

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.306 of 2012

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1. Narain Sah S/O Sri Babu Lal Ahu Khagaria R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
 2. Laxman Kumar Sah @ Laxman Kumar Sahu S/O Sri Babu Lal Sahu Khagaria R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
 3. Smt. Indu Devi W/O Narain Sah R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
 4. Smt. Arti Devi W/O Laxman Kumar Sah @ Laxman Kumar Sahu R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai

.... Appellant/s

Versus

1. Srimati Sita Devi Widow Of Late Siya Sharan Rai R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
2. Shambhu Rai S/O Late Siya Sharan Rai R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
3. Dilip Rai S/O Late Siya Sharan Rai R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
4. Bipin Singh @ Bipin Kumar @ Bipin Kumar Singh S/O Late Rajendra Singh R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
5. Ruby Kumari @ Ruby Devi W/O Sri Kishore Singh, D/O Late Rajendra Singh, D/O Late Rajendra Singh And Late Somari Devi R/O Village - Mughal Bazar, Munger, P.S. Kotwali (Munger), District - Munger
6. Sunil Kumar @ Sunil Kumar Singh S/O Late Rajendra Singh R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai
7. Banti Singh @ Nunu Babu Singh S/O Late Rajendra Singh R/O Village - Dhabauli, P.S. Muffasil (Begusarai), District - Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Roy

For the Respondent/s : Mr. S. Ashfaque Ahmad.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-01-2016

Heard Mr. Rajeev Roy, learned counsel for the appellants.

Plaintiffs are the appellants in this appeal against the judgment and decree of reversal dismissing the suit.

The suit land originally belonged to one Rajendra

Singh, who had two wives, namely, Shanti Devi and Somari Devi. Rajendra Singh had no issue from Shanti Devi and, therefore, he solemnized another marriage with Somari Devi and out of the said wed lock three sons and one daughter were born. It is the case of the plaintiffs that after death of Rajendra Singh, a suit for partition was filed by the 2nd wife Somari Devi against the first wife Shanti Devi, and her own son Bipin Singh. The said suit ended in compromise wherein the land of the family of Rajendra Singh was partitioned allotting 1/6 share in it to each of his descendents. The defendant-2nd set Bipin Singh got 3 katha 10 dhur of land in total in the said compromise. The dispute in the present suit is the land of plot no. 1115. It is the case of the plaintiffs that in the said compromise each of the heirs of Rajendra Singh got 2 katha 12 ½ dhur of land of plot no. 1115. The defendant-2nd set Bipin Singh had, by three sale deeds executed in the year 1989, 2001 and 2005, sold his allotted share of 2 katha and 12 ½ dhurs of land to the defendants-respondents 1st set. The plaintiffs have assailed the said sale deeds asserting that subsequent to the compromise, there was a transaction of exchange between Somari Devi and Bipin Singh in which Bipin Singh had given his 2 katha 12 ½ dhurs of land of plot no. 1115 to Somari Devi and in return thereof, Somari Devi gave him 3 katha 10 dhurs of land of plot no. 391 which he subsequently sold to Suresh Yadav by a registered sale deed wherein also the fact of exchange was mentioned.

The plaintiffs are purchasers from Somari Devi and her two sons of the property which includes 2 katha and 12 ½ dhurs of land of plot no. 1115 allotted by the compromise decree to the defendants 2nd set.

The defendants 1st set filed his contesting written statement and denied the case of exchange as set up by the plaintiffs. Defendants 2nd set. Bipin Singh filed his written statement and denied the fact of exchange as set up by the plaintiffs.

The seminal issue between the parties, therefore, was the legality and validity of transaction of exchange by which according to the plaintiffs, the defendants 2nd set (vendor of defendants 1st set) had given the suit land of plot no. 1115 allotted to his share to Somari Devi (vendor of the plaintiffs).

The trial court returned the findings on the issue in favour of the plaintiffs and granted the reliefs as prayed. In appeal by the defendants 1st set, the lower appellate court, on reappraisal of the evidence, has come to the conclusion that the plaintiffs have failed to establish the validity and legality of the transaction of exchange said to have been entered into between Somari Devi (vendor of the plaintiffs) and her son Bipin Singh (vendors of the defendants 1st set). The appeal, therefore, has been allowed by the impugned judgment and decree.

Mr. Roy, learned counsel for the appellants has accepted during the course of argument that the transaction of exchange was the foundation of the case of the plaintiffs. It has been



further submitted that though the deed of exchange was not registered as required under section 118 of the Transfer of Property Act, but still the said transaction of exchange was mentioned by the defendants 2nd set Bipin Singh in the sale deed executed by him in favour of Suresh Yadav with regard to the land which he had received in exchange from Somari Devi. Learned counsel for the appellants, therefore, has submitted that the findings of the appellate court below discarding the transaction of exchange was vulnerable as the said aspect has not been duly considered. It has also been submitted that the trial court after considering the entire oral and documentary evidence on record has rightly recorded the conclusion in favour of the plaintiffs but the lower appellate court has wrongly set aside the same. No other submission has been made on behalf of the appellants.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the entire case of the plaintiffs is dependant on the legality and validity of transaction of exchange which is said to have been entered into between the vendor of the plaintiffs and the vendor of the defendants 1st set. The findings by the lower appellate court disclose that the said exchange deed was executed before the Notary Public and has not been registered in accordance with law as envisaged in Section 118 of the Transfer of Property Act. This fact has not been disputed on behalf of the appellants that the transaction of exchange was not a

registered document. The lower appellate court has, thus, rightly recorded the finding that the transaction of exchange as claimed by the plaintiffs cannot be made the foundation of title of the plaintiffs over the suit land. During the course of argument, it has also been accepted that the defendants-2nd set Bipin Singh, vendor of the defendants-1st set has denied the fact of exchange in the written statement and the said fact has also been denied by the defendants-1st set. In this view of the matter, it was incumbent upon the plaintiffs in order to succeed to establish the legality and validity of the transaction of exchange which was the basis of the title of their vendor of the suit land. This Court, therefore, comes to the conclusion that the lower appellate court has rightly recorded the finding that the transaction of exchange cannot be held to be legal and valid.

No substantial question of law, therefore, arises which needs to be considered and decided in this appeal. This appeal is, accordingly, dismissed.

(V. Nath, J)

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