

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.271 of 2013

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1(a) Malti Devi, wife of Sheojee Singh
1(b). Sheodhan Kumar, son of Sheojee Singh
1(c). Mui Devi
1(d). Rina Kumari, both daughters of Sheojee Singh
2. Sheo Shankar Singh son of Sheo Chand Singh @ Gyanchand Singh.
All resident of Village- Chak Chatar, Post Office- Koath, Police Station-
Dawath, District- Rohtas at Sasaram. Defendant 2nd set ... Appellants

.... Appellant/s

Versus

1. Hafij Mohmmad jama Khan son of Late Hafij Md. Nayeemuddin Khan, resident of Village and Post Office- Koath, Police Station- Dawath, District- Rohtas at Sasaram. Plaintiff Respondent 1st set
2. Ahmad Khan @ Bhuwar Khan son of LAte Hafij Md. Nayeemuddin Khan, resident of Village and Post Office- Koath, Police Station- Dawath, District- Rohtas at Sasaram. Defendant 1st Set Respondent 2nd set
3. (a). Manjar Khan,
(b). Anjar Khan
(c). Ansar Khan
(d). Afar Khan
(e). Afahan Khan
(f). Arfan Khan, all sons of Late Chuni Khatoon and of Sri Ahmad Khan resident of Village and Post Office- Koath, Police Station- Dawath, District- Rohtas at Sasaram. Defendant 2nd set Respondent
4. Jainul Hoda son of Late Meer Wasir.
5. Atikul Meer son of Jainul Hoda.
6. Jeyaul Meer son of Jainul Hoda.
7. Khalikul Meer son of Jainul Meer.
8. Nazibul Meer son of Jainul Meer. Respondents No. 4 to 8 are resident of Village- Sohinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas at Sasaram. ... substituted respondent 3rd set

.... Respondents

with

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Second Appeal No. 260 of 2013

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1. (a). Manjar Khan,
(b). Anjar Khan
(c). Ansar Khan
(d). Afar Khan
(e). Afahan Khan
(f). Arfan Khan, all sons of Late Chuni Khatoon and of Sri Ahmad Khan
All Resident Of Village- Koath, Police Station- Dawath, District- Rohtas At
Sasaram. Defendant Cross Objectors

.... Appellants

Versus

1. Hafij Mohammad Jama Khan S/O Late Hafiz Mohammad Nayeemuddin Khan Resident Of Village- Koath, Post Office- Koath, Police Station- Dawath, District- Rohtas At Sasaram.
2. Ahmad Khan @ Bhuwar Khan S/O Late Hafiz Mohammad Nayeemuddin Khan Resident Of Village And Post Office- Koath, Police Station- Dawath, District- Rohtas At Sasaram.
3. Jainul Hoda S/O Late Meer Wasir Resident Of Village- Sahinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas At Sasaram.
4. Atikul Meer S/O Jainul Hoda Resident Of Village- Sahinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas At Sasaram.
5. Jeyaul Meer S/O Jainul Hoda Resident Of Village- Sahinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas At Sasaram.
6. Khalikul Meer S/O Jainul Hoda Resident Of Village- Sahinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas At Sasaram.
7. Nazibur Meer S/O Jainul Hoda Resident Of Village- Sahinoa, Post Office- Babhnaul, Police Station- Dawath, District- Rohtas At Sasaram. Defendants Respondents
- 8(a) Malti Devi, wife of Sheojee Singh
- 8(b). Mui Devi
- 8(c). Rina Kumari, both daughters of Sheojee Singh
- 8(d). Sheodhan Kumar, son of Sheojee Singh
Resident Of Village- Chak Chatar, Post Office- Koath, Police Station- Dawath, District- Rohtas At Sasaram
9. Sheo Shanker Singh S/O Sheo Chand Singh @ Gyanchand Singh Resident Of Village- Chak Chatar, Post Office- Koath, Police Station- Dawath, District- Rohtas At Sasaram

