

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.230 of 2014

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Lal Bihari Sah, Son of Late Sugani Sah, Resident of Village and P.O.-Dhobaha,
P.S.- Ara Mufassil, District-Bhojpur.

.... Appellant

Versus

1. Raj Kumari Devi, Wife of Sri Ajay Prasad.
2. Dhaja Dhari Singh, Son of Late Sheo Muni Singh.
3. Kalawati Devi, Wife of Late Parshu Ram Dasaundhi.
4. Binod Dasaundhi.
5. Sunil Dasaundhi.
6. Santosh Dasaundhi.
All sons of late Prashu Ram Dasaundhi.
7. Vijay Dasaundhi @ Sumodh Dasaundhi.
8. Raju Dasaundhi @ Chundra Dasaundhi.
Both sons of Badri Dasaundhi.
9. Triveni Dasaundhi, Son of Late Ram Kailash Dasaundhi.
Nos. 1 to 9 residents of village and P.O.-Dhobaha Bazar, P.S.-Ara Mufassil,
District-Bhojpur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Kumar Mritunjay Narain, Adv.
Mr. Ramchandra Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-11-2016

Heard the learned counsel for the appellant.

The learned counsel for the other side is present.

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

The plaintiff filed the suit for declaration of his
title on the basis of the sale deed dated 07.12.1991 executed by one
Deo Kumar Sah in favour of the plaintiff and further for declaration



that the earlier sale deed dated 07.10.1991 executed by the same vendor Deo Kumar Sah in favour of defendant no.1 for the suit property and the sequential sale deed executed by the defendant no.1 in favour of defendant no.2 for the part of the same property, are all illegal, void and without jurisdiction. The plaintiff also prayed for relief of recovery of possession, in case, the plaintiff was found not to be in possession.

The matrix of facts demonstrates that the suit property admittedly belonged to Deo Kumar Sah. The plaintiff's case was that the said Deo Kumar Sah entered into an agreement for sale on 20.04.1991 with the plaintiff for the sale of the suit land. Later on Deo Kumar Sah executed a sale deed in favour of the defendant no.1 on 07.10.1991 for the suit land. The said Deo Kumar Sah thereafter also executed a sale deed in favour of the plaintiff on 07.12.1991 for the same land. The defendant no.1 executed a sale deed with regard to the part of the purchased property in favour of the defendant no.2. Alleging that the defendant no.1 had full knowledge of the Mahadnama (agreement for sale) of the plaintiff, the plaintiff sought for the reliefs as abovementioned. The suit was contested by the defendants, denying the averments made in the plaint and further asserting that the defendant no.1 was a bonafide purchaser for value and without notice of the agreement for sale propounded by the



plaintiff. The defendants also denied the genuineness of the agreement for sale dated 20.04.1991 between Deo Kumar Sah and the plaintiff.

Both the courts below after scrutiny of evidence, have reached to the concurrent finding of fact that the Mahadnama (agreement for sale) propounded by the plaintiff was not a genuine document. After recording the said finding, the courts below have further found that the plaintiff was not entitled to the declaration of title on the basis of the subsequent sale deed executed by the same vendor Deo Kumar Sah in favour of the plaintiff on 07.12.1991 after execution of the sale deed dated 07.10.1991 in favour of the defendant no.1. The suit was accordingly dismissed and thereafter the appeal filed by the plaintiff has been dismissed by the impugned judgment and decree.

The learned counsel appearing for the appellant has submitted that the courts below have misconstrued the evidence led on behalf of the plaintiff and therefore the conclusions are vulnerable. It has been contended that the witnesses on behalf of the plaintiff have supported the fact of the agreement for sale but both the courts have wrongly interpreted the statements in the depositions and have wrongly non-suited the plaintiff on the ground that the agreement for sale was not genuine. It has been further also contended that even when the plaintiff's mother had purchased the property



subsequently from defendant no.1 and even if the plaintiff was a witness on the said sale deed, the same would not bind the title of the plaintiff as claimed in view of the catena of decisions where it has been laid down that mere witnessing a document will not mean that the witness was aware of the contents of the said document. During the course of submission, however, the fact of execution of the sale deed and purchase of the part of the suit land by the mother of the plaintiff from the defendant no.1 has not been denied. The fact has also not been denied that the plaintiff has appeared as a witness on the said document. The main submission on behalf of the plaintiff-appellant has been upon the misconstruction of the evidence by the courts below.

After considering the submission and perusal of the judgments of both the courts below, it is pellucid that the base of the plaintiff's case for getting the declaration as prayed in the suit, is the agreement for sale dated 20.04.1991. Both the courts below after scrutiny of evidence on record, have come to the finding that the said document is not a genuine document. It is not the case on behalf of the appellant that the said finding has stemmed out of non-consideration of evidence or are based upon surmises and conjectures or dehors the legal principles established by law. It is well settled that even if a finding of fact is wrong, the same would be binding upon the



second appellate jurisdiction, unless it is shown that the said finding is perverse or unreasonable in any manner. This Court, during the course of submission, has not been persuaded to accept that the concurrent finding of fact recorded by both the courts below are perverse in any manner or the conclusions which have been arrived by the courts below on the analysis of evidence, could not have been arrived by a reasonable person. The misconstruction of evidence cannot be a substantial question of law, unless it is shown or established that the final conclusion on the basis of the evidence is not a possibility in law.

The appellate court below has also come to the finding that the plaintiff has omitted to seek the relief for cancellation or setting aside the sale deed in favour of the defendant no.1. It has been found by the appellate court below that the plaintiff has deliberately omitted to seek the relief in order to avoid the bar of limitation. During the course of submission, this Court has further not been persuaded to find this conclusion to be illegal or non-acceptable. The findings of fact have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon.

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)

Nitesh/-

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