

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.337 of 2013

=====

Jag Mohan Sah S/O Late Asharfi Sah Resident of Village Kushahar, P.O. Jhajhawa Bazar, P.S. Mohmmadpur, District Gopalganj.

.... Appellant/s

Versus

1. Lalmati Devi W/O Durga Sah Resident of Village Bishunra, P.S. Masarakh, District Saran.
2. Prabhunath Sah S/O Achhe Lal Sah.
3. Laxuman Sah S/O Achhe Lal Sah.
4. Gautam Sah S/O Achhe Lal Sah.
5. Bharat Sah S/O Achhe Lal Sah.
6. Jasoda Kumari D/O Achhe Lal Sah.
7. Shanti Kumari D/O Achhe Lal Sah.
8. Subhanti Kumari D/O Achhe Lal Sah.
9. Rupanti Kumari D/O Chhe Lal Sah.
10. Ganesh Sah son of Achhe Lal Sah, all resident of village Laguni, P.S. Panapur, P.O. Dhenukhi, District-Saran.
11. Thakur Sah S/O Mishri Sah.
12. Ram Kumari W/O Ramdeyal Bhagat both Resident Of Village Kusahar, P.S. Mohammadpur, P.O. Jhajhawa, District Gopalganj.
13. Kailashiya W/O Janardhan Bhagat.
14. Sukhdeo Sah S/O Jhagru Sah.
15. Daroga Sah S/O Jhagru Sah all Resident of Village Dumarsan, P.O. Mohammadpur, District Gopalganj.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 22-02-2016

Heard Mr. Ranjan Kumar Dubey, the learned counsel
appearing on behalf of the appellant.

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

The suit was filed by the two plaintiffs namely Jag Mohan Sah (plaintiff no. 1) and Samundri Devi (plaintiff no. 2) for partition of the suit property with further relief for declaring the sale deed executed by the father of the plaintiff no. 1 in favour of defendant no. 2 as farzi and without consideration.

According to the admitted genealogy, in the family of Hanuman Sah, the last surviving male was Charitar Sah who had a son Asrafi Sah and a daughter Samudari Devi. One of the sons of Asrafi Sah was plaintiff no. 1 Jag Mohan Sah in the suit. The daughter of Charitar Sah was the plaintiff no. 2 Samudari Devi whereas Asrafi Sah (now deceased) was defendant no. 1 in the suit. Asrafi Sah executed a sale deed on 26.11.1987 in favour of the defendant 2nd set Thakur Sah for 4 katha of land of plot no. 788 (total area 8 katha). The plaintiffs filed the suit for partition of properties mentioned in schedule-k of the plaint which also included the plot no. 788 (total area 8 katha) and the relief against the sale deed of the defendant 2nd set was also sought on the basis that the sale deed had been obtained by the defendant 2nd set Thakur Sah after intoxicating the defendant no. 1 Asrafi Sah and also exercising undue influence upon him and

without payment of the consideration amount. The defendant 2nd set-purchasers contested the assertions of the plaintiffs and claimed the sale deed to be legal and valid.

It has been found by the trial court that the plot no. 788 area 8 katha was the self acquired property of Charitar Sah and after his death it devolved upon his son Asrafi Sah and the daughter Samudari Devi in equal share i.e. 4 katha each. It has been further found that Asrafi Sah sold 4 katha land of his share to the defendant 2nd set by registered sale deed dated 26.11.1987. It has been further held that the plaintiff no. 1 Jag Mohan Sah did not get any share in plot no. 788 area 8 katha as it was the self acquired property of his grand father Charitar Sah but he has got share in the other property mentioned in schedule K of the plaint which are the joint family property. Accordingly, the suit was decreed for partition of the joint family property and the validity of the sale deed in favour of defendant 2nd set was upheld declaring the defendant 2nd set to be entitled to the 4 katha of land purchased by the sale deed dated 26.11.1987.

The plaintiff no. 1 Jag Mohan Sah filed the appeal and it appears from the points formulated for determination by the appellate court below that the refusal of the decree with regard to the sale deed dated 26.11.1987 was only questioned.



The appellate court has come to the finding that the plaintiff no. 1 did not get any share in plot no. 788 area 8 katha as it was the self acquired property of Charitar Sah and was exclusively inherited by his son Asrafi Sah and the daughter Samudari Devi to the extent of half share each. It has also been held that the plaintiff no. 1 has no right to challenge the validity of the said sale deed and moreso when he has admitted the execution of the said sale deed by Asrafi Sah. Accordingly, the appeal has been dismissed by the impugned judgment and decree.

The learned counsel for the plaintiff-appellant has submitted that the appellate court below has not considered the material evidence as well as the settled principle of law and therefore the findings recorded by the appellate court below are vulnerable. It has been posited that the plaintiff no.1 was legally entitled to assail the sale deed executed by Asarfi Sah in favour of the defendant 2nd set but both the courts below have wrongly discarded the case of the plaintiffs. No other submission has been made on behalf of the appellants.

After perusal of the judgment of both the courts below and considering the submissions, it becomes manifest from the findings of the courts below that the sale deed has been executed by the defendant no. 1 Asrafi Sah in favour of the



defendant 2nd set for the property which was the self acquired property of his father Charitar Sah. The said sale deed has been executed only for 4 katha of land of the share of Asrafi sah in 8 katha land of plot no. 788. As the 8 katha of land of plot no. 788 was admittedly the self acquired property of Charitar Sah, it was exclusively inherited by his son and daughter to the exclusion of the plaintiff no. 1 in view of Section 8 of the Hindu Succession Act, 1956. As such, there is no substance in the submission on behalf of the appellant that he has the right to question the alienation of 4 katha land of his share by his father Asrafi Sah by registered sale deed dated 26.11.1987 in favour of the defendant 2nd set. Moreover, the courts below have also taken into notice that the plaintiff no. 1 Jag Mohan Sah has earlier accepted the valid execution of the sale deed in question by Asrafi Sah in favour of defendant 2nd set in his written statement (Ext. D) and the deposition (Ext. E) in the proceeding under Section 145 Cr.P.C. wherein he has stated that the said sale deed was executed after adjusting the amount of Jarpesgi in the consideration amount by Asrafi Sah in favour of defendant 2nd set. The findings by the trial court are based upon the scrutiny of the material, oral and documentary evidence of the parties and are also in accordance with the settled principle of law. The

appellate court below, in its judgment of affirmance, has rightly upheld the findings of the trial court in this regard. The conclusion by the appellate court below are based upon the admitted facts and the evidence on record and no unreasonableness or perversity in the same could be shown or established during the course of submission on behalf of the appellant.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--