

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.228 of 2013

1. Ramswaroop Prasad Son Of Late Bhagwan Mahto
2. Umendra Prasad
3. Rajesh Kumar Both Son Of Ramswaroop Prasad All Are Resident Of Village Chandasi, Tola, Jolahpura, Police Station- Noorsarai, District- Nalanda.
4. Upendra Prasad Verma, Natural son of Ram Swaroop Prasad & adopted son of Jagdish Prasad Gupta, resident of Village Chandasi, Tola, Jolahpura, Police Station- Noorsarai, District- Nalanda.

..... Defendants Appellants

.... Appellants

Versus

1. Satya Narain Prasad @ Chhote Lal Son Of Prayag Mahto
2. Mithlesh Kumar Minor Of Chhote Lal @ Satya Narain Prasad
3. Manorma Devi @ Sohagi Devi Wife Of Chhote Lal @ Satya Narain Prasad
4. Baiju Kumar Minor Son Of Chhote Lal @ Satya Narain Prasad
5. Ramchandra Prasad
6. Kapildeo Prasad
7. Ashok Prasad Son Of Late Sheo Nandan Mahto
8. Jagdish Prasad Gupta @ Ramautar Prasad S/O Bhagwan Mahto
9. Uday Shankar Prasad @ Chunnu Minor Son Of Jagdish Prasad Gupta @ Ramautar Prasad All Are Resident Of Village Chandasi, Tola Jolhapura, Police Station- Noorsarai.
10. Urmila Devi, wife of Mundrika Prasad, resident of Mohalla Mirdad (Kalyanpur), Police Station Bihar, District Nalanda

..... Defendants Respondents

.... Respondents

with

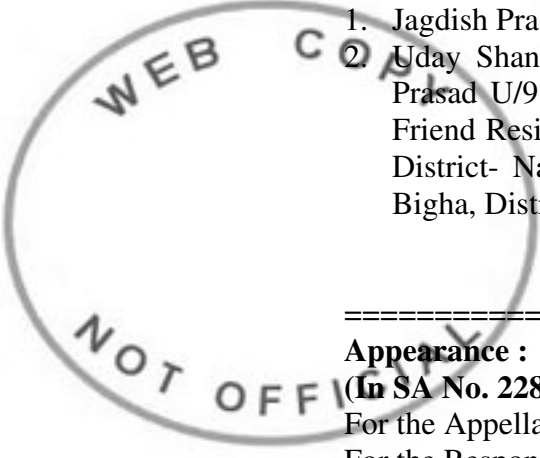
Second Appeal No. 229 of 2013

1. Ram Swaroop Prasad Son Of Late Bhagwan Mahto
2. Upendra Prasad Verma Natural Son Of Ram Swaroop Pd
3. Umendra Prasad Son Of Ram Swarop Prasad
4. Rajesh Kumar Son Of Ram Swaroop Prasad All Are Resident Of Village Chandasi, Tola Jolahpura, Police Station- Noorsarai, District- Nalanda.

..... Defendants Appellants

.... Appellants

Versus

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1. Jagdish Prasad Gupta @ Ramotar Prasad Son Of Late Bhagwan Mahto
 2. Uday Shankar @ Chunnu Minor Son Of Jagdish Prasad Gupta @ Ramotar Prasad U/9 Of Fatherr Jagdish Prasad Gupta @ Ramotar Prasadn And Next Friend Resident Of Village Chandsi, Tola Jolahpura, Police Station Noorsarai, District- Nalanda At Present Resident Of Village Gangti, Police Station Bar Bigha, District- Munger.

.... Respondents

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Appearance :

(In SA No. 228 of 2013)

For the Appellant/s : Mr. PREMCHANDRA YADAV

For the Respondent/s : Mr.

(In SA No. 229 of 2013)

For the Appellant/s : Mr. PREMCHANDRA YADAV

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-04-2015

Heard learned Counsel for the appellants in both the appeals.

In view of the submission that common question of law and fact arises in both the appeals these two appeals have been heard together and are being disposed of by this common order.

2. It is not in dispute that the plaintiff in T.S. No. 70 of 1993 and plaintiff in T.S. No. 135 of 1995 are own brothers. They belong to the family of Bodhi Mahto, who died leaving behind four sons namely Prayag Mahto, Saukhi Mahto, Bhagwan Mahto and Jageshwar Mahto, out of whom Jageshwar Mahto died issueless and his branch became extinct. The plaintiff's case (in T.S. 70/93) is that in the year 1930 a sale deed was executed in favour of Md. Saritul Rasool for 9.71 Acres of land of joint family but that deed was only a farzi and showy document and in fact the said transaction was never intended to be acted upon. Later on, said Saritul Rasool executed a deed in the year 1968 and it is the case of



the plaintiff that, that deed was a deed of relinquishment as the said Saritul Rasool became old and therefore need for this document arose. The note of discord between the parties with regard to this deed is that according to the plaintiff it was a deed of Ladabi simpliciter, whereas according to the defendant Ram Swaroop Prasad (plaintiff of T.S. No. 135 of 1995) it was a sale deed for Rs. 33,000/- out of which Rs. 11,000/- was paid by his mother Sancho Devi. Both the courts below have come to the concurrent finding that the sale deed of the year 1930 was a farzi transaction and the deed executed in the year 1968 by Md. Saritul Rasool was a Ladabi deed. Both the courts below have also relied upon the recitals made in the deed of 1968 as well as the title given in the said document which comprehensively displays the nature of that deed as well as the deed executed in the year 1930. Learned Courts below on the basis of aforesaid finding further also came to the finding that the sale deed executed by Prayag Mahto and others in favour of Satya Narayan Prasad for 1.30 Acres of land was a valid transaction conferring right, title and possession over the said property on said Satya Narayan Prasad.

