

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.140 of 2012

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1. Nirala Co-Operative Grih Nirman Samiti, Keshari Nagar, Patna, Registration No. Pat. 41/1977 Through Its Secretary Sri Satya Narain Singh, Son Of Sri Jeo Nandan Singh Of Village And P.O.-Akauna Ghat, P.S.-Barhara, District-Bhojpur, At Present Mohalla-Keshari Nagar Pan Bhawan, P.S.-Shastri Nagar, P.O.-Shastri Nagar, District-Patna
2. Sri Satya Narain Singh Son Of Jeo Nandan Singh Of Village And P.O. Akauna Ghat, P.S.-Barhara, District-Bhojpur, At Present Mohalla-Keshari Nagar Pan Bhawan, P.S.-Shastri Nagar, P.O.-Shastri Nagar, District-Patna

.... Appellant/s

Versus

1. Sri Mahtab Rai Son Of Late Sheo Rai
2. Sri Surendra Rai
3. Sri Sukhdeo Rai
4. Sri Basudeo Rai all Sons Of Mahtab Rai all Residents Of Village-Ramji Chak Digha, P.S.-Digha, District-Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Uday Singh, Adv.
Mr. Sudhir Kumar Singh, Adv.

For the Respondent/s : Mr. Suman Kumar, Adv.
Mr. Jitendra Kumar Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

10 26-06-2015

Heard Mr. Kumar Uday Singh, the learned counsel

appearing on behalf of the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree as prayed by the plaintiffs.

The plaintiffs filed the suit for declaration of title over the suit land and for declaration that the sale deed dated 04.12.1985 is forged, fabricated, void, inoperative and not binding upon the plaintiffs.

The necessitous facts, for appreciation of the submissions made on behalf of the appellants, are that the suit property admittedly belonged to the plaintiffs. The plaintiff no. 1 is the father and the plaintiff no. 2 to 4 are his sons. The plaintiffs have filed the suit praying for declaration of their title over the suit land after setting aside the sale deed dated 04.12.1985 which is said to have been executed by the plaintiff no. 3 in favour of the defendant no. 1-cooperative society. It is the case of the plaintiffs that the plaintiff no. 3 was minor on 04.12.1985 and the sale deed in question had been obtained by the defendants after kidnapping him and thereafter getting the execution and registration of the sale deed in question. The plaintiffs have also come out with further pleas that no consideration money was paid for the execution of the sale deed; the coercion was exercised by the defendants; the property subject matter of the sale deed in question was joint family property of the plaintiffs and the two dhurs of land at Hajipur which was also shown to have been sold by the plaintiff no. 3 never belonged to the family of the plaintiffs and

was included for the apparent reason to confer the jurisdiction upon the registration authority at Hajipur.

The defendants appeared and contested the assertions of the plaintiffs in their written statement. The allegation of kidnapping of the plaintiff no. 3 was categorically denied and it was also asserted that no coercion was exercised before getting the sale deed. It was the case of the defendants that according to the negotiation and agreement, the plaintiff no. 3 executed the sale deed after receiving the consideration money. It has also been stated that the plaintiff no. 3 had assured the defendants that the sold property was his separate property and he had marketable title over the same and further that the two dhurs of land at Hajipur also belonged to him.

The trial court, after scrutiny of the pleadings and evidence, returned the findings on all the issues in favour of the plaintiffs and granted the decree as prayed. In appeal by the defendants, the appellate court, after reappraisal of evidence concurred with the findings of the trial court and has dismissed the appeal by the impugned judgment and decree.

