

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.323 of 1985

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1.Shinhashan Devi wife of Late Digambar Mishra.

2.Veda Devi wife of late Digambar Mishra.

3.Shib Shankar Mishra son of late late Digambar Mishra.

4.Sarban Mishra son of late Digambar Mishra.

5.Manjula Devi daughter of late Digambar Mishra.

6.(a) Bachha Devi wife of late Gouri Kant Mishra.

6(b) Kamlesh Kumar Mishra

6(c) Hiresk Kumar Mishra.

6(d) Saroj Devi

All are sons & D/O Late Gauri Kant Mishra.

7.Ram Shakhi Devi wife of Late Bhup Nr. Mishra.

8.Ganga Devi wife of late Abhai Shankar Mishra.

9.Renoo Devi daughter of late Bhup Nr. Mishra.

10.Rejesh Kr Mishra minor son of late Abhai Shankar Mishra.

11.Rani Devi minor daughter of late Abhai Shankar Mishra.

12. Tootoo Devi minor daughter of late Abhai Shankar Mishra.

Nos. 10 to 12 minors under the guardianship of Ganga Devi, their mother.

All residents of village Bishanpur Umri, Pergana, Pachani, P.S. Madhepur, District
Madhubani.

..... (Defendants-Appellants)..... Appellants.

vs

Anandi Jha son of Haldhar Jha resident of village Balia, Pergana, Pachahi, P.S.
Madhepur, District (Madhubani)

(Plaintiff-Respondents).... Respondent/s

with

Second Appeal No. 324 of 1985

1.Shinhashan Devi wife of Late Digambar Mishra.

2.Veda Devi wife of late Digambar Mishra.

3.(a) Bachha Devi wife of late Gouri Kant Mishra.

(b) Kamlesh Kumar Mishra

(c) Hires Kumar Mishra.

(d) Saroj Devi

All are sons & D/O Late Gauri Kant Mishra.

4. Siv Shanker Mishra.

5..Sarban Kr Mishra son of late Digambar Mishra.

6.Manjula Devi daughter of late Digambar Mishra.

7.Ram Shakhi Devi wife of Late Bhup Nr. Mishra.

8.Ganga Devi wife of late Abhai Shankar Mishra.

9.Renoo Devi daughter of late Bhup Nr. Mishra.

10.Rajesh Kr Mishra minor son of late Abhai Shankar Mishra.

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All residents of village Bishanpur Umri, Pergana, Pachani, P.S. Madhepur, District Madhubani.

..... (Defendants-Appellants)..... Appellants.

Versus

Baidyanath Jha son of Haldhar Jha resident of village Balia, Pergana, Pachahi, P.S.
Madhepur, District (Madhubani)

(Plaintiff-Respondents).... Respondent/s

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Appearance :

(In SA No.323 of 1985)

For the Appellant/s : Mr.S. S. Dwivedi, Sr. Adv, Mr. Ranjan Kumar
Dubey, Adv, Mr. Rakesh Chandra, Adv and Mr.
Parth Gaurav, Adv

For the Respondent/s : Mr. Shailendra Kumar Jha, Adv

(In SA No.324 of 1985)

For the Appellant/s : Mr.S. S. Dwivedi, Sr. Adv, Mr. Ranjan Kumar
Dubey, Adv, Mr. Rakesh Chandra, Adv and Mr.
Parth Gaurav, Adv

For the Respondent/s : Mr. Shailendra Kumar Jha, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-08-2016

Heard Mr. S.S. Dwivedi, learned senior counsel for the
appellants and Mr. Shailendra Kumar Jha, learned counsel for the
respondents.

2. The defendants in the two suits are the appellants in
this appeal assailing the judgment and decree of affirmance.

3. The factual exposes' are that the suit land admittedly
belonged to the defendant-Digambar Mishra. The case of the
plaintiffs in both the Title Suit No. 122 of 1971 and Title Suit No.



123 of 1971 is that Digambar Mishra had executed two separate sale deeds in favour of the two plaintiffs namely Anandi Jha (Plaintiff in Title Suit No. 122 of 1971) and Baidyanath Jha (Plaintiff in Title Suit No. 123 of 1971) transferring the property subject matter of the two sale deeds in favour of the plaintiffs. It is the further case of the plaintiffs that after the execution of the sale deeds, Digambar Mishra refused to register the same and the plaintiffs thereafter took steps for getting the document registered by filing petition before the registering authority who initiated a proceeding, wherein, the notice was issued to the defendant-vendor but he did not turn up leading to the refusal of registration of the deeds by the registering authority. In the backdrop of these facts, the plaintiffs filed the two suits praying the relief for direction to the registering authority to register the respective sale deeds of the plaintiffs.

