

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.145 of 2013

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1. Kameshwar Ram S/O Late Budhan Ram Resident Of Town, P.O. And P.S.-
Kauwakol, District- Nawadah
 2. Mano Devi @ Mania Devi W/O Kameshwar Ram Resident Of Town, P.O. And
P.S.- Kauwakol, District- Nawadah

..... DefendantsAppellants Appellant

Versus

1. Vijay Narayan Son Of Late Babu Ram Gupta Resident Of Town, P.O. And P.S.-
Kauwakol, District- Nawadah
2. Uday Narayan Son Of Late Babu Ram Gupta Resident Of Town, P.O. And P.S.-
Kauwakol, District- Nawadah
3. Laxmi Narayan Son Of Late Babu Ram Gupta Resident Of Town, P.O. And P.S.-
Kauwakol, District- Nawadah

..... Plaintiffs Respondents Respondents

4. Lakhan Ram Son Of Late Badhan Ram Resident Of Town, P.O. And P.S.-
Kauwakol, District- Nawadah

..... Defendant Respondent Respondent

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-01-2015

Heard learned Counsel for the appellants in support of this
appeal.

2. The defendants are the appellants in this appeal against
the judgment and decree of affirmance. The factual expose are that the
suit land measuring an area of 10½ dec. of plot no. 1593 was the
ancestral property of Tekait Nem Narayan Singh, who had admittedly
three sons namely Rajendra Singh, Dev Narayan Singh and Faudi
Singh. The wife of Tekait Nem Narayan Singh was Mundrika Devi. The

plaintiffs claimed purchase of the suit land by registered sale deeds (Ext. 1 and Ext. 2/1) from Rajendra Singh and Mundrika Devi. The suit has been filed for declaration of title and confirmation of possession.

3. The defendants resisted the claim of the plaintiffs on the basis that they had purchased the suit land from Tekait Nem Narayan Singh much earlier by way of sada sale deed (unregistered sale deed) as well as some deeds which were registered. The defendants did not dispute the correctness of the sale deed executed by Rajendra Singh and Mundrika Devi in favour of the plaintiffs, but have asserted that the vendors of the plaintiffs did not have the right to execute the sale deed in favour of the plaintiffs as the period of seven years had not expired when Tekait Nem Narayan Singh was said to have become traceless. The defendants, therefore, claimed their title and possession over the suit land on the said basis.

4. The trial court returned the findings that the two sale deeds executed in favour of the plaintiffs were valid and genuine and the plaintiffs had acquired title and possession over the suit land on that basis. In appeal by the defendants, the appellate court on reappraisal of evidence has upheld the findings of the trial court and dismissed the appeal.

5. Learned Counsel appearing for the appellants has submitted that the courts below erred in law in not appreciating the fact that as all the purchasers of plot no. 1593 as well as all the co-sharers have not been impleaded as parties in the suit, the suit suffered from non-joinder of necessary parties. It has been further canvassed by the learned Counsel for the appellants that the courts below should have



got the land measured through a survey knowing Pleader Commissioner in order to ascertain the location and position of the suit land. It has also been propounded that the sale deeds in favour of the plaintiffs could not have been executed without expiry of seven years when Tekait Nem Narayan Singh became traceless and in that view of the matter his son could not have acquired title in the property to transfer the same in favour of the plaintiffs and further Mundrika Devi, the wife of Tekait Nem Narayan Singh, also could not have transferred the suit land as she was not a co-parcener in the family of Tekait Nem Narayan Singh.

6. After perusal of the judgments of both the courts below and consideration of the submissions on behalf of the appellants it is limpid that the defendants had not challenged the execution of the sale deeds for the suit land in favour of the plaintiffs. The contention on behalf of the defendants that Rajendra Singh and Mundrika Devi had no title over the suit land to transfer in favour of the plaintiffs cannot be countenanced for the simple reason that the suit property was admittedly the family property of Tekait Nem Narayan Singh and none of the co-sharers including the other two sons of Tekait Nem Narayan Singh had raised any objection to the sale deeds in favour of the plaintiffs. The law is well settled that the transfer of a joint family property made by a co-parcener or a member of the family would not become per se void or illegal and its validity can be assailed only by the other co-sharers or the members of the joint family. On similar ground, the submission that the other purchasers have not been impleaded as party also falls apart as the suit is confined to 10½ dec. of land over

which only the plaintiffs and defendants were staking their claims on the basis of purchase.

7. Both the courts below on scrutiny of the pleadings and evidence have come to the finding that the defendants have not acquired valid title and possession over the suit land on the basis of khista (unregistered) sale deed and other sale deeds. The submission on behalf of the appellants that the order passed in the proceeding under Section 145 Cr.P.C. should have been taken into consideration by the courts below, is also not acceptable because the orders passed in a proceeding under Section 145 Cr.P.C. is simply a police order and any finding therein cannot have any relevance before a Civil Court, where the dispute of title and possession has to be determined on the basis of independent evidence.

8. The issues arising between the parties now stand concluded by concurrent findings of fact and this Court has not been persuaded during the course of submission on behalf of the appellants to find that the findings are perverse in any manner.

9. Ex consequenti, this Court does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

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