

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.68 of 2014

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1. Shiv Shankar Mandal Son Of Late Ramroop Mandal
 2. Sonia Devi Wife Of Shiv Shankar Mandal Both Resident Of Village Sahoor Tola Sitarampur Post Office Sahoor, Police Station Surajgarha, District Lakhisarai

..... Defendant 1st set Respondents
.... Appellants

Versus

1. Bhushan Mandal
2. Binod Mandal Both Sons Of Late Mahu Mandal Both Are Residents Of Village Sahoor Tola Sitarampur, Post Office Sahoor, Police Station Surajgarha, District Lakhisarai Plaintiffs Appellants
3. Kamdeo Mandal Son Of Late Tikam Mandal
4. Rabindra Mandal
5. Kampany Mandal Minor Sons Of Late Tikam Mandal Under The Legal Guardianship Of Kamdeo Mandal
6. Janardan Mandal Son Of Late Ayodhya Mandal Respondent Nos. 3 To 6 Are Resident Of Village Sahoor Tola Sitarampur, Post Office Sahoor Police Station Surajgarha, District Lakhisarai

..... Defendants Respondents
.... Respondents

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Appearance :

For the Appellant/s : Mr. HARSHWARDHAN SAHAY
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-07-2016

Heard Mr. Harshwardhan Sahay, learned Counsel appearing for the appellants.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of reversal.

3. The suit was filed by the plaintiffs for declaration of their right and title over the suit land and further for declaration that the sale deed dated 8.2.1991 executed by defendant No. 3 in favour of defendant No. 1 is forged and fabricated. The defendants contested the claim of the plaintiffs.

4. The trial court returned the finding in the suit against the plaintiffs and dismissed the suit. In the appeal, however, the appellate court below on reappraisal of evidence has reversed the findings of the trial court and allowed the appeal by setting aside the judgment and decree of the trial court and granting the decree to the plaintiffs as prayed.

5. Learned Counsel appearing for the appellants has submitted that the appellate court below has committed error in law in not considering the fact that defendant No. 3, who was the admitted title holder of the suit property, was not examined in the suit in support of the plaintiffs. It has also been canvassed that as the defendant No. 3 was alive, therefore, the appellate court below has committed error in allowing the prayer of the plaintiff for adducing additional evidence and getting the LTI appearing on the disputed sale deed dated 8.2.1991 examined with that appearing on the sale deed dated 8.6.1991 (Ext. 1). No other submission has been made on behalf of the appellants.

6. After considering the submission and perusal of the judgments of both the courts below it is manifest that the suit property admittedly belonged to defendant No. 3. The plaintiffs have claimed to be purchaser of the suit property by registered sale deed dated 19.4.1991 from defendant No. 3 and have questioned the genuineness and validity of the sale deed dated 8.2.1991 executed by defendant No. 3 in favour of defendant No. 1 for the suit property. It is also admitted fact between the parties that the defendant No. 3 has sold some other property in favour of defendant No. 2 by sale deed (Ext. 1). The appellate court below after allowing the prayer of the plaintiffs as made under Order 41 Rule 27 CPC

has received report of the handwriting expert, who examined the LTI appearing on the disputed sale deed dated 8.2.1991 with the LTI of defendant No. 3 appearing on the admitted sale deed dated 8.6.1991 (Ext. 1). The appellate court below thereafter has considered the evidence available on record as well as the finding recorded by the trial court and thereafter has come to the conclusion that the sale deed dated 8.2.1991 is not a genuine document executed by defendant No. 3 in favour of defendant No. 1 with regard to the suit property. It is demonstrably clear that the findings of fact have been recorded by the appellate court below on the basis of evidence which are acceptable and could have been relied upon. This Court has not been persuaded to find any perversity or unreasonableness in the findings recorded by the appellate court below.

7. As such, this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

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