

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.330 of 2013

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1. Smt. Shubhwala Devi W/O Rishi Kumar Singh Resident Of Village-
Harishankarpur, P.S- Paroo, District- Muzaffarpur.

2. Smt. Kamli Devi W/O Ramchandra Bhagat Resident Of Village-
Harishankarpur, Jaintpur, P.S- Paroo, District- Muzaffarpur.

3. Shyamlal Bhagat S/O Ramchandra Bhagat Resident Of Village-
Harishankarpur, Jaintpur, P.S- Paroo, District- Muzaffarpur... Appellants.

Versus

1. Phulpati Devi W/O Late Jugul Rai Resident Of Village- Mohammadpur,
P.S- Paroo, Post- Alwarpur, Post- Koria, District- Muzaffarpur.

2. Nawal Rai S/O Late Jugul Rai Resident Of Village- Mohammadpur, P.S-
Paroo, Post- Alwarpur, Post- Koria, District- Muzaffarpur.

3. Sabal Rai @ Banaras Rai S/O Late Jugul Rai Resident Of Village-
Mohammadpur, P.S- Paroo, Post- Alwarpur, Post- Koria, District-
Muzaffarpur.

4. Ratan Devi W/O Motilal Rai And D/O Late Jugul Rai Resident Of
Village- Mohammadpur, P.S- Paroo, Post- Alwarpur, Post- Koria, District-
Muzaffarpur.

5. Jatan Devi W/O Kun Kun Rai And D/O Late Jugul Rai Resident Of
Village- Mohammadpur, P.S- Paroo, Post- Alwarpur, Post- Koria, District-
Muzaffarpur.

6. Mahendra Mahto S/O Sheojee Mahto Resident Of Mohalla- Brahampura,
Sodagodown Chowk, Post- Mit P.S- Brahampurs, District- Muzaffarpur.

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 22-02-2016

Heard Mr.Ranjan Kumar Dubey, the learned

counsel appearing for the appellants.

The plaintiffs are the appellants in this appeal
against the judgment and decree of reversal dismissing the suit
filed by the plaintiffs.

The plaintiffs filed the suit for declaration
that the plaintiff no.2 had not executed any sale deed with regard
to the suit property in favour of the defendant no.1 and such sale

deed was forged and collusive. The relief for recovery of possession was also prayed. It was the case of the plaintiffs that the plaintiff no.2 was the owner of the suit property situated in village- Harishankarpur and she intended to sell the same to plaintiff no.1 and in fact she executed the sale deed dated 08.08.1986 in favour of the plaintiff no.1 for valid consideration and put the purchaser plaintiff no.1 in possession. It was the further case of the plaintiffs that the defendant no.1 dispossessed the plaintiff no.1 from the suit property and thereafter the plaintiffs became aware of the claim of the defendant no.1 over the suit property on the basis of sale deed dated 30.04.1986 said to have been executed by the plaintiff no.2. The plaintiffs denied the execution and registration of the said sale deed and alleged that the said sale deed had been obtained by the defendant no.1 by setting up another lady who impersonated the plaintiff no.2 before the registering authority. It was also the case of the plaintiff that the plaintiff no.2 had executed a sale deed on 07.10.1985 in favour of the defendant no.1 for the property in village- Chakroshan and in the course of execution of this sale deed, the defendant no.1 had obtained the L.T.I. of the plaintiff no.2 and signature of husband of the plaintiff no.2 on surplus stamp papers and had fabricated the sale deed in question. It was also asserted that the plaintiff no.2 was not fully literate and her husband was also a man of

diminished understanding and therefore they could not become aware of the fraud played by the defendant no.1.

The defendants, however, contested the assertions of the plaintiffs by filing the written statement. It was the case of the defendants that there had been agreement for sale of the suit land between the plaintiff no.2 and the defendant no.1 (since deceased) but the plaintiff no.2 at the behest of Ambika Singh and in temptation for more money had executed the sale deed in favour of the plaintiff no.1 subsequent to the execution of the sale deed in favour of the defendant no.1. The defendants also asserted that the plaintiff no.2 had willingly and with the consent of her husband had executed the sale deed in favour of the defendant no.1 after fully understanding the contents of the sale deed which was executed and got registered by the plaintiff no.2 in accordance with law/rules.

