

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.1 of 2014

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1. Krishna Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.
 2. Badri Rajak @ Budhu Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.
 3. Ganesh Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.
 4. Mahesh Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.
 5. Dinesh Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.
 6. Mithilesh Rajak S/O Late Nanhu Rajak Resident Of Mohalla Ramdhanpur, Pipal Gali, P.S. Kotwali, District Gaya.

.... Appellant/s

Versus

1. Smt. Dayamanti Devi W/O Sri Amar Singh Resident Of Mohalla Ramdhanpur, P.S. Kotwali, District Gaya.
2. Amar Singh S/O Late Doman Singh Resident Of Mohalla Ramdhanpur, P.S. Kotwali, District Gaya.
3. The Regional Manager, State Bank Of India, Tisri Tall, Main Branch, Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhishek, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

4 04-04-2016 Heard learned counsel for the appellants.

2. The plaintiffs are the appellants in this appeal against

the judgment and decree of affirmance dismissing the suit for declaration of sale deed as illegal.

3. The plaintiffs filed the suit for declaration that the sale deed dated 05.03.2002 said to have been executed by the mother of the plaintiffs was illegal. The fact had not been disputed that the mother of the plaintiffs was the title-holder of the suit property. However, it was the case of the plaintiffs that they for the first time came to know in proceeding under Section 144 of the Cr.P.C in the year 2005 that the defendants who were the tenants of the plaintiffs over the suit house had got executed sale deed for the suit house in their favour by the mother of the plaintiffs. Making allegations of fraud to have been perpetrated by the defendants in obtaining the sale deed, the plaintiffs prayed for the relief of the declaration as above said.

4. The defendants appeared and filed their contesting written statement denying the averments made in the plaint and asserting the legality and validity of the sale deed in question. Both the courts below have reached to the concurrent finding that the plaintiffs have failed to establish fraud as alleged in the execution of the sale deed in question in favour of the defendants. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

5. The learned counsel for the appellants has made the sole submission that the allegations made in paragraph no. 15 of the plaint has not been properly considered by both the courts below. No other submission has been made on behalf of the appellants.

6. After perusal of judgments of both the courts below and considering the submissions, it is manifest that the sale deed dated 05.03.2002 is a registered document. Such a document carries a legal presumption of valid execution and registration. It has been found by both the courts below that it is the case of the plaintiffs that out of the six plaintiffs some of them or their family members used to reside with their mother (vendor in the sale deed dated (05.03.2002) for taking care of her. It has also not been denied that the registration of the sale deed in question was done on commission at the house of the plaintiffs itself and it has also been accepted on behalf of the plaintiffs-appellants that the said sale deed bears the signature of the plaintiff no. 5 Dinesh Rajak, as a witness over the same. The learned counsel on behalf of the appellants has fairly accepted that there is no pleading in the plaint on behalf of the appellants explaining or denying the presence of the signature of the plaintiff no. 5 Dinesh Rajak, on the sale deed in question.

7. After considering the facts and circumstances of the case as well as the materials on record, both the courts below have reached to the conclusion that the plaintiffs have failed to establish the fraud as alleged by them by cogent evidence. In the background of the aforesaid facts it has also been held by both the courts below that the suit was barred by limitation. During the course of submission on behalf of the appellants as well as from the records, it also transpires that the defendants have also filed a suit for eviction against the plaintiffs with regard to the suit house and in retaliation the present suit has been filed by the plaintiffs. This Court has not been persuaded to find any unreasonableness or perversity in any manner in the findings recorded by both the courts below.

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

(V. Nath, J)

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