of 1982, however, was earlier taken up for hearing and was decreed. The said decree was affirmed in appeal also.

The trial court, after the scrutiny of evidence and pleadings of the parties, returned the finding on the crucial issue regarding the age of Thakur Dusadh in the year 1952 that he was major in that year



and on that basis it has been held that the sale deed executed in favour of the plaintiffs on 26.06.1952 by Thakur Dusadh is a legally valid document. In appeals, by the subsequent purchaser-defendants, the appellate court, on reappraisal of evidence, affirmed the findings and dismissed the appeals by the impugned judgment and decree in both the second appeals.

Mr. Abbas Haidar, the learned counsel for the appellants has submitted that both the court below have erred in law in not appreciating the evidence led by the defendants in proper perspective. It has been canvassed that in absence of direct evidence regarding the age of Thakur Dusadh in the year 1952, the courts below should have directed for medical examination of Thakur Dusadh for finding out his age in the year 1952. It has also been submitted by the learned counsel that the sale deed executed by the brother of Thakur Dusadh in the year 1949 clearly mentions Thakur Dusadh to be minor and, therefore, that evidence was at least sufficient for indicating the fact that the Thakur Dusadh was minor in the year 1949. It has also been emphatically argued that that plaintiffs have failed to lead cogent evidence to establish that Thakur Dusad was major in the year 1952.

After perusing the judgments of both the courts below and considering the submissions of the learned counsel for the appellants, it is limpid that the crucial issue in the suit was the age of Thakur



Dusadh on 26.06.1952 in view of the rival claims of the parties in that regard. However, it has been accepted by the learned counsel for the appellants that the sale deed dated 26.06.1952 in favour of the plaintiffs is a registered document and Thakur Dusadh even after getting the knowledge of the same or within three years of attainment of majority did not file any suit assailing the validity of the said sale deed. Both the courts below, on the basis of scrutiny of evidence, have come to the concurrent finding that Thakur Dusadh was major on 26.06.1952. The courts below have referred and relied upon the statement made by Thakur Dusadh who appeared as witness in T.S. No. 274 of 1982 wherein he has deposed that his father died in the year 1945 and at that time his age was 12 years. The certified copy of the said deposition (Ext. 3/B) has been produced as evidence in the suit by the plaintiffs. Though, Thakur Dusadh, who has been impleaded as defendant in the present two suits, has deposed that he had not made such deposition in T.S. No. 274 of 1982 but except the denial, no evidence has been adduced to substantiate the said fact. Moreover, both the courts below have also found that no evidence has been adduced on behalf of the defendants to show that Thakur Dusadh made any payment of rent from 1952 upto 1982 for the suit land which could have at least supported the version set up by Thakur Dusadh or the defendants (subsequent purchasers) regarding non-

acquisition of the title and possession by the plaintiffs over the suit land. To the contrary, the plaintiffs have adduced Ext. 8 series (Rent Receipts) even prior to the year 1982 to show that they have been exercising their rights of ownership and possession over the suit land on the basis of their purchase. The defendants have not produced any rent receipt. Both the learned courts below after considering the report of the handwriting expert have also come to the conclusion that the sale deed in question in favour of the plaintiffs bears the thumb impression of Thakur Dusadh. Both the learned courts below, after elaborate scan of oral and documentary evidence, have concluded that the preponderance of probability is in favour of the plaintiffs.

The issues arising between the parties have now been concluded by concurrent findings of fact and this Court has not been persuaded to find perversity in any manner in the findings by the learned courts below.

In the ultimate eventuate, this Court finds no substantial question of law arising for consideration in both the appeals, which are accordingly, dismissed.

Devendra/-

(V. Nath, J.)

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