

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.184 of 2013

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1. Jakir Hussain S/O Hadish Mian Resident Of Village Nawaka Semra, P.S. Gopalpur, P.O. Semra Bazar, District Gopalganj.
 2. Nasir Nussain S/O Hadish Mian Resident Of Village Nawaka Semra, P.S. Gopalpur, P.O. Semra Bazar, District Gopalganj.
 3. Asishia Khatoon D/O Hadish Mian Resident Of Village Nawaka Semra, P.S. Gopalpur, P.O. Semra Bazar, District Gopalganj.
 4. Noor Jahan Khatoon D/O Hadish Mian Resident Of Village Nawaka Semra, P.S. Gopalpur, P.O. Semra Bazar, District Gopalganj.
 5. Subhawati Khatoon W/O Late Hadish Mian Resident Of Village Nawaka Semra, P.S. Gopalpur, P.O. Semra Bazar, District Gopalganj.

.... Appellant/s

Versus

1. Bataka Khatoon W/O Wakil Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
2. Jaharuna Khatoon W/O Mokhtar Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
3. Mohid Ansari S/O Jalil Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
4. Firoz Ali S/O Late Rajid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
5. Naushad Mian S/O Late Rajid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
6. Khafroj Mian S/O Late Rajid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
7. Khursid Mian S/O Late Rajid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
8. Apna Khatoon D/O Rojid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
9. Neha Kumari D/O Rojid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
10. Perjina Khatoon D/O Rojid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
11. Jarina Khatoon D/O Rojid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.
12. Sayera Khatoon W/O Rojid Ansari Resident Of Village Semra, P.O. Semra Bazar, P.S. Gopalpur, District Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagendra Rai
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-03-2015

Heard Mr. Nagendra Rai, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this Second Appeal against the judgment and decree of affirmance.

3. The plaintiffs filed the suit for the sole relief that the sale deeds dated 4.12.2000 and 26.12.2000, executed by defendant nos. 3 and 4 in favour of defendant nos. 1 and 2, are void as they have been executed by the persons having no title over the property, subject matter of those sale deeds. Other grounds of the transfer being void as without consideration, forgery etc. have also been mentioned, but the learned Counsel for the appellants has chosen not to press those grounds.

4. The genealogy of the family of the vendors of the plaintiff and the defendant nos. 3 and 4 is admitted. From the said genealogy, it is apparent that Bulaki Mian had four sons namely Rahman Mian, Tapsi Mian, Saral Mian and Khudadin Mian, out of whom Khudadin Mian admittedly died unmarried and issueless. Saral Mian had two sons namely Zahoor Mian and Jali Mian. The defendant nos. 3 and 4 are the sons of Jali Mian. The property, subject matter of the two sale deeds in question, admittedly belonged to Bulaki Mian and after his death it devolved upon his three sons Rahman Mian, Tapsi Mian and Saral Mian. The plaintiffs have claimed to have purchased the part of the suit property by registered sale deed dated 15.8.1938, executed by Taposi Mian and Zahoor Mian and further by exchange deed executed by the transferee of Rahman Mian. In this manner, the plaintiffs have stated that they have acquired the entire interest of Rahman Mian, Tapsi Mian and Saral Mian, on the premise that Saral Mian was deaf and dumb and,

therefore, his son Zahoor Mian executed the sale deed transferring the interest of Saral Mian in favour of the plaintiffs.

5. Defendant nos. 3 and 4 are admittedly sons of Jali Mian (one of the two sons of Saral Mian), who have executed the two sale deeds in question i.e. sale deed dated 4.6.2000 and 26.12.2000 (Ext. 2/b and Ext. 2/c) in favour of the defendants and they have resisted the relief prayed by the plaintiffs.

6. The crucial issue whether the defendant nos. 3 and 4 would be said to be the persons having no title to transfer in favour of the defendant nos. 1 and 2 by sale deeds Ext. 2/b and Ext. 2/c, has been decided by both the courts below against the plaintiffs. It has been held that Jali Mian had interest in the property of Bulaki Mian and after his death the same has been inherited by his two sons and the sale deeds in question executed by them cannot be said to be by persons having no title to transfer. The suit was dismissed and the appeal has thereafter been dismissed on the basis of the finding on aforesaid crucial issue with another finding by both the courts below with regard to non-joinder of necessary parties in the suit, as the plaintiffs have not impleaded the co-purchaser or his descendent as parties in the suit.

7. Mr. Rai, learned Counsel appearing for the appellants, has submitted that both the courts below have erred in law in not appreciating that the two sale deeds in question were void to the extent of excess of the share of the vendors. It has been canvassed that the genealogy table is admitted between the parties and on that basis both the courts below should have come to the conclusion that the plaintiffs were entitled to at least a decree in part. No other submission has been made on behalf of

the plaintiffs.

8. After perusal of the impugned judgments and considering the submissions, it is evident that both the courts below on the basis of appreciation of evidence have come to the finding that Jali Mian, and after his death his two sons, defendant nos. 3 and 4, have got interest in the property of Bulaki Mian. In fact, learned Counsel for the appellants has also not disputed the said fact. The suit has been filed by the plaintiffs for declaring the two sale deeds, Ext. 2/b and 2/c, as void, mainly on the basis that the vendors of those sale deeds had no title over the property, subject matter of the sale deeds. Once after the finding that the vendors were entitled to the properties, subject matter of the two sale deeds, the further question as to the extent of their share and the quantum of validity of the two sale deeds would have been gone by the courts below only when the necessary pleadings and evidence in support of the same would have been led by the parties and the relief even alternatively would have been sought for. It has not been disputed on behalf of the appellants that there is no such pleading nor any evidence aliunde on behalf of the plaintiffs to establish the extent of the share of Jali Mian or his two sons in the property of Bulaki Mian and there was also no prayer. Even otherwise also, the said issue could have been decided only when the other decedents of Bulaki Mian would have been made party in the suit, which has also not admittedly been done. As such, this Court does not find force in the submission on behalf of the appellants that the learned courts below have committed error in not granting the decree to the plaintiffs in part declaring the sale deeds in question to be void to the extent of excess of share of the vendors. In

absence of foundational facts and evidence adduced in that regard, the said finding could not have been recorded by the courts below. The impugned judgments cannot be held to be vitiated for the said reason.

9. The learned courts below have also found the suit to be bad for non-joinder of necessary parties. The plaintiffs have examined PW 1 and PW 2, who are descendents of copurchasers (brothers of the original plaintiff) who have claimed interest in the properties and both the courts below, therefore, have come to the right conclusion that they were necessary parties to the suit.

10. For the aforesaid reasons and discussion, this Court does not find any illegality or perversity in any manner in the impugned judgments of the courts below and, therefore, it is held that there is no substantial question of law arising in this appeal. It is, accordingly, dismissed.

(V. Nath, J.)

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