

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.3 of 2014

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Mahendra Mistry S/O Late Firangi Mistry Resident Of Village Asnaha,
P.S. Bausi, P.O. Maniyarpur, District Banka.

..... Plaintiff Respondent

.... Appellant

Versus

1. Hari Kishore Mistry S/O Late Kashi Mistry Resident Of Village Asnaha, P.S. Bausi, P.O. Maniyarpur, District Banka.
2. Lalmani Mistry S/O Late Kashi Mistry Resident Of Village Asnaha, P.S. Bausi, P.O. Maniyarpur, District Banka.Defendant 1st party..... Appellant
3. Murli Prasad Singh S/O Late Randhir Prasad Singh Resident Of Village Asnaha, P.S. Bausi, P.O. Maniyarpur, District Banka. Defendant 2nd party Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Manish Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 05-04-2016

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit filed by the plaintiff.

3. The plaintiff filed the suit for declaration of title upon declaration that the sale deed dated 28.10.2003 executed by the defendant 2nd set in favour of defendant 1st set are not binding upon the plaintiff.

4. The facts providing the context for determination of the question arising in this appeal are that admittedly the suit property was allotted property of one Randhir Singh in his share in partition with his co-sharers. Randhir Singh had three sons namely Chunchun



Singh, Mukund Singh and Murli Singh. The sale deed dated 4.4.1978 was executed by Randhir Singh, Chunchun Singh, Mukund Singh and Murli Singh in favour of the plaintiff, transferring the suit property in his favour. However, in the said sale deed Murli Singh was shown as minor and was placed under the guardianship of his father Randhir Singh. The discord arose when Murli Singh executed a sale deed on 28.10.2003 in favour of the defendant 1st set with regard to part of the property purchased by the plaintiff by sale deed dated 4.4.1978. The suit has been filed in this background of facts by the plaintiff for declaration of his title over the suit property on the basis of sale deed dated 4.4.1978 after declaring the later sale deed dated 28.10.2003 executed by Murli Singh, defendant 2nd set, in favour of defendant 1st set as not binding upon the plaintiff.

5. The ceremonial issue which arose between the parties was with regard to the status of Murli Singh as minor or major on 4.4.1978 when the sale deed was executed in favour of the plaintiff. The trial court in a cryptic and mechanical manner granted the decree to the plaintiff as in the judgment apparently no evidence at all has either been noticed or discussed. In appeal, however, the appellate court on reappraisal of evidence has come to the finding that in the sale deed in favour of the plaintiff Murli Singh was fraudulently described as minor and under the guardianship of his father Randhir Singh. The appeal has been allowed, dismissing the suit of the plaintiff by the impugned judgment and decree.

6. The learned Counsel for the appellant has submitted that the evidence adduced on behalf of the plaintiff has not been



considered by the appellate court before coming to the finding that the defendant 2nd set Murli Singh was major on 4.4.1978. Elaborating his submission, the learned Counsel has contended that the sale deeds (Ext. 1/A and Ext. 1/B) executed in the year 1977 and 1983 have been brought as evidence on behalf of the plaintiff, wherein Murli Singh has been shown as minor. It has been submitted by the learned Counsel, therefore, that the findings by the appellate court below are vulnerable and substantial question of law arises for consideration in this appeal. No other submission has been made on behalf of the appellant.

7. After perusal of the judgments of both the courts below and considering the submissions it is limpid that the title of Randhir Singh and his three sons over the suit property is not in dispute. The plaintiff has claimed to have derived right, title and interest in the suit property on the basis of sale deed dated 4.4.1978 executed by Randhir Singh and his three sons. It is noticeable that in the said sale deed one of the sons of Randhir Singh has been described as minor. This Murli Singh has subsequently executed a sale deed with regard to his share in the property on 28.10.2003 in favour of defendant 1st set. It is also transparent from the judgment of the appellate court below that one of the vendors of the plaintiff namely Mukund Singh has been examined as DW 15 in the suit and he has stated in his deposition that Murli Singh was major on the date when the sale deed was executed in favour of the plaintiff. Similar statement has been made by PW 3 in para 18 of his deposition. Moreover, the appellate court below has also taken into notice the two sale deeds (Ext. A and



Ext. A/1) of the year 1975 and 1976 executed by Randhir Singh and his three sons including Murli Singh and in these two sale deeds Murli Singh has been described as major. It is not the case of the appellant that any of the vendors in the sale deed dated 4.4.1978 has come to support the case of the plaintiff. The appellate court below has preferred to rely upon the oral as well as documentary evidence adduced on behalf of the defendants in order to come to the conclusion that fraud has been practiced upon Murli Singh in getting his share in the property transferred by sale deed dated 4.4.1978. In absence of any of the vendors of the plaintiff coming in support of the plaintiff, the appellate court below has rightly not relied upon the two sale deeds (Ext. 1/A and Ext. 1/B) of the year 1977 and 1983. During the course of submission it could not be pointed out that any of the vendors in the said two sale deeds (Ext. 1/A and Ext. 1/B) have been examined on behalf of the plaintiff. It is well settled by now that even a wrong finding of fact or insufficiency of evidence will not raise a substantial question of law if there are some evidence on record which are acceptable and have been considered by the court for reaching to the conclusion. This view has been reiterated in the recent decision in the case of **Damodar Las vs. Sohan Devi** by the Apex Court in **AIR 2016 SC 262**.

8. The entire submission on behalf of the appellant centers round reappreciation of evidence in order to interdict the finding of fact by the appellate court below. This Court in view of the fact that those findings are not perverse or unreasonable is not inclined to align with the submission made on behalf of the appellant.

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.)

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