

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.250 of 2004

Subhash Sah @ Subhash Prasad Sah , son of Late Prahallad Sah, resident of village Nawadah, P.S. Rajoun, District Bhagalpur, now district Banka

.....Plaintiffs.....Appellant.....in the Courts
below **Appellant**

Versus

1. Lakhi Sah, son of late Hari Sah

2. Sarbottam Sah, son of Lakhi Sah

Both are residents of village and P.O. Danora, P.S. Sanokhar District Bhagalpur

.....Defendant 1st party.....Respondent 1st party

in the courts below.....Respondent 1st party

3. Barun Prasad Yadav, son of Bhoju Yadav, resident of village Sakhara, P.S. Rajoun, District Banka

.....Defendant 2nd party....Respondent 2nd party.....Respondent 2nd

party ...Respondent 2nd party Defendant –Respondent 3rd party

....Respondent3rd party **Respondents**

Appearance :

For the Appellant/s : Mr. A.C.JHA

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-03-2015

Heard Mr. Kapildeo Singh, learned counsel
appearing for the appellant.

The plaintiff No. 2 is the appellant in this second
appeal against the judgment and decree of affirmance, dismissing the
suit.

The plaintiffs Prahallad Sah and his son Subhash
Sah filed the suit for declaration of their title over the suit land
described fully in the schedule of the plaint. The plaintiffs' case, in
short, was that Hari Sah had two sons Prahallad Sah and Lakhi Sah



and after death of Hari Sah, the two brothers inherited the property including the suit property. It is further case of the plaintiffs that Lakhi Sah by oral sale for Rs. 3,000/- sold his share in the property in favour of the plaintiff No. 1 Prahallad Sah (now deceased) and on that basis the plaintiffs acquired valid title over the suit property. It is further case of the plaintiffs that Lakhi Sah later on transferred by registered sale deed dated 15.06.1987, an area of 3 1/3 decimals of land out of his share in favour of defendant 2nd set although after the oral sale in favour of the plaintiffs, he had no title left to transfer in favour of the defendant 2nd set. As stated above, the suit has been filed for declaration of title and also for injunction against the defendant 2nd set. No relief has been claimed against the sale deed dated 15.06.1987 executed by the defendant no. 1 Lakhi Sah in favour of the defendant 2nd set although the plaintiffs have accepted to have knowledge of the said sale deed and has also stated that due to the execution of the said sale deed, the suit has been filed as the cloud has been cast over their title.

The defendant purchaser alone contested the suit. The defendant no. 1 Lakhi Sah though filed written statement but did not contest the suit. The mother of Lakhi Sah was added as intervenor-defendant but after filing her written statement, she also did not to contest the suit. The contesting defendant has resisted the



claim of the plaintiffs on the ground that there had already been partition between the plaintiffs, defendant no. 1 and the mother of defendant no. 1, who was the step-mother of the plaintiff No. 1. The defendant has further come out with the case that he purchased the property for valuable consideration and, has, thus acquired valid title and possession on that basis.

The trial court after considering the pleadings and evidence of the parties returned the findings on the issues against the plaintiffs. In appeal, the appellate court after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal.

Mr. Singh, the learned counsel appearing for the appellants has firstly submitted that the appellate court has committed error in law in dismissing the appeal even after recording the finding that the sale deed executed by the defendant no. 1 in favour of the defendant no. 2 was not valid. It has been further contended that in view of the provision of Section 4 of the Partition Act, the courts below should have passed a decree in favour of the plaintiffs. The learned counsel has also placed the relevant portion of the judgment of the courts below in order to persuade this Court to align with his submissions.



After perusing the impugned judgment of both the courts below and submissions made on behalf of the appellant, it is pellucid that the plaintiffs have filed the suit for the main relief of declaration of title over the suit land and the consequential relief of injunction against the defendant 2nd set from interfering in possession of the plaintiffs over the suit property. The plaintiffs' assertion that the plaintiff no.1, Prahallad Sah and the defendant no. 1 Lakhi Sah were joint and Lakhi Sah by oral sale for Rs. 3,000/- sold his share in the suit property in favour of the plaintiff No. 1, has not been supported by cogent evidence as found by both the courts below. The witnesses examined on behalf of the plaintiffs including the own uncle of the plaintiffs have not supported the case of jointness as propounded by the plaintiffs rather they have specifically deposed in cross-examination that there had been partition between the plaintiff no. 1, Parahallad Sah, the defendant no. 1 Lakhi Sah and the mother of defendant no. 1 (Gango Devi). It has been further found that no valid title over the portion of the suit property could have passed in favour of the plaintiffs on the basis of oral sale over Rs. 3,000/- in view of the provisions of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act.

The submission on behalf of the appellant on the basis of Section 4 of the Partition Act is clearly misconceived



and the reliance by the learned counsel on the decision by the Hon'ble Apex Court in the case of Ghanteshar Ghosh Vs. Madan Mohan Ghosh & Ors. reported in AIR 1997 S.C. 471 is also misplaced. From the bare facts of the case as pleaded by the plaintiffs, it is transparent that the plaintiffs have claimed their exclusive title over the suit property and it is not their case that the suit property is a dwelling house of a joint family.

It is well settled that the plaintiffs have to succeed on the strength of his own case and not on the basis of the weakness in the case of the defendant. Even when the appellate court has recorded the finding that the sale deed in favour of the defendant 2nd set was not valid, having been executed by the defendant no. 1 in excess of his share in the property, still the plaintiffs were required to establish his exclusive title over the suit property. On the basis of the case as made out by him, it is manifest enough that even if the sale deed executed by defendant no. 1 in favour of defendant no. 2 gives no title to the defendant no. 2, the title will still remain with the defendant no. 1 and will not pass upon the plaintiffs whose case of acquisition of title on the basis of oral sale has been disbelieved by both the courts below. It is also manifest that the plaintiffs have not claimed any relief against the sale deed dated 15.06.1987 executed

by the defendant no. 1 in faovur of the defendant no. 2 although they have accepted to have knowledge of the same. The findings by both the courts below appear to be reasonable and based on evidence and this Court has not been persuaded to find perversity in any manner for the same.

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

(V. Nath, J.)

Vats/-

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