

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.223 of 2013

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BINOD PRASAD Son of Baidya Nath Prasad Resident of Village- Nepura, P.S. -
Astawan, District- Nalanda, at present residetn of Keoribigha, P.S. Barbigha,
District- Shekhpura.

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

.... Appellants

Versus

1. SURENDRA PRASAD son of - Basudeo Mahto Resident of Village-
Rupaspur, P.S. Sarmera, District Nalanda. At present resident of H/O Vashist
Singh , Hanuman Nagar, Narayapur, P.S. and P.S. Barbigha, District-
Sheikhpura.

..... Defendant No. 1..... Appellant..Respondent 1st set

2. Kailash Prasad @ Kailash Mahto Son of - Late Faudi Mahto, Resident of
Village - Narayanpur, Tola Parsobigha, P.S. Barbigha, District- Sheikhpura

..... Defendant No. 2..... Respondent no. 2..Respondent 2nd set

3. Asha Devi wife of Ganauri Prasad , D/o Arjun Mahto Resident of Village -
Naurajpur, P.S. Sare, District- Nalanda.

..... Defendant No. 3..... Resondent no. 3....Respondent 3rd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. RAJENDRA KISHORE PRASAD

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-07-2015

Heard Mr. Rajendra Kishore Prasad, learned Counsel for the
appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of reversal. The plaintiff filed the suit for declaration
of title and possession and also for permanent injunction restraining the
defendants from interfering with the possession of the plaintiff over the
suit land. The plaintiff has accepted that the suit property originally
belonged to the defendant no. 2 Kailash Mahto. The said Kailash Mahto
by a registered sale deed dated 27.11.2000 transferred some land (not



the suit land) out of Plot No. 965 in favour of the defendant no. 3 Asha Devi. The plaintiff has claimed to have purchased the suit land from defendant no. 3 Asha Devi through registered sale deed dated 8.12.2001. It is the case of the plaintiff that subsequent to the execution of the sale deed dated 27.11.2000 by Kailash Mahto in favour of Asha Devi, there was mutual agreement between them, by which they agreed that instead of the land mentioned in the sale deed dated 27.11.2000 the suit land would stand transferred by the said sale deed in favour of Asha Devi. It is in this manner that the plaintiff has traced the title of his vendor Asha Devi over the suit land which she has sold to the plaintiff.

3. The defendant no. 1 alone contested the suit by filing written statement denying the assertion and claim of the plaintiff. This defendant no. 1 has categorically denied the title of the plaintiff over the suit property on the basis of his purchase from defendant no. 3 Asha Devi and has also asserted that there was no mutual agreement in between the original owner Kailash Mahto and Asha Devi after execution of the sale deed dated 27.11.2000.

4. The trial court returned the finding in favour of the plaintiff and decreed the suit. The appellate court below after reappraisal of the pleadings and evidence, however, has overturned the judgment and decree of the trial court and allowed the appeal and dismissed the suit filed by the plaintiff. It has been held by the appellate court below that the claim of the plaintiff of acquiring valid title over the suit property from defendant no. 3 Asha Devi on the basis of the sale deed executed by her is not legally sustainable as no title over the suit property could have been acquired by Asha Devi by mutual agreement (unregistered).

5. Mr. Prasad, learned Counsel appearing for the appellant, has submitted that the appellate court below has not considered material evidence on record. No other submission has been made on behalf of the appellant.

6. After perusal of the judgment of both the courts below and after considering the submission it is manifest that the claim of title of the plaintiff over the suit property is ultimately based upon the mutual agreement entered into between defendant no. 2 Kailash Mahto and defendant no. 3 Asha Devi. It is not in dispute that the suit property was originally owned by Kailash Mahto and is part of the bigger Plot no. 965. Kailash Mahto has transferred a part of the land of Plot No. 965 in favour of Asha Devi by registered sale deed dated 27.11.2000. However, Asha Devi by sale deed dated 8.12.2001, which is the basis of the claim of the plaintiff, has not transferred the land purchased by her from Kailash Mahto, but altogether different land has been mentioned in the sale deed of the plaintiff. The case of the plaintiff that there was a mutual agreement (unregistered) between Kailash Mahto and Asha Devi to change the land, subject matter of the original sale deed dated 27.11.2000, has rightly been not relied upon by the appellate court below. Even otherwise also, from the judgment of the trial court also it is evident that the said mutual agreement (unregistered) has not been executed by Kailash Mahto and did not bear his signature or L.T.I. The defendant no. 3 Asha Devi, who was vendor of the plaintiff, has not been examined in the suit on behalf of the plaintiff in support of the case of mutual agreement.

7. The appellate court below has considered the entire

evidence in accordance with the settled principle of law and this Court does not find any unreasonableness or perversity in the finding of the appellate court below.

8. In the result, it is held that there is no substantial question of law arising for consideration in this Second Appeal. It is accordingly dismissed.

(V. Nath, J.)

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