

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.90 of 2014

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Pramod Kumar Rai S/o Sri Ram Ayodhya Rai Resident of Village Nonadih, P.S.
Sikrahta Kala, District Bhojpur.

..... Plaintiff Respondent

.... Appellant

Versus

Raj Nath Tiwari S/o Lakshman Tiwary Resident of Village Basara, P.O. and P.S.
Sikrahta Kala, District Bhojpur.

..... Defendant Appellant

.... Respondent

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Appearance :

For the Appellant : Mr. Chandan Kumar Verma

For the Respondent :

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-08-2016

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal refusing the decree for specific performance of contract as prayed by the plaintiff.

3. The plaintiff filed the suit for specific performance of contract for sale against the defendant on the assertion that the defendant had executed a *Mahdanama* (agreement for sale) on 21.1.1996, agreeing to sell the suit land with the plaintiff for consideration money of Rs.1,20,000/- out of which Rs. 74,000/- was paid by the plaintiff by way of advance. The defendant appeared and contested the assertion of the plaintiff denying the legality and validity of the alleged *Mahdanama* dated 21.2.1996. It was also the case of the defendant that the defendant had already executed a deed of mortgage for conditional sale for some of the suit property and had filed a suit for redemption of that mortgage when the plaintiff refused to accept the mortgage money and redeem the

mortgage.

4. The trial court returned the finding in favour of the plaintiff and granted the decree to the plaintiff. However, in appeal, the appellate court below on reappraisal of evidence reversed the finding of the trial court, allowed the appeal and set aside the judgment and decree passed by the trial court by the impugned judgment and decree.

5. Learned Counsel for the appellant has submitted that the appellate court below has not properly considered the evidence led on behalf of the parties while reversing the finding of the trial court. It has been canvassed that the oral evidence on behalf of the parties have not been considered by the appellate court below, but the same were considered by the trial court and, therefore, it was incumbent upon the appellate court below to consider the same before reversing the findings of the trial court. It has also been submitted that the appellate court below has misconstrued the evidence of the parties and has wrongly passed the impugned judgment. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the suit had been filed by the plaintiff claiming decree for specific performance of contract for sale on the basis of unregistered deed of agreement for sale dated 21.2.1996. The legality and genuineness of the said deed has been disputed by the defendant and the appellate court below on consideration of the evidence has come to a finding that the said deed of agreement for sale was not genuine. It has also been noticed by the appellate court below that the plaintiff and the defendant in their deposition have

admitted that some of the suit land has been mortgaged by executing a deed of mortgage in favour of the plaintiff by the defendant. The appellate court below has also come to the finding that the plaintiff has failed to discharge the burden of proof by adducing cogent evidence.

7. The findings by the appellate court below, on the points formulated by it, have been recorded on the basis of appreciation of evidence which were acceptable and could have been relied upon. During the course of submission no perversity or unreasonableness in the same could be established. In fact the entire submission of the appellant has centered around reappreciation of evidence which cannot be done unless the findings are found to be vitiated in any manner.

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

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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