

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.189 of 2012

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1. Imamul Hoda S/O Abdul Hakim Momin Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani.
 2. Md. Mustakeen Ansari S/O Late Mustafa Ansari Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani.
 3. Md. Iftexhar Ansari S/O Late Mustafa Ansari Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani.Plaintiffs Respondents

.... Appellants

Versus

1. Md. Jaheer Alam S/O Late Md. Khalil Alam Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani. Defendant Appellant
2. Md. Tanweer Alam S/O Late Md. Sageer Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani.
3. Bibi Sahjadi W/O Late Md. Sageer Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani. Defendant Respondent IInd parties
4. Shekh Israil Haque S/O Imam Bux Resident Of Mauza Raiyam, P.O- Raiyam, P.S- Jhanjharpur, (Bhairab Sthan) District- Madhubani. ... Defendant Respondent III parties

.... Respondents

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Appearance :

For the Appellant/s : Mr. Nagendra Upadhyay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

7 23-11-2015

Heard learned Counsel for the Appellants.

2. The plaintiffs in the suit are the appellants in this appeal against the judgment and decree of reversal. The suit has been filed for declaration of title and confirmation of possession. The trial court decreed the suit but the appellate court has overturned the finding and dismissed the suit.

3. Learned Counsel for the appellants has submitted that the appellate court below has not considered the evidence properly



and has wrongly discarded the evidence laid on behalf of the plaintiffs. By referring to the finding in the second paragraph of page 31, learned Counsel has further submitted that in view of the fact that the revisional survey entry is in the name of the appellants, the appellate court below ought to have relied on it. The learned Counsel, however, has accepted that no attesting witness has been examined on behalf of the plaintiffs in order to prove the gift deed (Ext. 3), which was the basis of title of the plaintiffs over the suit land. No other submission has been made on behalf of the appellants.

4. After perusal of the judgments of both the courts below and considering the submission it is manifest that the plaintiffs have claimed their title over the suit land on the basis of gift deed executed in their favour by the recorded tenant. It would be note worthy that the parties belong to a Muslim family and they shall be governed by the Muslim Law. The appellate court below has elaborately considered the aspect as to whether the plaintiffs have succeeded in establishing the legality and validity of the gift deed and has come to the finding that the plaintiffs have failed to examine attesting witnesses in support of the gift deed. Learned Counsel for the appellants has submitted that there are other evidence to show title of the plaintiffs over the suit land but this Court is not persuaded to look into the same for the simple reason that the plaintiffs were required to establish in accordance with law the validity of the gift deed which was the basis of their title. The defendants have claimed the suit land on the basis of sada sale deed of the year 1907 executed by the predecessor of the plaintiffs. They have also led evidence that the

said sale deed was executed by the predecessor of the plaintiffs in their favour. It does not appear that any evidence has been led on behalf of the plaintiffs to establish the invalidity of the said transfer by their predecessor in favour of the predecessor of the defendants.

5. From perusal of the judgment of the appellate court below it appears that the appellate court below has, after formulating the points for determination, elaborately and comprehensively considered the pleadings and evidence of the parties and thereafter has recorded its finding. During the course of submission on behalf of the appellants it could not be shown that the findings recorded by the appellate court below are perverse or unreasonable in any manner.

6. 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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