The trial court returned the findings in favour of the plaintiffs and decreed the suit. In appeal by the defendants the appellate court below on reappraisal of evidence has reversed the findings of the trial court, allowed the appeal and dismissed the suit by the impugned judgment and decree in this appeal.

Mr. Dubey, the learned counsel for the appellants, has submitted that the findings of the appellate court is vitiated on account of non-consideration of materials oral and

documentary evidence of the plaintiffs. It has been canvassed that in view of the pleading of the plaintiffs that the plaintiff no.2 is semi-literate person and the finding of the trial court in that regard also, the appellate court below has wrongly held that the burden of proving the allegation of fraud and impersonation was upon the plaintiffs.

Elaborating his submissions, it has been contended by the learned counsel for the appellants that the expert report has not been properly taken into notice by the appellate court below before upholding the validity of the sale deed in question and therefore the finding in that regard is vulnerable. It has been argued that the fraud played by the defendant no.1 in obtaining the sale deed for the suit land is explicit from the fact that the sale deed in question has been executed on the stamp papers purchased on 07.10.1985 on which date the plaintiff no.2 had admittedly executed the sale deed in favour of the defendant no.1 for the land of village-Chakroshan. The learned counsel has placed the findings of both the courts below in detail in order to persuade this Court that the conclusions by the appellate court below are vitiated for misappropriation of the evidence on record.

After perusal of judgments of both the courts below and considering the submissions, it is pellucid that the sale deed in question is a registered document and bears the L.T.I. of

the plaintiff no.2 and the signature of her husband also as a witness. The appellate court below has taken into notice the deposition of the plaintiff no.2 Kamli Devi and has found that she has admitted her L.T.I. on the sale deed in question. This fact is also apparent from the averments made in the plaint wherein the signature of the husband of the plaintiff no.2 on the sale deed as witness has also been accepted. The basis of the entire case of the plaintiffs is the allegation of fraud and impersonation perpetrated by defendant no.1 in obtaining the sale deed in this regard. It will be apposite to mention that the plaintiff no.2 has not claimed herself to be a pardanasin lady in the sense of not understanding the affairs of sale, purchase and registration etc rather from the facts appearing from the pleading and evidence, it is apparent that the plaintiff no.2 had executed other sale deeds as well and had gone to the registration office for getting the same registered. The appellate court below on scrutiny of evidence has come to the finding that the plaintiff no.2 Kamli Devi used to visit outside her house in order to manage the transactions relating to property. The appellate court below has further also scanned the depositions of the witnesses including the scribe and the attesting witnesses of the sale deed in question before coming to the conclusion that the plaintiff no.2 Kamli Devi had executed the said sale deed after fully understanding the contents thereof which were read over to

her by the scribe. Though, the submission has been made on behalf of the appellants of non-consideration of oral and documentary evidence by the appellate court below but during the course of submission no such evidence has been pointed out which has been omitted out from consideration and which if considered would have turned the table in favour of the appellants. The fact also cannot be ignored that the sale deed in question is a registered document carrying with it a presumption that it has been executed and registered in accordance with law and this presumption is even stronger when the L.T.I. of the plaintiff no.2 and the signature of her husband as a witness over the said sale deed are admitted facts.

It would be profitable here to take into notice the dictum of the apex court in the case of **Damodar Lal Vs Sohan Devi, AIR 2016 SC 262** as follows:

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Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach

on the reasonable man's inference on the facts.

To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity."

It is not the case of the appellants that the findings by the appellate court are not based upon any evidence or only on conjectures and surmises. From the impugned judgment of the appellate court below also it is manifest that it has recorded the findings on the basis of its evaluation of the evidence on record and those findings cannot be branded as unreasonable or outrageous. The entire submissions on behalf of the appellants, in fact, has centered around the possibility of another view on the basis of reappraisal of the evidence but it is well settled that the possibility of another view on the issue cannot be a substantial question of law at the second appellate stage.

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

(V. Nath, J)

Nitesh/-

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