

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.452 of 2010

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1.Dinesh Mandal

2.Rajpati Manda;

Both sons of late Biro Mandal, resident of village- Athsahia, P.S. Bariyarpur (Muffasil), Anchal- Bariyarpur, District- Munger.

Plaintiffs- Respondents—Appellants

Versus

Krishnadeo Singh son of late Maldu @ Salty Singh

Resident of village- Athasahia, P.S. Bariyarpur (Muffasil),Anchal- Bariyarpur,District- Munger.

Defendants- Appellant- Respondent

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh-2

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

14 11-03-2015 Heard learned counsel for the appellants in support of this appeal.

The plaintiffs are the appellants in this appeal against the judgment and decree of reversal.

The suit has been filed by the plaintiffs for declaration of title and possession over the suit land and also for grant of permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit land. The relief has also been sought for setting aside the order passed in a proceeding under Section 145 Cr.P.C. in favour of the defendants.

The plaintiffs have claimed title and possession over the



suit land on the basis of inheritance and as Khatiyani Raiyat. The proceeding under Section 145 Cr.P.C. for the suit land has been decided in favour of the defendants in the year 1989 declaring the possession of defendants over the suit land. The defendants have resisted the claim of the plaintiffs on the basis that the father of the plaintiffs, namely, Biro Mandal, had executed the sale deed dated 05.12.1955 for the suit land in favour of Kailu Thakur, who in turn, sold the suit land by sale deed dated 08.01.1962 to Jaidrath Sah. The purchaser Jaidrath Sah sold the suit land to the defendants by registered sale deed dated 14.12.1989. The plaintiffs have claimed that the sale deed dated 05.12.1955 executed by their father Biro Mandal is a forged and fabricated document as their father Biro Mandal was already dead in the year 1950.

The trial court decreed the suit holding that the burden of proof was on the defendants to establish that Biro Mandal was alive in the year 1955 when the sale deed dated 05.12.1955 (Ext. A/2) was executed and further also when the sale deed in the year 1968 (Ext.A/3) was executed in favour of Jamila Khatoon. It has been concluded by the trial court that as the defendants have failed to lead the evidence and discharge the burden of proof which was upon them, the plaintiffs were entitled to the decree in the suit.

The appellate court, on re-appraisal of the pleadings and

evidence of the parties, has reversed the judgment of the trial court and dismissed the suit filed by the plaintiffs by the impugned judgment and decree.

Learned counsel for the appellants has submitted that the appellate court below has ignored material evidence of the plaintiff and therefore its judgment is vitiated. It has been canvassed that besides the oral evidence, the plaintiffs have also adduced in evidence the death certificate issued by Sarpanch to establish that the father of the plaintiffs died in the year 1950. It has been further submitted that the evidence, if scrutinized properly, would show that the claim of the plaintiff is legal, valid and well founded. The learned counsel, therefore, has propounded that the appellate court has committed error of law in non-suiting the plaintiffs on the ground that the burden of proof has not been discharged.

After perusing the impugned judgments of the courts below and considering the submission it is manifest that the plaintiffs' father, Biro Mandal, is said to have executed the sale deed on 05.12.1955 (Ext. A/2) for the suit land in favour of Kailu Thakur. The plaintiffs have not sought any relief with regard to this sale deed or subsequent sale deeds on the basis of which the defendants have claimed their title over the suit land. It has been admitted by the plaintiffs that they became aware of the sale



deeds said to have been executed by their father, Biro Mandal, during the proceeding under Section 145 Cr.P.C. in the year 1989. The plaintiffs are thus claiming the relief for title over the suit land without seeking to remove the obstruction (the sale deeds executed by their father Biro Mandal) which are admittedly in the way of getting the relief as prayed. Besides the sale deed dated 05.1.1955 (Ext.A/2), the defendants have brought another sale deed dated 29.11.1958(Ext. A/3) executed by Biro Mandal in favour of Mostt. Jamila Khatoon in respect of other land to show that Biro Mandal was alive in 1958. No step has been taken by the plaintiffs to get the signatures on those sale deeds examined by Hand Writing Expert in order to establish the case that those sale deeds were not executed by their father Biro Mandal. The learned counsel for the appellants has accepted that the Sarpanch who had issued the death certificate (Ext. 6) has not been examined in the suit. There is also no explanation for non examination of the said Sarpanch. Moreover the two sale deeds (Exts. A/2 and A/3) are registered documents and carry with them the presumption of valid execution. The burden of proof was necessarily upon the plaintiffs which they have failed to discharge. The trial court has decreed the suit by placing the burden of proof wrongly upon the defendants to establish the valid execution of the sale deed. The appellate court has rightly

reversed the judgment and decree of the trial court. The judgment of the appellate court clearly demonstrates absence of cogent evidence on behalf of the plaintiff in support of his case. This Court does not find illegality or perversity in any manner in the conclusion of the appellate court.

Accordingly, it is held that there is no substantial question of law arising in this appeal for consideration. The appeal is, thus, dismissed.

(V. Nath, J)

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