

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.134 of 2014

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1. Birendra Prasad.
 2. Ganga Prasad.
Both sons of Ramashray Prasad.
 3. Ramdayal Prasad, Son of Ramadhar Prasad.
All are resident of Village-Bankatwa, P.S. Paharpur, District-East Champaran

.... (Defendant-appellant)- Appellants.
Versus

1. Ramchandra Prasad, Son of Hari Bhajan Prasad, Resident of Village-Lohiar Pakaria, P.S. Harsidhi, District-East Champaran.

.... (Plaintiff-Respondent)-Respondent 1st Set.

2. Ramashish Prasad, Son of Ramkishun Prasad, Resident of Village-Bankatwa, P.S. Paharpur, District-East Champaran.
3. Munshi Prasad.
4. Manager Prasad.
5. Ramayodhya Prasad.

6. Rambahadur Prasad, Respondent No. 3 to 6 are Son of Narain Mahto, Resident of Village-Bankatwa, P.S. Paharpur, District-East Champaran.

...(Dedendants-Respondents)..Respondent 2nd Set

7. Pappu Kumar.
8. Pintoo Kumar, Both respondent no. 7 and 8 are s/o Bageshwar Prasad.
9. Pratima Devi, w/o Bageshwar Prasad.
10. Babita Devi, D/o Bageshwar Prasad, All respondents no. 7 to 10 are r/o village-Bankatwa, p.s. Paharpur, District- East Champaran.
11. Champa Devi, w/o Rajeshwar Singh, r/o Village- Ghogharaha, P.S. Harsidhi, District- East Champaran.

...(Defendants-Appellants)-Respondents 3rd Set.

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Appearance :

For the Appellant/s : Mr. Anant Kumar Bhaskar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

5 29-09-2016 Heard learned counsel appearing on behalf of the appellants and learned counsel for the respondents.

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

3. The suit was filed by the plaintiff for declaration of his title over the suit property and recovery of possession. The facts are not in dispute that the suit land originally belonged to



defendant no. 4 and the plaintiff claimed to have purchased the suit land by sale deed dated 06.06.1972, whereas contesting defendant asserted to have purchased the same land by two sale deeds dated 03.11.1972 and 23.04.1973 from defendant no. 4 and claimed to have got title and possession over the purchased property. It was also the case of the contesting defendants that the sale deed in favour of the plaintiff was executed by the defendant no. 4 in order to save his property from execution and for which, no consideration money was paid.

4. Both the courts below have returned the findings on material issues in favour of the plaintiff. The suit was decreed and thereafter the appeal filed by the defendants has been dismissed by the impugned judgment and decree.

5. Learned counsel for the appellants has submitted that the finding by the courts below are perverse and cannot be sustained. It has been contended that no consideration money was paid with regard to the sale deed dated 06.06.1972, and therefore the same was not legally valid document of title. It has further been pointed out that this fact has been supported by the witnesses examined on behalf of the contesting defendants, but the learned court below wrongly held that no evidence has been led by the contesting defendants on the point of non-payment of the consideration money. It has further been submitted that the issue recorded on

the point of the possession which was issue no. 4 has also been wrongly determined on the basis of the document which was in fact executed during the pendency of the suit and could not have been relied upon.

6. Learned counsel for the plaintiff- respondent has however pointed out that no counter claim has been filed by the contesting defendants questioning the finding on the legality or validity of the sale deed.

7. After considering the submissions and perusal of the judgments of the courts below, it is evident that the plaintiff has filed the suit for declaration of his title and manifestly the contesting defendants have not claimed adverse possession over the suit property, rather they have claimed their own title and possession over the suit property on the basis of the two sale deeds executed by the defendant no. 4. The claim of the plaintiff, however, is based upon earlier sale deed in his favour for the suit land executed by the defendant no. 4. It would be pertinent to notice that the defendant no. 4, in his written statement in the suit, has accepted the execution of the sale deed in favour of the plaintiff. The principle is well settled that a stranger to a transaction of sale cannot question the payment of consideration money. In the present case, the contesting defendants are admittedly stranger to the sale deed of the plaintiff

and in fact are subsequent purchasers of the same land. In this view of the matter, the issue of non-payment of consideration money could not have been raised and could not be material to uphold the claim of the defendants over the suit property.

8. So far the submission with regard to possession over the suit land is concerned, the suit has been filed for recovery of possession on the basis of title. The issue of possession over the suit land becomes crucial only when the defendant claims adverse possession of suit land; otherwise it is the claim of the rival title over the suit property alone which will be decisive consideration before the courts. In the present case both the parties have asserted their own entitlement of possession over the suit property on the basis of their purchases. The findings by the courts below are recorded on the basis of evidence which were acceptable and could have been relied upon. This Court, therefore, does not find any perversity or unreasonableness in the findings by the courts below.

9. Ex consequenti, this Court does not find any substantial question arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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