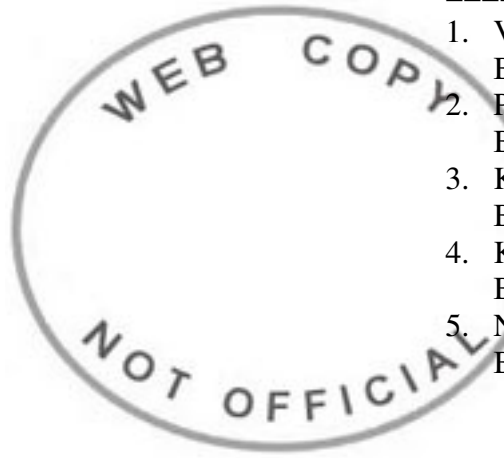


IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.379 of 2013



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1. Vinod Kumar Singh Son Of Trilok Nath Singh Resident Of Mohalla-Barmasia, Jagannath Mandir, Katihar, P.S. And District-Katihar.
 2. Prem Nath Singh Son Of Trilok Nath Singh Resident Of Mohalla-Barmasia, Jagannath Mandir, Katihar, P.S. And District-Katihar.
 3. Kunal Singh Son Of Vinod Kumar Singh Resident Of Mohalla-Barmasia, Jagannath Mandir, Katihar, P.S.- And District-Katihar
 4. Kanchan Kumari D/O Vinod Kumar Singh Resident Of Mohalla-Barmasia, Jagannath Mandir, Katihar, P.S.- And District-Katihar
 5. Neha Kumari D/O Vinod Kumar Singh Resident Of Mohalla-Barmasia, Jagannath Mandir, Katihar, P.S.- And District-Katihar
- Defendants 2nd party Respondents 2nd party
..... Appellants

Versus

1. Most. Beli Devi Wife Of Late Meghnath Yadav Resident Of Mohalla-Barmasia, P.S. And District-Katihar.
2. Pramod Kumar Yadav Daughter Of Late Meghnath Yadav Resident Of Mohalla-Barmasia, P.S. And District-Katihar.
3. Sanjay Kumar Yadav Son Of Late Meghnath Yadav Resident Of Mohalla-Barmasia, P.S. And District-Katihar.
4. Reeta Devi Daughter Of Late Meghnath Yadav Resident Of Mohalla-Barmasia, P.S. And District-Katihar.
5. Geeta Devi Daughter Of Late Meghnath Yadav Resident Of Mohalla-Barmasia, P.S. And District-Katihar.
6. Yugal Kishore Singh Son Of Late Raghunandan Prasad Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
..... Plaintiffs Appellants Respondent 1st set
7. Most.Meena Devi Wife Of Late Brij Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
8. Sunita Kumari D/O Late Braj Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
9. July Kumari D/O Late Braj Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
10. Vikkay Kumar Son Of Late Braj Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
11. Sangeeta Kumari D/O Of Late Braj Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
12. Guddi Kumari D/O Late Braj Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
13. Bimal Kishore Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
14. Gyaneshwar Prasad Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
15. Abhay Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
16. Mukul Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar.
17. Ajay Kumar Singh Resident Of Mohalla-Laliyahi At Present Barmasia, P.S. And District-Katihar. Defendants 1st party

..... Respondents 1st party Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Md. Waliur Rahman
For the Respondent/s : Mr. Devendra Kumar Sinha, Sr. Advocate
Mr. Bajrangi Lal

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

04-04-2016

Heard Mr. W.Rahman, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal granting the decree of specific performance of contract as prayed by the plaintiffs by the appellate court below.

3. The facts in the present context are not in dispute that the plaintiffs filed the suit claiming specific performance of contract against the defendant No. 1 (now deceased) on the basis of unregistered agreement for sale dated 5.3.1998 said to have been executed by defendant No. 1 in favour of the plaintiffs for the suit property. The plaintiffs also impleaded the defendant 2nd set (the present appellants) as defendants in the suit alleging that they purchased the suit property having the knowledge of the agreement for sale in favour of the plaintiffs for the suit property. The plaintiffs also claimed to have come in possession over the suit land on the basis of agreement for sale. The defendants filed the written statement denying the claim of the plaintiffs and resisting the reliefs as prayed by the plaintiffs. On behalf of the defendant 2nd set it was also pleaded that they had no knowledge of the agreement for sale



as propounded by the plaintiffs and it was also asserted that they were purchasers of the suit property for valuable consideration. It is, however, not disputed that by the learned Counsel for the appellants that none of the defendants adduced evidence in the suit or even produced themselves as witnesses in the suit in support of their case as pleaded.

4. The trial court returned the findings on the issues against the plaintiffs and dismissed the suit. In appeal, however, the appellate court on reappraisal of evidence has reversed the findings of the trial court and granted the decree as prayed by the plaintiffs by the impugned judgment and decree.

5. Mr. Rahman, the learned Counsel appearing for the appellants, has submitted that the findings recorded by the appellate court below are based on surmises and conjectures, as no material evidence has been considered. It has been further submitted that the suit was also barred by the provisions of Section 34 of the Specific Performance of Contract Act as the plaintiffs have omitted to claim relief for setting aside the sale deed in favour of the defendant 2nd set (the present appellants). It has been next propounded by the learned Counsel that even though the defendants did not adduce any evidence but still the appellate court below was required to record an objective finding on the basis of materials adduced by the plaintiffs and as the same has not been done, the impugned judgment and decree are vulnerable. No other submission has been made on behalf of the appellants.

6. After perusal of the judgments of both the courts below



and considering the submissions, it is manifest that the plaintiffs have prayed for a decree for specific performance of contract on the basis of agreement for sale said to have been executed by the defendant No. 1 (now deceased) in favour of the plaintiffs. The defendant 1st set (the vendor) and the defendant second set (the subsequent purchasers) both filed the written statement but no evidence was adduced either oral or documentary on their behalf to establish the pleadings made in the written statement. Still further the defendant 1st set and defendant 2nd set did not appear as witness in the suit to prove the pleadings made by them in their written statement. In this backdrop, the findings by the appellate court below that even the initial onus which was squarely on the defendant 2nd set to establish absence of knowledge of agreement for sale has not been discharged and, therefore, the evidence led in that regard by the plaintiffs was legally acceptable. The genuineness and validity of the agreement for sale have also not been denied by the defendants in their written statement and similarly those denials in their pleadings also have not been proved. Further, from the perusal of the judgment of the appellate court below it transpires that the findings have been recorded by the appellate court below in the said fact situation on the basis of the materials on record and this Court has not been persuaded to hold the view that those findings are unreasonable or perverse in any manner. Moreover, in view of Section 19 of the Specific Performance of Contract Act, the submission on behalf of the appellants that the suit was barred under Section 34 has also no substance.

7. 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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