

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.438 of 2009

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1. Sri Bindeshwari Prasad Choudhary S/O Late Sri Chand Choudhary R/O Mohalla-Binddpur, P.S.& Distt- Katihar
 2. Smt. Bidyawati Devi W/O Bindeshwari Prasad Choudhary R/O Mohalla-Binodpur, P.S.& Distt- Katihar

.... Appellant/s

Versus

1. Smt. Anima Rani Paul Wodow Of Late Kanhai Lal Paul R/O Mohalla-Binddpur, P.S.& Distt- Katihar
2. Sri Gobinda Chandra Paul S/O Late Kanhai Lal Paul R/O Mohalla-Binodpur, P.S.& Distt- Katihar
3. Bhola Nath Paul S/O Late Kanhai Lal Paul R/O Mohalla-Binodpur, P.S.& Distt- Katihar
4. Gauri Rani Paul D/O Late Kanhai Lal Paul R/O Mohalla-Binodpur, P.S.& Distt- Katihar
5. Arati Paul D/O Late Kanhai Lal Paul R/O Mohalla-Binodpur, P.S.& Distt- Katihar
6. Sri Gopal Paul S/O Late Balai Chandra Paul R/O Mohalla-Binodpur, P.S.& Distt- Katihar At Present Posted In Railway Service as T.C.M. At Bihpur, Distt.-Shalalpur
7. Smt. Renuka Paul Widow Of Late Shambhu Charan Paul C/O Sri Mathura Mahto Of Village-Parknabad, P.O.-Mohan Bazar (Pathardila) Distt-Dhanbad
8. Smt. Mira Rani Chatterjee D/O Late Shambhu Chandra Paul W/o Pranab Kumar Chatterjee Present Tosana Colloiray Kundra, P.O.-Bachelor Institute Of Technolgy Sindri, Distt.-Dhanbad
9. Smt. Ratna Rani Singh D/O Late Shambhu Charan Paul, W/O Sri Bhagwan Singh Presetn Carriage Fitter Sindari Marshalling Yard, Anandnagar, P.O.-B.T.I Sindari, Distt.-Dhanbad
10. Smt. Lili Rani Singh D/O Late Shambhu Charan Paul, W/O Sri Amrendra Pd. Sinha Present Wireless Operator Jai Kundra Colliery, P.O.-

Chirkande, Distt.Dhanbad

11. Sri Swapan Kumar Paul @ Khoknan S/O Shri Subrate Kumar Paul @ Nithu Present C/O Carriage Foreman Officers Croma Railway Station, Distt.-Dhanbad (Eastern)

12. Smt. Anjali Paul S/O Late Haren Chandra Paul R/O Sector 23 Indra Nagar, Lucknow 2226016

13. Smt. Annapurna Paul S/O Late Haran Dhandra Paul R/O Sector 23 Indra Nagar, Lucknow 2226016

14. Smt. Saila Eals Paul D/O Late Haran Chandra Paul R/O Kacharapura, P.S. & P.Onawadip, Distt.-Nadia (West Bengal) C/O Sri Dulal Chandra Paul At Kacharapura, P.O.-Nawdip, Distt-Nadia

15. Sri Murari Mohan Paul S/O Late Haran Chandra Paul R/O Kacharapura, P.S. & P.Onawadip, Distt.-Nadia (West Bengal) C/O Sri Dulal Chandra Paul At Kacharapura, P.O.-Nawdip, Distt-Nadia

16. Smt. Menka Rani Paul W/O Marari Mohan Paul R/O Kacharapura, P.S. & P.Onawadip, Distt.-Nadia (West Bengal) C/O Sri Dulal Chandra Paul At Kacharapura, P.O.-Nawdip, Distt-Nadia

.... Respondent/s

Appearance :

For the Appellant/s : M/S Nageshwar Prasad Sinha & S.Kumar

For the Respondent/s : M/S. P. K. Jaipuriyar & Anshuman Jaipuriyar

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

11 06-01-2015 Heard Mr. Nageshwar Prasad Sinha, the learned counsel for the appellants. The learned counsel for the contesting respondents is also present.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance.

3. The suit has been filed by the plaintiffs for declaration of their joint title with the defendant 2nd set and for declaration that the power of attorney dated 30-8-1978 and the sale deed executed on the basis of the said power of attorney on 28-7-1978 and thereafter another sale deed by defendant no.4 in favour of defendant no.1 on 24-5-1982 are null and void and not binding upon the plaintiffs. The relief for recovery of possession has also been prayed.

