

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.492 of 2010

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1. Radhey Shyam Choudhary.
 2. Kamchandra Choudhary.
 3. Prem Choudhary @ Ramashish Choudhary @ Parau Choudhary.
 4. Pujari Choudhary.
 5. Lal Babu Choudhary, all sons of Singhashan Choudhary.
 6. Sheo Kumari Kuar, wife of Singhashan Choudhary.
 7. Tetari Devi, daughter of Singhashan Choudhary.
 8. Lal Bahadur Yadav husband of Savitri Devi.
 9. Anita Kumari.
 10. Sunita Kumari, both daughters of Lal Bahadur Yadav.
 11. Ashok Yadav, son of Lal Bahadur Yadav, all residents of village-Barka Shankhey, P.S. Unchakagaon, District-Gopalganj.

.... **Appellants.**

Versus

1. Bani Devi.
2. Shail Kumari Devi.
3. Meena Devi, daughters of Brijnandan Pandey.
4. Raj Kumari Devi, wife of Brijnandan Pandey, all residents of village-Barka Shankhey, P.S. Unchkagaon, District-Gopalganj.

.... **Respondents.**

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Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr.Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

9 01-05-2015 Heard Mr. Ganpati Trivedi, learned senior counsel on behalf of the petitioners. Mr. Nagendra Rai, learned counsel for the respondents is also present.

The plaintiff has filed the suit for declaration and tile of



recovery of possession over the suit land described in the schedule 1 of the plaint. Admittedly, the suit land originally belonged to Raghunath Kanu. It is the case of the plaintiff that Raghunath Kanu died leaving behind one son Ramsundar Sah and a daughter Banrasia Devi. The plaintiff has claimed to have purchased the land from Ramsundar Sah by sale deed dated 03.12.1980. The defendants on the other hand have come out with the case that Raghunath Kanu had four sons namely Hira, Moti, Raja and Ramsundar. The defendants have claimed to have purchased the part of the suit land, to be precise 16 dhurs out of Plot No.958, from the three brothers, namely, Raja, Hira and Moti.

The crucial issue in the suit, as framed by the courts below, was as to whether Raghunath Kanu had four sons as claimed by the defendants or he had only one son Ramsundar as claimed by the plaintiff.

Both the courts below after scrutiny of the pleadings and evidence of the parties have concluded that Raghunath Sah died leaving behind only one son Ramsunder and disbelieved the case of the defendants that Raja, Hira and Moti were also the sons of Raghunath. The suit has been thus decreed and thereafter the appeal by the defendants has been dismissed.

Mr. Trivedi, learned counsel for the appellants has confined his submission to



only one aspect that the document Ext-C and Ex-D have not been properly considered by the appellate court and in fact there has been no consideration at all. It has been canvassed that Ext-C is the registered deed of mortgage by conditional sale executed by Raja Sah and Sundar Sah in favour of plaintiff no.2 Rajkumari Devi and Ext-D is a deed of mortgage by conditional sale executed by Hira Sah in favour of Mahajan Sah. It has been pointed out that Ext-C has been executed in the year 1977 and Ext-D has been executed in the year 1952. It has been argued on behalf of the appellants that these two deeds clearly establish the case of the defendants that Raghunath Sah died leaving behind four sons including Raja, Hira and Moti who are the vendors of the defendants. No other submission has been made on behalf of the defendants.

From perusal of the judgments of the courts below, it is pellucid that both the courts below have recorded their findings on the basis of appreciation of evidence and materials on record. The appellate Court has specifically considered Ext-C and Ext-D and refused to rely upon the same. With regard to Ext-C, the appellate Court has concluded that in view of the specific denial by the plaintiff, the defendants were required to get the original document on record in accordance with law which they have

failed to do and further that this transaction was never revealed by the vendor of the defendants nor there is any evidence regarding redemption of this mortgage. With regard to Ext-D which is a mortgage deed in original, the appellate Court has found that there was no explanation as to how the mortgagor had got the original mortgage deed in absence of any case of redemption as there was no redemption note upon the deed. This Court, therefore, does not find substance in the submission on behalf of the appellants that the documentary evidence Ext.-C and Ext.-D have not been considered or not properly considered. It is apparent from the judgments of both the courts below that the entire material, oral and documentary evidence led on behalf of the parties have been thoroughly scanned before recording the conclusion that Raghunath Kanu died leaving behind one son Ramsundar Sah who was the vendor of the plaintiff. It is well settled that a civil litigation is decided on the basis of the preponderance of probability in view of the pleadings and evidence on record. During the course of submission, this Court has not been persuaded to find illegality, unreasonableness or perversity in the findings by the courts below. The submissions on behalf of the appellants, in fact, has centered around reappreciation of evidence at this second appellate stage which cannot be ventured as the

findings of facts have not been established to be vulnerable.

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

(V. Nath, J)

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