4. The defendant filed his written statement in the suit contesting genuineness of the sale deeds produced by the plaintiffs alleging that his signature on the two sale deeds had been fabricated by the plaintiffs. The defendant denied entering into any contract of sale with the plaintiffs for the suit land and further also denied to have received any consideration money.

5. The trial court returned the finding on the crucial



issue in the two suit in favour of the plaintiffs holding that the two sale deeds in question in favour of the respective plaintiffs carried the genuine signature of the defendant. The appellate court below on reappraisal of evidence has affirmed the finding of the trial court and has dismissed the two appeals arising out of the judgment and decree passed in T.S. No. 122 of 1971 and T.S. No. 123 of 1971. It is apt to mention here that the appellate court below with the consent of the parties has heard the two appeals analogously and has disposed of the same by a common judgment. The present two second appeals i.e. S.A. No. 323 of 1985 and S.A. No. 324 of 1985 have been preferred by the defendant-appellants and with the consent of the parties both the appeals have been heard together and are being disposed of by this judgment.

6. At the time of Admission of these appeals the following substantial question of law has been framed by order dated 3.3.1986:-

"This appeal will be heard on the question formulated in Ground No. 2(a). It will be open to the appellant to raise other points before the bench hearing the appeal with its permission."

7. In Ground No. 2(a) of the memo of appeal, the following substantial question of law has been mentioned.

"Whether a suit for a decree directing a

document (sale deed) to be compulsorily registered under section 77 of the Registration Act, is maintainable where it has come to the notice of the court that a sale deed in favour of a third party (not a party to the suit) for the same land in dispute had already been executed and registered prior to the filing of the suit?"

8. During the course of submission no further substantial question of law has been raised on behalf of the appellants, though Mr. Dwivedi, learned senior counsel for the appellants has submitted that the appellants propose to urge general question regarding the judgment of the appellate court below to be not in accordance with the prescribed procedure and suffering from improper consideration of the materials on record but no substantial question of law in this regard is required to be framed. The main thrust of the submissions of Mr. Dwivedi is on the basis of the substantial question of law already formulated. After pointing out the background facts that defendant-Digambar Mishra was the admitted owner of the suit land and as he had executed three registered sale deeds (Exhibit A, Exhibit-A/1 and Exhibit-A/2) in favour of Jagdish Jha and his sons, the suit suffers from non-joinder of necessary parties and no relief as prayed could have been granted to the plaintiffs till the three sale deeds are set aside and that too in presence of the purchasers. Elaborating his submissions



Mr. Dwivedi has pointed out that the plaintiffs have alleged that defendant-Digambar Mishra has executed two sale deeds for the suit land on 11.03.1969 and admittedly those sale deeds have not been registered and therefore, in this view of the matter it was requirement of law that the sale deed executed by the same defendant-Digambar Mishra prior to the filing of the suit must have been challenged and the purchasers must have been made party. It has also been submitted that the defendant-Digambar Mishra in his written statement has stated the fact regarding the execution of the three sale deeds in favour of Jagdish Jha and his sons and has also furnished the detail but in spite of that the plaintiffs of both the suits have omitted to seek any relief with regard to those three sale deeds and have further also not made the three purchasers in those three sale deeds party-defendants in the suit. It has been also contended that both the courts below have wrongly brushed aside the three sale deeds (Ext. A, A/1 and A/2) executed by the defendant on 30.05.1961 and have wrongly come to the conclusion that those three sale deeds have no material bearing upon the relief as claimed by the plaintiffs in the present suit. It has been next contended that the appellate court below has not applied its mind to the facts and evidence on record and has simply reiterated the reasonings assigned by the trial court and therefore, also the



judgment of the appellate court below is vitiated. The learned senior counsel has referred to order 41 Rule 31 C.P.C and has emphasized the principle regarding reappraisal of evidence in a judgment of the appellate court. The learned senior counsel has further also submitted that the question of passing of consideration money should have been gone into by both the courts below but they have failed to record the finding in this regard. It has been lastly submitted that in view of the categorical challenge to the validity and legality of the sale deeds by the defendants the grant of relief to the plaintiffs, as prayed, directing the registering authority to register the sale deeds would only create further litigation which fact has not been considered by both the courts below.

