

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.63 of 2014

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Mokhtar Rai S/O Late Dhunmun Rai R/O Village And P.O Ekderawa, P.S+ Distt-
Gopalganj.

.... Appellant/s

Versus

1. Binda Rai S/O Late Abhiraj Rai R/O Village And P.O- Ekderawa, P.S+ Distt-
Gopalganj. Plaintiff Respondent
2. Ramchandra Rai S/O Late Dhunmun Rai R/O Village And P.O- Ekderawan,
P.S+ District- Gopalganj. Defendant Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Mahesh Prasad No. 2
Mr. AJAY MISHRA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2016

Heard Mr. Mahesh Prasad No. 2, learned Counsel appearing
for the appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of affirmance granting the decree to the plaintiff.
The necessitous facts are that the plaintiff filed a suit for declaration of
title and recovery of possession over the suit land . The plaintiff claimed
his title over the suit land on the basis of sale deed dated 10.7.1962
executed by the father of the defendants in favour of the plaintiff. The
defendants appeared and contested the claim of the plaintiff denying the
valid execution of the sale deed alleging forgery, fabrication and fraud
against the plaintiff.

3. Both the courts below have returned the finding that the sale
deed dated 10.7.1962 executed in favour of the plaintiff by the father of
the defendants is legal and valid document conferring valid title to the

plaintiff over the suit land. The suit was therefore decreed and thereafter the appeal filed by the defendants has also been dismissed by the impugned judgment and decree.

4. Mr. Mahesh Prasad No. 2, during his submission has accepted that the defendants have not taken any steps for setting aside or cancellation of the sale deed before any competent court and have also not filed any counter claim in the suit against the said sale deed. The learned Counsel for the appellant, however, has contended that as the plaintiff happened to be the maternal grand son of the defendants' father, therefore, it was upon the plaintiff to establish the valid execution of the sale deed in view of the close relationship and presumption of execution of the sale deed in favour of the plaintiff under undue influence. The learned Counsel for the appellant, however, could not point out any averment in the written statement filed by the defendants alleging undue influence or any circumstance showing domination of the will of the vendor by the plaintiff. The learned Counsel for the appellant has also relied upon the decision of the Apex Court reported in AIR 1973 SC 435 in support of his submission. No other submission has been made on behalf of the appellant.

5. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiff has based his claim of title upon the registered sale deed executed by the father of the defendants on 10.7.1962. The fact stands admitted that the said sale deed was not challenged by the father of the defendants or even after his death by the defendants at any point of time. The courts below have taken into notice that after getting the sale deed the plaintiff has

redeemed the mortgage over the suit property by paying the mortgage amount to the mortgagee and have referred to the mortgage deed (Ext. 1/5) along with the note of redemption thereupon. The courts have also taken into notice that the Jamabandi for the suit land has been created in the name of the plaintiff and he has paid the rent to the State of Bihar and granted rent receipt (Ext. 2). There is also no challenge to the validity of the registered sale deed on the basis of undue influence or fraud by making relevant pleading much less specific pleading in that regard and there is no presumption that only because the parties to a transaction are closely related, undue influence has been exercised in obtaining the sale deed.

6. Both the courts below have analysed the evidence adduced by the parties and reached to the conclusion that the sale deed in favour of the plaintiff is legally valid and genuine document. The principle laid down in the decision relied upon by the learned Counsel for the appellant would also not enure to the benefit of the appellants, in the facts and circumstances as there is no pleading at all with regard to undue influence or the details of the fraud.

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.)

Snkumar/-

AFR/NAFR	
CAV DATE	
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