

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.183 of 2014**

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1. Noor Alam
  2. Zahoor Alam
  3. Gayasuddin All are sons of Late Latif Mian and Resident of Village- Kunjlahi, P.O. Kunjlahi, P.S. Nautan, District- West Champaran.

.... .... Appellant/s

Versus

1. Abdul Rahman @ Abdul Rahman Mian Son of Late Rafique Mian, Resident of Village- Khadda Rahimpur, P.O.- Kunjlahi, P.S. Nautan, District- West Champaran.
2. Mozaja Khatoon @ Manoja Khatoon, wife of Hasmuddin, D/o Late Rasool Mian resident of village- Dhokharaha, P.O. Ramnagar, P.S. Ramnagar, District- West Champaran.
3. Nazama Khatoon, W/o Mahazir Ansari, D/o Late Rasool Mian, Resident of village- Dharampur, P.O. Parsa, P.S. Bagha, District- West Champaran.
4. Ashama Khatoon W/o Isharul Ansari Anwarul Ansari D/o Late Rasool Mian, Resident of village- Dharampur, P.O. Parsa, P.S. Bagha, District- West Champaran.
5. Amin Mian S/o Late Guljar Mian, Resident of Village- Khadda Rahimpur, P.O.- Kunjlahi, P.S. Nautan, District- West Champaran.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Uma Shankar Singh, Sr. Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 01-12-2016**

Heard Mr. Uma Shankar Singh, learned counsel for the appellants.

The defendant 2<sup>nd</sup> set in the suit are the appellants in this appeal against the judgment and decree of affirmance granting the



decree to the plaintiff, as prayed.

The matrix of facts discloses that one Guljar Miyan had two sons and four daughters. The plaintiff is the grand son of said Guljar Miyan and has come out with the case that the two daughter of Guljar Miyan namely Bibi Mahajeedan and Bibi Sarla had sold the suit land to the father of the plaintiff for Rs. 80/- and had also executed the sada sale deed in that regard. The suit has been filed by the plaintiff for declaration of title over the suit land and further for declaration that the subsequent sale deed executed by the defendant no. 1 Bibi Junabo Khatoon daughter of Bibi Mahajeedan in favour of the defendant 2<sup>nd</sup> set with regard to the suit land was null and void and not binding upon the plaintiff. The suit was contested by the defendant 2<sup>nd</sup> set who by filing written statement denied the assertion made by the plaintiff and claimed his title and possession over the suit land on the basis of the purchase from defendant no. 1.

Both the courts below have returned the findings on the material issues against the defendants and have come to the finding that the plaintiff has succeeded in establishing his title over the suit land on the basis of purchase of the suit land by his father from Bibi Mahajeedan and Bibi Sarla. The suit was, accordingly, decreed and thereafter the appeal by the defendant 2<sup>nd</sup> set has been dismissed by the impugned judgment and decree.



Learned senior counsel for the appellants has submitted that the frame of the suit as filed by the plaintiff is defective as Bibi Sarla has not been impleaded as defendant in the suit. Elaborating his submissions, it has been contended that the plaintiff has set up the case of purchase of the suit land from both Bibi Mahajeedan and Bibi Sarla and in that view of the matter the impleadment of Bibi Sarla as party to the suit was a necessary legal requirement. It has been further canvassed by learned senior counsel that all the witnesses examined on behalf of the defendant 2<sup>nd</sup> set have supported the case of the defendant 2<sup>nd</sup> set. During the course of submission, however, it has been accepted that no prayer was made by them in the court below for appointment of a handwriting expert in support of their case that Bibi Mahajeedan and Bibi Sarla never executed the sada sale deed (Ext. 2/A) in favour of the plaintiff. Learned senior counsel has also maintained that both the courts below have committed material irregularity in ignoring the material evidence led on behalf of the defendant 2<sup>nd</sup> set. It has also been submitted that the vendor of the defendant 2<sup>nd</sup> set has gone in collusion with the plaintiff and therefore in her deposition that she has supported the case of the plaintiff.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the plaintiff has claimed his title over the suit land on the basis of sada sale deed said



to have been executed by Bibi Mahajeedan and Bibi Sarla with regard to the suit land. There is no dispute about the title of Bibi Mahajeedan and Bibi Sarla over the suit land inasmuch as the contesting defendants have claimed to have purchased the suit land from the defendant no. 1 Bibi Junabo Khatoon who is none else but the daughter of Bibi Mahajeedan. However, the courts below have taken into notice the statement made in her deposition by Bibi Junabo Khatoon which do not support the case as pleaded by the defendant 2<sup>nd</sup> set. The defendant 2<sup>nd</sup> set have also omitted to substantiate their plea by cogent evidence that the sada sale deed (Ext. 2/A) was not executed by Bibi Mahajeedan and Bibi Sarla.

Both the courts below have recorded the findings on the basis of scrutiny of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find perversity or unreasonableness in the findings by both the courts below. So far as the submission with regard to the non-impleadment of Bibi Sarla as party to the suit is concerned, it is admitted position that the contesting defendant 2<sup>nd</sup> set has not claimed to have purchased the suit land from Bibi Sarla and thus they are not the representative of her interest in the suit property in any manner. If the plaintiff has not chosen to implead Bibi Sarla as party, it is obvious that the decree would not be binding upon Bibi Sarla. In fact no such relief has been claimed



against Bibi Sarla who is one of the vendors by the plaintiff.

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

**(V. Nath, J)**

Devendra/-

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