9. Mr. Jha, learned counsel appearing for the respondents, however, has submitted that in view of the nature and scope of a suit under Section 77 of the Registration Act, the substantial question of law as formulated does not arise for consideration. It has been further submitted that the appellate court below while passing the judgment of affirmance has applied its mind to the facts and circumstances and the evidence on record and it cannot be said that the appellate court below has simply reiterated reasonings of the trial court. Learned counsel has placed the judgment of both the courts below in support of his contentions.

10. In view of the fact that the suits have been filed by the plaintiffs praying for relief as envisaged under Section 77 of the Registration Act, it would be apt here to notice the said provision as follows:-

"77. Suit in case of order of refusal by Registrar-

(1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the civil court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit."

11. It would thus be evident from the above provision that the scope of the suit under Section 77 of the Registration Act is limited to the grant of relief of registration of the document which has been refused to be registered by the registering authority and the other questions pertaining to legality or propriety of the document or the title of the defendant-vendor in such a suit are alien to the scope of such suit. The issue as to whether the defendant Digambar Mishra had the title over the suit property either at the time of execution of the two sale deeds in favour of the plaintiffs or before filing of the suit is clearly not within the



jurisdiction of the court to determine in a suit under Section 77 of the Registration Act. It is also evident that the jurisdiction of the court under this provision is akin to that of a registering authority and it has only to see as to whether the acceptance of the execution of the document has been rightly denied by the defendant. It would be apposite here to take into notice the observations of their Lordships in case of *Kalavakurti Venkata Subbaiah vs Bala Gurappagaris Guruvi Reddy AIR 1999 S.C. 2958 as follows:-*

"10.....
..... The provisions of the Specific Relief Act and the Registration Act may to a certain extent cover the same field but so that one will not supersede the other. Where the stage indicated in Section 77 of the Act has reached and no other relief except a direction for registration of the document is really asked for, Section 77 of the Act may be an exclusive remedy. However, in other cases it has no application, inasmuch as a suit for specific performance is of wider amplitude and is primarily one for enforcement of a contract and other consequential or further relief. If a party is seeking not merely the registration of a sale deed, but also recovery of possession and mesne profits or damages, a suit under Section 77 of the Act is not adequate remedy.

11. The analysis of the provisions of S. 77 of the Act made by us above would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the present case where the relief prayed for is directing the defendant to register the sale deed dated July 2, 1979 in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property. The document has not been presented by the respondent to the Sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to cooperate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen in the present case at all.

.....
....."

12. Both the courts below have refused to accept the plea of the defendant relating to non-joinder of necessary party as well as vendor having no title after the execution of the three sale deeds (Ext. A, A/1 and A/2) in favour of strangers to the suit. In view of the limited scope of the suit under Section 77 of the Registration Act and also in view of the dictum of the Apex Court as abovementioned, this Court holds that the suit filed by the plaintiffs under Section 77 of the Registration Act could not be held to be bad for non-joinder of the necessary party or the relief as prayed by the plaintiff could have been refused after determining the issue of absence of title of the defendant-vendor. This Court, therefore, affirms the findings by the court below in this regard. It further appears from perusal of the judgment of both the courts below that after the scrutiny of evidence including the report of the handwriting expert, both the courts below have come to the conclusion that the two sale deeds in question bear the signature of the defendant-Digambar Mishra. The proposition relating to non passing of the consideration money or the registration of the two sale deeds creating future litigation has definitely no bearing to the relief as prayed by the plaintiff under Section 77 of the Registration Act. During the course of submission on behalf of the appellant the





finding of fact recorded by both the courts below could not be shown or established to be perverse or unreasonable in any manner. Even otherwise also those findings of fact have been recorded by the courts below on the basis of appreciation of evidence which are acceptable and could have been relied upon.

13. In the ultimate eventuate, this Court answers the substantial question of law, as framed, against the appellants. The two second appeals are accordingly, dismissed and the judgment and decree passed by both the courts below are affirmed. In the facts and circumstances of the case, there shall be no order as to cost.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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