3. Both the courts below on the basis of scrutiny of evidence have further recorded the finding that there was partition in between the three branches of Bodhi Mahto in the year 1968 itself for which a memorandum of partition was also prepared in the year 1969 as produced by the plaintiff. In view of the definite case of the defendant Ram Swaroop Prasad (plaintiff of T.S. No. 135 of 1995) that there was no partition in the family, the courts below have also come to the finding that the gift deed executed by Sancho Devi in favour of her grandsons was void document.



4. It would be pertinent to mention here that earlier T.S. No. 70 of 1993 was filed by Jagdish Prasad Gupta for partition of the properties of the branch of Bhagwan Mahto along with the prayer for declaration that the gift deed of the year 1992 executed by Sancho Devi in favour of her grandsons was a void document. Subsequently the T.S. No. 135 of 1995 was filed by Ram Swaroop Prasad (defendant in T.S. No. 70 of 1993) for partition of the entire family property of the family of Bodhi Mahto with further prayer to declare the sale deed of the year 1968 for 1.30 Acres of land in favour of Satya Narayan Prasad as illegal and invalid document. The T.S. No. 70 of 1993 was decreed and T.S. No. 135 of 1995 was dismissed. The appeals filed by Ram Swaroop Prasad against the judgment and decree of the trial court were also dismissed. The present Second Appeal has been filed assailing the judgment and decree passed in appeal in the aforesaid two suits.

5. Assailing the impugned judgments and decree, learned Counsel for the appellants has firstly submitted that both the courts below have committed error in law in not appreciating that the transaction of the year 1930 in favour of Saritul Rasool was in fact a benami transaction and therefore the bar as envisaged in Benami Transaction Act, 1988 would squarely be attracted in the suit filed by Jagdish Prasad. Elaborating his submissions, learned Counsel has canvassed that for all intent and purpose the matter involved is the interpretation of the said deed as well as the later deed executed in the year 1968 by Md. Saritul Rasool and therefore the same raises a substantial question of law. It has been further argued by the learned Counsel that both the courts below have not appropriately construed the provisions of Sections 91 and



92 of the Evidence Act and have wrongly allowed the plaintiff Jagdish Prasad in T.S. No. 70 of 1993 to adduce evidence contradicting the contents of the deed of 1930. It has been further submitted that both the courts below have wrongly placed reliance on the statement made by the present appellant Ram Swaroop Prasad in a proceeding under Section 145 Cr.P.C. when the attention of Ram Swaroop Prasad, during the course of cross-examination, was not drawn to the said submission. Learned Counsel has referred to Section 145 of the Evidence Act in that regard. On the basis of these submissions it has been prayed that this appeal be admitted as substantial question of law arises for consideration.

6. After perusal of the judgments of both the courts below and consideration of the submissions, it is pellucid that the crucial issue between the parties was the nature of the transaction of the year 1930 with Md. Saritul Rasool. After considering the evidence and also the later document executed by Md. Saritul Rasool in the year 1968 it has been found by the courts below that the transaction of the year 1930, though was described as a sale transaction, but was never intended to be acted upon. In line, the courts below have further held that the transaction of the year 1968 was only by way of relinquishment (Ladabi). Though the appellant as plaintiff has come out with the case that the transaction of the year 1968 was a sale transaction where his mother Sancho Devi paid Rs. 11,000/- by way of consideration but there is conspicuous absence of any explanation with regard to the recitals as well as title of the document of the year 1968 showing it to be a deed of Ladabi. It is not the case of the appellant that he remained unaware of the document of the year

1968. Moreover, this appellant also appeared as a witness on the sale deed for 1.30 Acres of land executed in favour of Satya Narayan Prasad but has failed to file any suit challenging the validity of the sale deed within three years after attaining majority or even later on. The appellant has also failed to explain as to what prevented him from filing a suit for partition assailing the said sale deed when he contested mutation cases against the purchasers of the land. Similarly the gift deed executed by Sancho Devi was with regard to joint family property and in view of the well established principle such gift transaction is void *ab initio*.

7. Both the courts below have elaborately analysed the evidence of the parties and the findings recorded by the courts below could not be established to be unreasonable or perverse in any manner.

8. In this view of the matter, this Court does not find any substantial question of law arising for consideration in these Second Appeals which are accordingly dismissed.

(V. Nath, J.)

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