

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.201 of 2014

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1. Ramdeo Sah, son of Late Fakir Sah
2. Sum itra Devi, wife of Late Ramautar Sah
3. Dilip Sah, son of Late Ramautar Sah
4. Foolmati Devi,
5. Kranti Devi
6. Khushboo Kumari
7. Maushmi Devi
8. Manju Devi
9. Ranju Devi
10. Runa Devi, daughters of Late Ashok Sah
11. Sumitra Devi, wife of Late Ashok Sah
12. Raj Kumar Sah, son of Late Ashok Sah
All resident of Babu Chakla, P.O. Mohaddepur, P.S. Pasraha Pargana
Farkiya, District Khagaria Defendants Appellants
..... Appellants

Versus

1. Narayan Singh
2. Lakhan Singh
3. Subhash Singh, sons of Late Mahraj Mahdal
4. Most. Kaushalya Devi, wife of Late Lochan Singh
5. Parmanand Singh
6. Suresh Singh
7. Jaikant Singh
8. Srikant Singh, sons of Lochan Singh
9. Dhanmanti Devi, daughter of Late Lochan Singh, all resident of Village Babu
Chakla, P.O. Mohaddepur, P.S. Pasraha Pargana Farkiya, District Khagaria
..... Plaintiff Respondent 1st party
10. Jay Jay Ram Singh, son of Late Sukhdeo Singh
11. Hardeo Singh, son of Late Jaggan Singh
12. Sanichar Singh, son of Late Surya Singh
13. Guddu Singh, son of Late Sukhdeo Singh
14. Mahendra Singh
15. Kailash Singh, both sons of Late Surya Singh
16. Most. Bholia Devi, wife of Late Surya Singh
17. Tetri Devi
18. China Devi, both daughters of Late Surya Singh
All residents of Village Babu Chakla, P.O. Mohaddepur, P.S. Pasraha
Pargana Farkiya, District Khagaria DefendantAppellants
..... Respondents

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Appearance :

For the Appellant/s : Mr. Praveen Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 28-10-2016



Heard learned Counsel for the appellants.

2. The defendant 2nd set in the suit are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiffs as prayed.

3. The fact is not in dispute that one Jhumak Mandal was the recorded tenant of the suit land and he died leaving behind a son namely Baharoo Mandal. In course of time Baharoo Mandal also died leaving behind four sons namely Shyam Mandal, Kare Mandal, Mahraj Mandal and Lochan Mandal. The plaintiffs are Lochan Mandal along with the descendents of Mahraj Mandal with the case that another son Shyam Mandal died leaving behind a son Singheshwar Singh who died unmarried and issueless. The plaintiff filed a suit for declaration of title and recovery of possession over the suit land described in the schedule of the plaint.

4. The defendant 2nd set-appellants, however, resisted the relief prayed by the plaintiff on the base of the case that Singheshwar Singh transferred the suit land 70 years back and executed a Rukka in favour of the defendant 2nd set. It was the further case of the defendants that after filing of the suit they had obtained registered sale deed dated 17.6.2002 with regard to the suit land executed in their favour by the widow and daughter of Singheshwar Singh.

5. The material disharmony between the plaintiffs and the defendant 2nd set, therefore, as evidenced from the judgments of both the courts below was the status of the vendors of the defendant 2nd set in the sale deed dated 17.6.2002 as widow and daughter of Singheshwar Singh in view of the specific case of the plaintiff that Singheshwar Singh died



unmarried and issueless.

6. Both the courts below have concurrently returned the finding that the existence of the widow and daughter of Singheshwar Singh could not be established by the defendant 2nd set and, therefore, they could not have derived any title in their favour on the base of the sale deed. The case of dispossession as made out by the defendant 2nd set was also disbelieved in the facts and circumstances of the case.

7. Learned Counsel for the appellants has, however, raised the submission that as the sale deed dated 17.6.2002 was a registered document and therefore it would have the presumption of its legal execution and therefore the plaintiffs were liable to seek relief against that sale deed. It has been propounded that the registered sale deed till it stands will have its legal effect of conferring the title over the suit land upon the defendant 2nd set-appellants. The learned Counsel has further argued that the provisions of Section 52 of the T.P.Act envisaging the doctrine of lispendence could not be an impediment in the way of title of the defendant 2nd set-appellants over the suit property even when the sale deed has been executed during pendency of the suit. The learned Counsel, however, has accepted that the vendors of the defendant 2nd set-appellants did not turn up in the suit in support of the defendant 2nd set – appellants and they were not examined as witnesses. It has also been accepted that the Rukka, evidencing the transfer of the suit land by Singheshwar Singh in favour of the defendant 2nd set-appellants has also not been produced by them. No other submission has been made on behalf of the appellants.

8. After considering the submission and perusal of the



judgments of both the courts below, it is evident that the title of Jhumak Mandal is admitted fact between the parties and further the fact that the four grand-sons of Jhumak Mandal inherited the suit property is also not in dispute. The plaintiffs' right over the suit land on the basis of inheritance has also not been disputed and the claim of the defendants is only on the basis of transfer of the suit land in their favour by the descendents of one brother Shyam Mandal. The defendants did not produce the Rukka said to have been executed in their favour in evidence of transfer of the suit land by Singheshwar Singh son of Shyam Mandal. The sale deed dated 17.6.2002 has been executed and registered during pendency of the suit. However, it has further been demonstrably clear that the vendors of the defendant 2nd set were not examined in the suit in support of the case of the defendant 2nd set that Singheshwar Singh died leaving behind the widow and a daughter who transferred the suit property. No other evidence to substantiate their claim of title over the suit land has been adduced on behalf of the defendant 2nd set-appellants. The proposition that as the sale deed was executed and registered during pendency of the suit, it would have been incumbent upon the plaintiffs to seek relief against that sale deed also failing which it would have its legal consequences, does not impress this Court for the simple reason that the defendant 2nd set-appellant has failed to bring on record any other material evidence in support of the claim that their vendors or the predecessor of their vendors had transferred the suit property in their favour and they were the descendents of the another brother Shyam Mandal or for that matter Singheshwar Singh son of Shyam Mandal. The findings by both the



courts below have been record on scrutiny of evidence which were acceptable and could have been relied upon. The conclusion by the courts below in drawing the adverse inference against the defendant 2nd set-appellant in not producing their vendors as witnesses in the suit in support of their case is also in accordance with the settled principle of law. This Court has not been persuaded to hold that the findings by the courts below against the appellants are perverse or unreasonable in any manner.

9. 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.)

Snkumar/-

AFR/NAFR	
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