4. The necessitous facts are that admittedly the suit property belonged to the family of the plaintiffs and defendant 2nd set. Defendant no.3 is the brother of the plaintiffs and defendant 2nd set. The defendant no.3 executed a sale deed in favour of his wife(defendant no.4) on 28-8-1978 purportedly on the basis of power of attorney dated 30-8-1978 said to have been executed in his favour by his father Haran Chandra Paul. Defendant no.4. is admittedly the wife of defendant no.3. The defendant no.4 sold the suit property in favour of defendant 1st set by sale deed dated 24-5-1982. The plaintiffs' allegation is that on the strength of the said sale deed defendant 1st set dispossessed the plaintiffs from the suit property. The defendants contested the suit and resisted the

claim of the plaintiffs by asserting the validity of the power of attorney as well as the legality and validity of the sale deeds dated 28-8-1978 and 24-5-1982.

5. After the scrutiny of the evidence in view of the pleadings of the parties, the trial court returned the finding that the power of attorney was forged and fabricated document and the sale deed executed on that basis in favour of defendant no.4 by defendant no.3 could not have been legal and valid. Sequentially it was held that defendant 1st set did not acquire any title over the suit land on the basis of the sale deed dated 24-5-1982 executed by defendant no.4 in his favour. In appeal, the appellate court, on reappraisal of evidence, has affirmed the findings of the trial court.

6. Mr. Sinha, the learned counsel for the appellants has strenuously submitted that the suit was barred by limitation as in view of the provision of Article 59 of the Limitation Act, the suit must have been filed within three years of the date of execution of the power of attorney and the sale deeds. It has been canvassed by the learned counsel that the provision of Article 59 of the Limitation Act will squarely be applicable because the plaintiffs are affected by the power of attorney as well as the sale deeds and therefore the relief for cancellation or setting aside those instruments are necessarily



involved. The learned counsel has further submitted that the findings by both the courts below on the validity of the power of attorney cannot be sustained in law inasmuch as the comparison of the signature with regard to which the dispute has been raised on behalf of the plaintiffs has not been done with the admitted documents. It has also been argued that the courts below were required to act in accordance with section 45 of the Evidence Act and ought to have taken the aid of the opinion of a handwriting expert before embarking upon the comparison of the signature on the power of attorney. It has also been submitted by the learned counsel that both the courts below have not properly considered the evidence led on behalf of the contesting defendants and therefore the findings are perverse.

7. After perusal of the judgments of both the courts below and careful consideration of the submission by the learned counsel for the appellants, it is limpid that as the suit has been filed for recovery of possession on the basis of title , the relief for declaration with regard to the power of attorney and the sale deeds on that basis thereafter could not be governed by Article 59 of the Limitation Act in view of the admitted fact that the plaintiffs were not parties to those power of attorney as well as those sale deeds and the only relief they have prayed is for declaring those

instruments as null and void and therefore not binding upon them.

In such eventuality the suit would definitely be governed by Article 65 of the Limitation Act and this Court does not find force in the submission on behalf of the appellants that the provision of Article 59 of the Limitation Act shall be applicable. The courts below have rightly come to this conclusion after scrutinizing the facts and law correctly.

8. The next submission by the learned counsel for the appellants that the Court was bound to take aid of a handwriting expert for comparison of the disputed signature is also devoid of merit in view of the provision of section 73 of the Evidence Act which requires the Court itself to form the opinion and it has nowhere mandated that in every case where the handwriting or signature or thumb impression is in dispute, the handwriting expert must be appointed and his report must be considered. The evidence both under section 45 and section 47 is an opinion which in the former case is on the basis of scientific analysis and in the latter it is based upon familiarity with the handwriting. In both the cases it is for the Court to satisfy itself to act upon such opinion on the basis of the totality of evidence on record. In the present case, the Court has considered the evidence of P.W. 9 Hari Mohan Dutta who was conversant with the signature of Haran Chandra



Paul. Such course was permissible under section 47 of the Evidence Act. The conclusion has been arrived by the courts below on the basis of the opinion of P.W. 9 as well as its own scrutiny of the disputed signature. On similar issue, the apex court in the case of Murarilal Vs. State of M.P., A.I.R. 1980 S.C. 531 has also observed that it is the plain duty of the court to compare the writings and come to its own conclusion. In this view of the matter, this Court does not find substance in the submission of the learned counsel for the appellants . The learned counsel for the appellants has also submitted that both the courts below have committed error any law in comparing the disputed signature of Haran Chandra Paul on the power of attorney with his signature appearing on the plan map paper (Ext.4). However, nothing has been pointed out or brought to the notice of the Court from which it could be inferred that the defendants ever disputed the signature of Haran Chandra Paul on the plan map paper (Ext.4). In that view of the matter, the courts below have not committed any error in comparing the disputed signature appearing on the power of attorney with the signature appearing on plan map paper(Ext.4).

9. The scope of interference with the findings of fact in second appellate jurisdiction is limited to the cases where the findings by the courts below are shown or established to be

perverse in any manner. The prayer on behalf of the appellant to appreciate the evidence in order to reach to a different finding on the issues of facts cannot be accepted. It is well settled that a judgment under appeal cannot be interfered only because it is not right but only when it is explicitly wrong. The issues arising between the parties are now concluded by concurrent findings of facts.

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

(V. Nath, J)

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