

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.187 of 2004

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Bhola Prasad Sah son of late Makundi Prasad Sah, resident of Banka Bus
Stand, P.O & P.S. Banka District Banka.

Defendant-Defendant 2nd Party-Appellant

Versus

1.Dr.Beni Madhav Gupta son of Late Jagdish Sah, resident of village Banka
P.O. & P.S. Banka District Banka.

Plaintiff-Respondent Ist Party.

2. Kishun Sah, son of Late Mangal Sah, resident of Banka Bus Stand P.O &
P.S. Banka District Banka.

Defendant Ist Party----Respondent IInd Party

3.Banarsi Kapri

4.Ramprasad Kapri

5.Janardan Kapri

6.Baleshwar Kapri

Nos. 3 to 4 are sons of Late Asharfi Kapri

All residents of village Manikpur P.O Sondiya Babhangama, P.S. Dhoriya,
District Bhagalpur.

.....Respondent III Party

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Appearance :

For the Appellant/s : Mr. Shashi S.Kishore
Mr. Shivpujan Sahay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

11 23-02-2016

Heard learned counsel for the appellant.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance granting the decree as prayed. The suit has been filed for redemption of mortgage dated 16.07.1970. It has been found by both the courts below that the plaintiff was entitled to the relief of redemption of the mortgage bond dated 16.07.1970.

3. The present appeal has been filed by defendant no. 2. Learned counsel appearing for the appellant has submitted that both the courts below have committed several errors of fact and the particular emphasis has been laid on the fact that the entitlement of Huro Devi over the suit property has not been established. It has also been submitted that some documents have been filed on behalf of the appellants along with the interlocutory application (I.A No. 4304 of 2004) filed under Order 41 Rule 5 C.P.C in this second appeal and the same requires consideration. It has been prayed by the learned counsel for the appellant that the matter be remanded to the appellate court below for fresh consideration of all the evidence. Except the aforesaid submission, learned counsel for the appellant could not specifically point out or spell out any substantial question of law arising for consideration in this appeal.



4. After considering the submissions and perusal of judgments of both the courts below, it is manifest that the suit for redemption of mortgage has been decreed and the said decree was affirmed in appeal also. It also appears that the findings by both the courts below have been recorded after elaborate consideration and analysis of the pleadings and evidence of the parties and this court is not persuaded to decipher unreasonableness or perversity in the same. It is nowhere the case of the appellant that the findings of fact have stemmed out of non consideration of material evidence on record or misreading of evidence. It is well settled by now that if there is some evidence to support the findings, the possibility of another view on the same set of materials cannot be a substantial question of law and the second appeal cannot be entertained on that basis. The prayer on behalf of the appellant to take into consideration some documents annexed with the interlocutory application (I.A. No. 4304 of 2004) is also misconceived and those documents have not been brought on record as evidence in accordance with law and there is even no explanation as to why those documents were not produced before the courts below on behalf of the defendant-appellant. From the submissions on behalf of the appellants, it is clearly evincible that the entire

endeavour has been made to persuade this Court to re-appreciate the evidence on record as well as consider the fresh evidence or to remand the matter back to the courts below for fresh consideration.

5. 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)

Ranjan/-

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