

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.268 of 2012

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1. Mostt. Bachchi Devi W/O Late Sachchidanand Prasad R/O Village- Salempur Dighri, P.S.- Surajgarha, District-Lakhisarai, Presently Residing Mohalla- Ram Bandh Canteen Para Burnpur, District- Bardwan (W.B.), Appellant No. 2 At Mohalla, C/O Lakhan, Near Burnpur, Gate No. 10, Burnpur, District-Burdwan (W.B.)
 2. Abdhesh Prasad Sah S/O Late Sachchidanand Prasad R/O Village- Salempur Dighri, P.S.- Surajgarha, District-Lakhisarai, Presently Residing Mohalla- Ram Bandh Canteen Para Burnpur, District- Bardwan (W.B.), Appellant No. 2 At Mohalla, C/O Lakhan, Near Burnpur, Gate No. 10, Burnpur, District-Burdwan (W.B.)
 3. Jaideo Prasad Sah S/O Late Sachchidanand Prasad R/O Village- Salempur Dighri, P.S.- Surajgarha, District-Lakhisarai, Presently Residing Mohalla- Ram Bandh Canteen Para Burnpur, District- Bardwan (W.B.), Appellant No. 2 At Mohalla, C/O Lakhan, Near Burnpur, Gate No. 10, Burnpur, District-Burdwan (W.B.) Defendant 1st set
 4. Dinesh Prasad Mahton S/O Late Janak Mahton R/O Village- Salempur Dighri, Police Station -Surajgarha, District- Lakhisarai
 5. Gautam Kumar S/O Dinesh Prasad Mahton R/O Village- Salempur Dighri, Police Station -Surajgarha, District- Lakhisarai
 6. Sarita Devi D/O Ram Lakhan Mahton R/O Bishunpur, P.S.- Mednichowki, District- Lakhisarai Defendant 2nd set Appellants

.... Appellants

Versus

1. Krishna Nandan Prasad S/O Late Gobind Prasad R/O Village- Salempur Dighri, Police Station- Surajgarha, District- Lakhisarai, Also Residing At Nagher Tola Sahibganj, Police Station And District- Sahibganj (Dhanbad)
2. Omdeo Prasad @ Umesh Prasad S/O Late Gobind Prasad R/O Village- Salempur Dighri, Police Station- Surajgarha, District- Lakhisarai, Also Residing At Nagher Tola Sahibganj, Police Station And District- Sahibganj (Dhanbad) Plaintiffs Respondent 1st set
3. Raj Kishore Prasad Sah S/O Radhe Shyam Prasad Sah R/O Village- Salempur Dighri, Police Station-Surajgarha, District- Lakhisarai
4. Nawal Kishore Sah S/O Radhe Shyam Prasad Sah R/O Village- Salempur Dighri, Police Station-Surajgarha, District- Lakhisarai Defendant 2nd set Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. D.K.Sinha, Sr. Advocate
Mr. Ambika Bhagat
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-05-2016



Mr. D.K.Sinha, learned Senior Counsel appearing on behalf of the appellants, has informed the Court that appellant No. 4 Dinesh Prasad Mahto is dead and his son is already on record as appellant No. 5. In this backdrop, prayer has been made to expunge the name of appellant No. 4 from the memo of appeal. The prayer is allowed. Accordingly the name of appellant No. 4 Dinesh Prasad Mahto is expunged from the memo of appeal.

2. Heard Mr. D.K.Sinha, learned Senior Counsel appearing on behalf of the appellants.

3. The defendants are the appellants in this second appeal against the judgment and decree of affirmance granting decree to the plaintiffs, as prayed.

4. The suit has been filed by the plaintiffs for declaration of title and possession over the suit land and further for declaration that both the sale deeds executed by defendant 1st set in favour of defendant 2nd set are void illegal and without jurisdiction. The facts, which appear from the case of the plaintiffs is that there were three brothers namely Krishna Nandan Prasad, Omdeo Prasad and Sachidanand Prasad. It is the case of the plaintiffs that there had been partition by a registered deed dated 24.8.1972, wherein all the three brothers were allotted one-third share each in the family property. It has been the further case of the plaintiffs that by registered sale deed dated 9.5.1973 (Ext. 2) one of the brothers Sachidanand Prasad transferred some of the properties allotted in his share to the plaintiff no. 1 Krishnandan Prasad. However, later on, heirs of Sachidanand Prasad, after his death, had transferred the suit property



as well as other properties in favour of defendant 2nd set by executing sale deeds. The defendants, on the other hand, contested the suit, firstly asserting that there had already been partition in the year 1954 and the story of subsequent partition in the year 1972 by the plaintiffs was not correct. It was also the case of the defendants that the sale deeds executed in favour of the defendant 2nd set by defendant 1st set were all legal and valid.

5. From the pleadings of the parties the spinal issue demonstrably was the legal validity of the partition by registered partition deed dated 24.8.1972 as well as the legal validity of the sale deed dated 9.5.1973 which was executed by one of the brothers Sachidanand Prasad transferring some of his allotted property in favour of plaintiff No.1. Both the courts below have concurrently found that the plaintiffs have succeeded by cogent evidence in establishing the partition of the family property amongst the three brothers by registered partition deed dated 24.8.1972 and it has also been found that the sale deed dated 9.5.1973 (Ext. 2) executed by Sachidanand Prasad in favour of plaintiff No. 1 was legal and valid. Consequent upon this finding the courts below have come to the conclusion that the subsequent sale deeds executed by defendant 1st set in favour of defendant 2nd set with regard to the property already sold to the plaintiffs were not legal and valid.

6. Mr. Sinha, learned Senior Counsel appearing for the appellants, has submitted that both the courts below have erred in law in recording the finding of invalidity of the sale deed in favour of the defendant 2nd set as there was no issue framed in this regard. It has also been submitted that the defendants' case of partition in the year 1954

has not been considered in true perspective by both the courts below. No other submission has been made on behalf of the appellants.

7. After perusal of the judgments of both the courts below and considering the submissions it is pellucid that the basis of the case of the plaintiffs was the partition of the properties amongst the three brothers by registered partition deed dated 24.8.1972 (Ext. 1). The said document has been thoroughly scrutinized by both the courts below along with other evidence both oral and documentary adduced by the parties and thereafter the finding has been recorded that the said document is legally valid document. The case of the defendants of partition in the year 1954 has also been considered and disbelieved by both the courts below for want of cogent evidence. The sale deed executed by one brother Sachidanand Prasad in favour of plaintiff No. 1 Krishnandan Prasad on 9.5.1973 (Ext. 2) transferring some of the properties allotted in his share by partition deed dated 24.8.1972, could not be proved by the defendants to be invalid in any manner. In this backdrop, the submission on behalf of the appellants that as no issue was framed with regard to the four sale deeds subsequently executed by the heirs of one of the brothers namely Sachidanand Prasad in favour of defendant 2nd set and therefore no finding could have been recorded, has got no substance. From the perusal of the judgments of both the courts below and also in view of the submission on behalf of the appellants it is clear and crystal that the validity of those sale deeds was directly in controversy between the parties and the issue was also framed in that regard by the trial court as Issue No. 7. In that view of the matter, this Court does not find force in this submission.

8. During the course of submission it could not be established that the findings by both the courts below are perverse or unreasonable in any manner.

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

(V. Nath, J)

Snkumar/-

AFR/NAFR	
CAV DATE	
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