..... Defendants Respondents

.... Respondents

Appearance :

(In SA No.271 of 2013)

For the Appellant/s : M/s Ram Chandra Singh, Jitendra Kumar Singh, Sankar Kumar & Suresh Kumar

For the Respondent/s : M/s Rashid Izhar, Jagjit Roshan & Tabish Sharfuddin

(In SA No.260 of 2013)

For the Appellant/s : M/s Ram Chandra Singh, Jitendra Kumar Singh, Sankar Kumar & Suresh Kumar

For the Respondent/s : M/s Rashid Izhar, Jagjit Roshan & Tabish Sharfuddin

CORAM: HONOURABLE MR. JUSTICE V. NATH**ORAL JUDGMENT****Date: 02-08-2016**

Heard Mr. Ramchandra Singh, learned Counsel appearing for the appellants in both the appeals.

2. The present appeal has been heard along with S.A. No. 260

of 2013 analogously and both the appeals are being disposed of by this common judgment.

3. The defendant 2nd set – purchasers are the appellants in these appeals against the judgment and decree of affirmance.

4. The plaintiff filed the suit for partition of his half share in the suit properties described in Schedule 'A', 'B', 'C' and 'D' of the plaint. After recording concurrent findings of fact on the issues arising between the parties, the courts below have granted the decree for partition to the plaintiff to the extent of half share in Schedule 'A', 'B' and 'C' and to the extent of 1/4th share in the Schedule 'D' property.

5. Mr. Singh, learned Counsel for the appellants has submitted that the courts below have committed error in law in not considering the fact that the earlier sale deeds executed in the year 1982 by the vendors of the defendant 2nd set were themselves void for want of permission from the consolidation authorities and, therefore, once after having come to the finding that the sale deeds in favour of the present defendants 2nd set are void for want of permission the learned courts below ought to have further held that the sale deeds of the year 1990 by the vendors of the plaintiff are also void for that reason. During the course of submission, however, the learned Counsel for the appellants has accepted that there has been no evidence led on behalf of the defendants to show or establish that there had been relevant notification under the Bihar Consolidation of Holdings (Prevention of Fragmentation) Act, 1956 requiring obtaining of the sanction before alienation of the land in the year 1982. The learned Counsel for the appellants has also submitted that both the courts below have not correctly appreciated the

evidence and therefore the findings of facts are vitiated.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the learned courts below have come to the concurrent findings of fact that the sale deeds executed by the vendors of the present defendant 2nd set earlier in the year 1982 in favour of the plaintiffs were legal and valid documents. On that basis it has been further held that the two subsequent sale deeds dated 15.1.1990 by the same vendors on the basis of which the defendant 2nd set-appellants have claimed their interest in the suit property are null and void. Once after holding the said fact the learned Courts below have also proceeded to hold that the two sale deeds dated 15.1.1990 are also void for want of permission from the consolidation authorities as required under the provisions of Bihar Consolidation of Holdings (Prevention of Fragmentation) Act, 1956. It does not appear nor it could be shown before this Court that the earlier sale deeds of the year 1982 have been challenged in the pleadings as illegal documents for want of permission under Section 6 of the Consolidation Act and there has been no evidence adduced in this regard that such requirement was there in the year 1982. From perusal of the judgments of both the courts below it is further demonstrably clear that the pleadings and evidence of the parties have been elaborately scrutinized before recording the findings of fact. The conclusions are based upon evidence which were acceptable and could have been relied upon. This Court also does not find any perversity or unreasonableness in the findings of fact as recorded by the courts below. The entire submission on behalf of the appellants centres around reappreciation of evidence which is not possible in the second

appellate jurisdiction unless the findings are shown to be perverse.

7. Ex consequenti, this Court does not find any substantial question of law arising in these two appeals for consideration. Both the appeals are, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

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CAV DATE	N/A
Uploading Date	09.09.2016
Transmission Date	N/A