Mr. Singh, the learned counsel for the appellants has submitted that both the courts below have ignored the material evidence on record as well as the well settled principles of law and

the findings recorded in favour of the plaintiffs, therefore, are vulnerable. It has been firstly submitted that on the crucial issue of minority of the plaintiff no. 3 on the date of execution of the sale deed i.e. 04.12.1985, there has been no direct evidence on behalf of the plaintiffs to establish the said fact. Elaborating the submissions, it has been urged that the plaintiff no. 3 has been said to be born on 15.01.1972 and it was incumbent upon the plaintiffs to corroborate the said fact by leading cogent documentary evidence which they have squarely failed to do and ultimately there is only the depositions of the plaintiff no. 1, the plaintiff no. 3 and one another plaintiff on record to support the minority of the plaintiff no. 3, as claimed. It has also been submitted that the plaintiff no. 3 was directed to appear before a medical board constituted for the purpose of assessing his age but he did not appear before the board as directed and, therefore, the learned courts below ought to have drawn adverse inference against the plaintiffs on that issue. It has been further submitted that the finding on the issue of coercion has been recorded only on the basis of the filing of the complaint by the plaintiffs with regard to their allegation of kidnapping for the purpose of the execution of the sale deed. The learned counsel, however, has accepted that in the said complaint case there was the order of conviction of the



present appellants but the said order was ultimately set aside at the appellate stage. It has also been submitted that there was no evidence of non payment of consideration even when it was the specific case of the defendants that the consideration was paid partly before the execution of the sale deed and the remaining amount was paid at the time of execution of the sale deed. On the issue of partition, it has been submitted that the defendants have categorically taken the plea that there has been partition among the plaintiffs and the property subject matter of the suit was allotted to the share of the plaintiff no. 3. It has been lastly argued that the defendants had bonafidely believed the existence of title of the plaintiff no. 3 over the two dhurs of land of Hajipur which was included in the sale deed as other co sharers of the plaintiffs, in their sale deeds executed in favour of the defendants, had included the lands of Hajipur also as subject matter of sale. The learned counsel has relied on the decision of the Apex Court in the case of **M/s Associated Clothiers Ltd. Vs. Commissioner of Income Tax, Calcutta A.I.R. 1967 S.C. 788** and in the case of **State of Rajasthan Vs. Mewar Textile Mills Ltd. Bhilwara A.I.R. 1954 S.C. 396**, in support of his submission regarding the inclusion of the two dhurs of land of Hajipur in the sale deed in question.

After perusal of the judgments of both the courts below and considering the submissions, it is limpid that the main discord between the parties to the suit is the validity of the sale deed dated 04.12.1985 executed by the plaintiff no. 3 in favour of the defendants. The plaintiffs who have claimed to be the members of the joint family have assailed the validity of the said sale deed on the ground that it was obtained after exercising coercion upon the plaintiff no. 3 after kidnapping him. Further grounds of assail are non-payment of consideration money and the property belonging to the joint family along with the allegation that the two dhurs of land of Hajipur never belonged to the plaintiff no. 3. Both the courts below after elaborate scrutiny of the evidence led by the parties have recorded the concurrent findings on the issues against the defendants. On the issue of non-payment of consideration money, it is manifest that no direct evidence was led by the defendant-appellants on whom the burden of proof squarely rested. It would be pertinent here to take into notice that the defendant no. 1 is a co operative society and the payment of money by it was necessarily to be accounted and documented but no account book/document in this regard has been brought on record. Moreover, the defendants' case of payment of consideration money in installment has also not been substantiated

by adducing cogent evidence. The reliance by the learned counsel for the appellants on the decision of the Apex Court in the case of **M/s Associated Clothiers** (supra) and in the case of **State of Rajasthan Vs. Mewar Textile Mills** (supra) is clearly misconceived because in the present case valid execution of the sale deed is neither admitted nor corroborated. The various aspects reflecting upon the invalidity of the sale deed in question have been determined in favour of the plaintiffs and it is after considering the totality of the facts and evidence that the courts below have recorded their conclusions. This Court has not been persuaded to find unreasonableness or perversity in any manner in the findings. It is well settled that civil disputes are decided on the basis of preponderance of probabilities and the fact and evidence in the present case clearly depict that the probability preponderates in favour of the plaintiffs.

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

(V. Nath, J)

Devendra/-

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