

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.398 of 2010

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Jagdish Narayan Giri, son of Late Jadhu Sharan Giri, resident of Village Lalachhapara, PO + PS Kesariya, District East Champaran

..... Plaintiff Respondent 1st party
..... Appellant

Versus

1. Kishun Ojha, son of Late Maharaj Ojha
2. Ram Chandra Ojha, son of Late Mahraj Ojha
3. Shiv Nandan Sah, son of Mukha Sah
4. Shiv Pujan Sah, son of Mukha Sah
5. Chhote Lal Sah, son of Shubhlal Sah
All residents of Village Lala Chhapara, PO + PS Kesariya, District East Champaran
..... Defendant 2nd party Appellants
..... Respondent 1st set
6. Ramadhar Giri, son of Sri Narayan Giri, resident of Village Lala Chghapara, PO + PS kesariya, District East Champaran
7. Smt. Mandodari Devi, wife of Banarshi Ban, daughter of Shri Narayan Giri, resident of Village Manju Mathiya, PO + PS kesariya, District East Champaran
..... Defendant 1st party..... Respondent 2nd party
..... Respondent 2nd set
8. Smt. Gauri Devi, wife of Suresh Jha, D/o mahraj Ojha, resident of Village bagahi, PS Ram Garhwa, PO Bagahi, District East Champaran
9. Lalbabu Jha, son of Bishwanath Jha, mother Leela Wati Devi
10. Shree Parash Nath Jha, son of Bishwanath Jha, mother Leela Wati Devi
11. Shri Prem Nath Jha, son of Lalbabu Jha, mother Leela Wati Devi
12. Umesh Jha., (Minore) son of Lalbabu Jha, mother Leela Wati Devi
13. Rita Kumari, daughter of Lalbabu Jha, mother Leela Wati Devi
All residents of Village Pachrukhi, PO + PS Baruraj, District Muzaffarpur
14. Smt. Janki Devi, wife of Vinod Jha, resident of Village Rupauli, PO Saraiyaganj District Muzaffarpur
15. Shesh Nath Jha, son of Late Janeshwar Jha, mother Ahilya Devi
16. Smt. Chanchal Devi, daughter of Jaleshear Jha, mother Ahilya Devi, Both 15 and 16 are resident of Bagahi, PO Bagahi, PS Ramgarhwa, District East Champaran
..... Defendant 2nd party Respondent 3rd party
..... Respondents

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Appearance :

For the Appellant/s : Mr. RAKESH KUMAR-1
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-05-2015

Heard Mr. Pramod Kumar Singh, learned Counsel for the

appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal.

3. The suit has been filed by the plaintiff for specific performance of contract for sale of the land described in the schedule of the plaint on the basis of Mahdanama executed by defendant 1st set. In the suit, the other defendants were impleaded as defendant 2nd set and it has been stated that they are purchasers subsequent to the Mahdanama of the plaintiff with the knowledge of the Mahdanama. The defendant 1st set who had been said to have executed the Mahdanama in favour of the plaintiff accepted the execution of the Mahdanama in favour of the plaintiff and expressed the readiness to execute the sale deed in favour of the plaintiff after payment of the remaining consideration amount. However, the case of the defendant 1st set is that the defendant 2nd set fraudulently got executed a sale deed from him with regard to the land, subject matter of Mahdanama, in their favour. The other defendants, including the subsequent purchasers, who were defendant nos. 9 and 12 contested the claim of the plaintiff as well as the assertions made by the defendant 1st set.

4. The trial court returned the finding in favour of the plaintiff and decreed the suit. In appeal, the appellate court below on reappraisal of the pleadings and evidence has overturned the findings, reversed the decree and allowed the appeal.

5. From the perusal of the impugned judgment of the appellate court below it is evident that the defendant nos. 9 and 12 (subsequent purchasers) died during pendency of the suit and before

passing of judgment and decree by the trial court. In para 14 of the impugned judgment it has also been mentioned that this fact has been accepted on behalf of the plaintiff. After taking into notice the said fact and other factors including the evidence, the appellate court has come to the conclusion that the plaintiff is not entitled to the decree as prayed.

6. Mr. Singh, learned Counsel appearing for the appellant, in response to the aforesaid finding has submitted that the appellate court below instead of allowing the appeal ought to have remanded back the matter for fresh hearing and disposal by the trial court. It has also been contended that the dispute between the parties still has been persisting and, therefore, it would be in the interest of justice that the plaintiff be granted opportunity to bring on record the heirs and legal representatives of the said deceased defendants.

7. After perusal of the judgments of both the courts below and considering the submissions it is limpid that the suit has been filed praying for a decree of specific performance of contract against the defendants including defendants 9 and 12 who were subsequent purchasers. After death of defendants 9 and 12 and in absence of their substitution by their heirs and legal representatives the frame of the suit clearly became defective as the decree prayed could not have been granted to the plaintiff till a finding in terms of Section 19(b) of the Specific Relief Act was recorded against defendants 9 and 12. It also does not appear from the impugned judgment of the appellate court below that on behalf of the plaintiff any prayer was made for grant of opportunity for substituting the heirs and legal representatives of the deceased defendant nos. 9 and 12 (subsequent purchasers) and there

was also no prayer for remand of the matter on that basis. Even in the memo of this Second Appeal also there is no averment with regard to the said fact of death of defendant nos. 9 and 12 during pendency of the suit and apparently there is no attempt to explain the fact for not seeking indulgence of the Court for taking steps to bring on record heirs and legal representatives of the said deceased defendants. In view of the aforesaid facts and circumstances and also in view of the admission of the plaintiff as evident from the impugned judgment that the defendant nos. 9 and 12 died during pendency of the suit and before the judgment of the trial court, the appellate court below has rightly come to the conclusion that the plaintiff was not entitled to the decree as prayed. During the course of submission in this appeal also no valid and cogent explanation could be submitted on behalf of the appellant for non substitution of the heirs and legal representatives of the deceased defendant nos. 9 and 12 in the suit and the only prayer has been made to remand the matter back for hearing of the matter afresh after substitution.

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

(V. Nath, J)

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