

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.105 of 2014

- =====
1. Tula Devi D/o late Pitambar Yadav and Wife of Ram Bilash yadav Resident of Villalge-Mattarahi, police StationBaheri, District Dharbhanga.
 2. Manoranjana Kumar Yadav Son of late Pitambar Yadav All Resident of Vikllage+P.O.Thathopur, tola Adavan, P.S baheri, District Darbhanga.
 3. Niranjana Kumar Yadav Son of late Pitambar Yadav
 4. Birendra Yadav
 5. Surendra Yadav All Sons of late Ram Bahadur Yadav null
 6. Rekha Devi W/o late Upendra Yadav null
 7. Amit Ranjan
 8. Lalan Kumar Both Sons of late Upendra Yadav null
 9. Ajay Kumar
 10. Sourav Kumar Both minor sons of late Upendra Yadav, Now Both under the Guardianship of their mother Rekha Devi All Sl nos. 1 to 8 are resident of Village- Thathopur, Tole- Aadavan, P.s Baheri, District Darbhanga.
 11. Renu Devi (daughter of Late Upendra Yadav) W/O Ram Sagar Rai Resident of Village- Rantanpur, Mahdopru, P.S Warisnagar, district Samastipur.
 12. Runa Devi Daughter of late Upendra Yadav, W/o Vijay Kumar Rai resident of village - Niyam Gorahari, P.S. - Hayaghat, District - Darbhanga.
- Defendant 1st party Appellants

.... Appellants

Versus

1. Ram Rekha Devi W/o Chandeshwar Yadav resident of village - Fatlaha, P.O. - Jarso, P.S. - Bahera, District - Darbhanga.
..... Heir of sole plaintiff Respondent 1st party
2. Smt. Ram Phool Devi @ Ram Full Devi W/O Sri Surendra Yadav resident of village - Habidih, Tole - Matharahi, P.S. - Baheri, District - Darbhanga.
..... Defendant 2nd party Respondent 1st party

.... Respondents

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Appearance :

For the Appellant/s : Mr. Bishwanath Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-09-2016

Heard Mr. B.N.P.Singh, learned Counsel appearing for the appellants.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiff as prayed.

3. The plaintiff filed the suit for declaration that the sale deed dated 12.11.1993 was forged, fabricated and not binding on the plaintiff and the defendant 1st set never acquired any title over the suit property on the basis of the said sale deed. Relief for permanent injunction restraining the defendants from interfering with the possession of the plaintiff on the basis of the said sale deed was also prayed.

4. The fact is not in dispute that Ram Sohag Yadav died and his widow is the plaintiff Subdhi Devi. Ram Sohag Yadav had two daughters namely Ramphool Devi, who was defendant 2nd set in the suit, Ram Rekha Devi and a son Lalendra Yadav, who died unmarried and issueless. The defendant 1st set in his written statement has accepted that the plaintiff Subdhi Devi was the sole owner of the suit property and her two daughters had relinquished their share in favour of the plaintiff. The plaintiff Subdhi Devi filed the suit wherein she averred that she had executed a gift deed on 30.3.1992 with regard to the suit property in favour of her daughter Ram Rekha Devi and it was her specific case that her another daughter Ramphool Devi (defendant 2nd set) went in collusion with the defendant 1st set who manufactured, forged and fabricated *Mahdanama* dated 19.1.1990 and thereafter the sale deed dated 12.11.1993 purported to have been executed by the plaintiff Subdhi Devi and defendant 2nd set Ramphool Devi with regard to the suit land. The defendants contested the claim and assertion of the plaintiff praying to dismiss the suit upholding the validity of the sale deed in question.

5. Both the courts below have concurrently returned the finding that the sale deed dated 12.11.1993 is forged and fabricated

document of sale, for which even no consideration was established to have been paid. The suit was decreed and thereafter the appeal preferred by the defendants has been dismissed by the impugned judgment and decree.

6. Mr. Singh, learned Counsel for the appellants, has submitted that the suit was not maintainable as Ram Rekha Devi, in whose favour the plaintiff claimed to have executed a gift deed on 30.3.1992 was not impleaded as party. It has, however, been accepted by the learned Counsel that the defendant 1st set had not taken any step claiming relief for setting aside or cancellation of the said gift deed even after having knowledge of the same up till now. It has been further submitted that the defendants are in possession over the suit land, but no issue has been framed by the courts below with regard to possession and, therefore, the judgments are vulnerable. No other submission has been made on behalf of the appellants.

7. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiff filed the suit seeking relief against the sale deed dated 12.11.1993 purported to have been executed by her in favour of the defendant 1st set with regard to the suit property. The defendant 1st set in their written statement has admitted that the plaintiff was the sole owner of the suit property after her two daughters relinquished their share in her favour. The courts below have concurrently found that the legality and validity of the sale deed could not be established by the defendants on the basis of cogent evidence. After elaborate scrutiny of evidence on behalf of the parties the findings have been recorded by both the courts below in favour of the

plaintiff and against the defendants. Those findings are evidently recorded upon the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to hold that the suit of the plaintiff was not maintainable in absence of her another daughter Ram Rekha Devi as party in the suit. In view of the admission by the defendants-appellants themselves in their written statement that the plaintiff Subdhi Devi was the sole owner of the suit property, the plaintiff did not pray for any relief with regard to possession and therefore once after the courts below have concurrently found that the defendant 1st set did not acquire title over the suit property on the basis of sale deed in question, the assertion of the defendant-appellants to be in possession of the suit property becomes immaterial as there is no claim of possession on their behalf on the suit property.

8. 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	
CAV DATE	N/A
Uploading Date	26.10.2016
Transmission Date	N/A