

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.135 of 2014

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Maro Devi, wife of Bishun Mahto, resident of Village Hussainabad, P.S. Ariari,
P.O. Hussainabad, Distgrict Sheikhpura Plaintiff Appellant

.... Appellant

Versus

Radhey Mahto, son of Late Saryug Mahto, resident of Mohalla Khandper
(Bhittapar), P.S. and P.O. Sheikhpura, District Sheikhpura Defendant

Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. Syed Firoz Raza

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-08-2016

Heard Mr. Syed Firoz Raza, learned Counsel appearing on
behalf of the appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit.

3. The matrix of facts in the context of the present appeal
demonstrates that the suit property originally belonged to Domni Devi.
The case of the plaintiff was that Domni Devi had executed three sale
deeds dated 3.12.2000, 9.12.2000 and 11.12.2000 with regard to the suit
land in favour of the plaintiff. However, those sale deeds were admittedly
registered on 20.12.2000. It was the further case of the plaintiff that in the
meantime on 14.12.2000 Domni Devi executed four gift deeds in favour
of the defendant and the said gift deeds were registered on 14.12.2000
itself. The plaintiff filed the suit for declaration of title over the suit land
and for recovery of possession, in case of dispossession.

4. The defendant denied the validity of the sale deeds said to

have been executed by Domni Devi in favour of the plaintiff and alleged the same to be forged and fabricated document. The defendant claimed exclusive title over the suit land on the basis of four gift deeds executed in his favour by Domni Devi.

5. Both the courts below have returned the finding on the crucial issue against the plaintiff. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

6. The learned Counsel for the appellant has firstly submitted that both the courts below have committed error of law in misinterpreting the provision of Section 47 of the Registration Act and ignored the legal effect of the said provision by which the three sale deeds in favour of the plaintiff even if registered on a later date would have the effect of conveying the title to the plaintiff over the suit land on the date of execution. It has been propounded that admittedly the gift deeds in favour of the defendant have been executed and registered after the execution of the sale deed and, therefore, by virtue of Section 47 of the Registration Act the vendor Domni Devi was left with no title over the suit property to gift the same in favour of the defendant on a later date. It has thus been submitted that substantial question of law arises for consideration in this appeal.

7. The another limb of submission on behalf of the appellant was that the gift deeds in favour of the defendant have been executed with regard to the land other than those covered by the sale deeds of the plaintiff. However, the learned Counsel for the appellant has fairly accepted that there is no pleading or evidence on record in support of

this submission. The learned Counsel for the appellant has further also accepted that no step was taken by the plaintiff-appellant for establishing the genuineness of the signature/LTI of the vendor Domni Devi over the sale deeds even when it was categorically challenged by the defendant.

8. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that in order to take resort to the provision as contained in Section 47 of the Registration Act for the purpose of accepting the conveyance of the title in her favour on the basis of the sale deeds, it was necessary for the plaintiff to first establish the genuineness and legal validity of the sale deeds in question. The appellate court below has found that there is no step taken by the plaintiff to establish the genuineness of the LTI of Domni Devi upon the sale deeds which is under challenge. It is also accepted on behalf of the appellant during the course of submission that no step was taken by the plaintiff in this regard. Once after the LTI appearing on the sale deeds was disputed and alleged to be forged and fabricated, it was legally incumbent on the plaintiff to lead cogent evidence including the prayer for examination of the same by a handwriting expert, which the plaintiff omitted to do. Moreover, there has been no relief prayed by the plaintiff in the suit against the four gift deeds for the suit land in favour of the defendant even after having the knowledge of the same. There is also no explanation on behalf of the plaintiff for not praying for such a relief in the suit and during the course of submission of this appeal also it could not be shown or established as to how the plaintiff will get the relief for declaration of title over the suit land till the gift deeds in favour of the defendant are not declared to be invalid and not binding upon the

plaintiff. The plaintiff has also claimed declaration of title over the suit land, but all the heirs and legal representatives of the deceased vendor who is said to have died before the filing of the suit, have admittedly not been impleaded as party defendants in the suit. This Court, therefore finds that in view of these factual lacunae, the provision as contained in Section 47 of the Registration Act cannot be invoked in favour of the plaintiff.

9. The finding by both the courts below have been recorded on the basis of evidence and materials on record which are acceptable and could have been relied and this Court does not find any perversity or unreasonableness in the same.

10. 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.)

Snkumar/-

AFR/NAFR	
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