

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.42 of 2014

=====

1. Noor Alam Son Of Late Sheikh Oli Mohammed
2. Amir Alam Son Of Late Sheikh Oli Mohammed
3. Abre Alam Son Of Late Sheikh Oli Mohammed
4. Shaiyda Khatoon Wife Of Takiyuddin And D/O Kalimullah @ Sheikh Bhola
5. Shalma Khatoon Wife Of Mustafa & D/O Late Sheikh Oli Mohammed Both R/O Village Jalalpur, P.S.-Hasanpura, District Siwan
6. Nazma Khatoon Wife Of Nazam & D/O Late Sheikh Oli Mohammed R/O Village Sareya, P.S. Thawe, District-Gopalganj
7. Subuktara Wife Of Nurul Haque & D/O Sk. Oli Mohammed R/O Village-Chet Chapra, P.S. Barhariya, District Siwan
SL Nos. 4 to 7 at present R/o Village- Bagaha Nizamat , P.s.- Jhawe, District-Gopalganj Appellants

Versus

1. Laddu Manjhi Son Of Dharikshan Manjhi (Deceased) R/O Village-Bagaha Shaida, P.S. Thawe, District Gopalganj
2. Kish Kumari Devi Wife Of Adalat Manjhi & D/O Dharikshan Manjhi Deceased R/O Village Sherbakhraur, P.P. Bhishanpar Bazar, P.S. Barauli, District Gopalganj
3. Kishmish Devi Wife Of Shri Kishun Manjhi & D/O Dharikshan Manjhi Deceased R/O Village Bhopatpur, P.S.-Kishanpura, P.S.-Basantpur, District-Siwan
4. Uma Devi Wife Of Mukhdeo Manjhi, D/O Dharikshan Manjhi Deceased R/O Village Ekdarwa, P.O. Jamsar, P.O. Uchkagaon, District Gopalganj, At Present Village Bagaha Shaida, P.S. Thawe, District Gopalganj
5. Girjit Manjhi Son Of Byadha Manjhi
6. Dwarika Manjhi Son Of Byadha Manjhi
7. Mukha Devi Wife Of Indradeo Manjhi & D/O Radha Manjhi (Deceased) All R/O Village Gajiyapur, P.S. Basantpur, District Siwan, At Present R/O Village Bagaha Shaida, P.S. Thawe, District Gopalganj
8. Buchi Manjhi Son Of Bayadha Manjhi
9. Nandlal Manjhi Son Of Late Bayadha Manjhi
10. Salahatiya D/O Late Byadha Manjhi
11. Sanapaliya D/O Late Byadha Manjhi
12. Panpaliya D/O Late Byadha Manjhi
13. Lalatiya D/O Late Byadha Manjhi
14. Lal Soni Devi Wife Of Late Dhura Manjhi
15. Ram Das Manjhi Son Of Late Dhura Manjhi
16. Suresh Manjhi Son Of Late Dhura Manjhi
17. Ram Ishwar Manjhi Son Of Late Dhura Manjhi
18. Ramayan Manjhi Son Of Late Dhura Manjhi All R/O Village Bagaha Shaida, P.S. Thawe, District Gopalganj
19. Smt Kamali Devi Wife Of Name Not Known, D/O Late Dhura Manjhi R/O Village Dudhara, P.S. Goreya Kothi, District Siwan, At Present R/O Village Bagaha Shaida, P. S Thawe, District Gopalganj
20. Margub Ali Son Of Late Wakil Ahmad
21. Ashif Ali Son Of Late Wakil Ahmad
22. Ragib Ali Son Of Late Wakil Ahmad
23. Masum Ali Son Of Late Wakil Ahmad
24. Mansur Ali Son Of Late Wakil Ahmad
25. Anwari Begum D/O Late Wakil Ahmad
26. Ansari Begum D/O Late Wakil Ahmad All R/O Village -Indarwa Ebadullah,

P.S. And District Gopalganj

.... Respondents

Appearance :

For the Appellant/s : Mr. KHALID AHSAN

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-10-2016

Heard Mr.Raghib Ahsan, learned senior counsel

appearing for the appellants.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit.

The plaintiffs filed the suit for declaration that the defendant nos. 1 to 4 were the mortgagee of the suit property but after the redemption of the mortgage under Section 12 of the Bihar Money Lenders Act 1975 they have now no right, title or interest in the suit property. The relief was also prayed for recovery of possession alongwith mesne profits.

Both the courts below have reached to the concurrent finding of fact that the plaintiffs have failed to establish that the defendant nos. 1 to 4 were the mortgagee over the suit property and the said mortgage had been redeemed under Section 12 of the Bihar Money Lenders Act 1975. Both the courts below have further found that the defendant nos. 1 to 4 are the title holders of the suit property by virtue of the purchase by registered sale deed dated 31.05.1950.



While criticizing the impugned judgments, the learned senior counsel for the appellants has submitted that both the courts below have committed error in law in ignoring the material evidence as well as misinterpreting the same. It has been argued that the judgment and decree in previous T.S.No.920/1951 operated as res judicata against the defendants nos. 1 to 4 wherein it has been held that their vendors were not competent to transfer the suit property. It has been further contended that the status of the defendant nos. 1 to 4 as mortgagee of the suit land is also established from the mortgage deed dated 04.01.1958 (Ext.1) whereby earlier sub mortgagee Wakil Ahmed had further mortgaged the suit land with defendant nos.1 to 4 . Elaborating the submissions, it has been canvassed that the final decree in the above earlier title suit also established the fact that no property was allotted in the share of the father of the defendant nos. 1 to 4 though he was a party defendant in the suit. No other submission has been made on behalf of the appellants.

After consideration of the submissions and perusal of the impugned judgments, it is manifest that the suit has been filed claiming the defendant nos. 1 to 4 as mortgagee of the suit land whose mortgagee had been extinguished by virtue of Section 12 of the Bihar Money Lenders Act 1975. It would be condign here to take into notice the pleading of the plaintiffs which have been extensively taken into consideration by both the courts below in their judgments. The



plaintiffs have averred that the suit land originally belonged to Barkat Mian who mortgaged the same alongwith another Plot No.567 with Sheikh Hafiz and put the said mortgagee in possession. Though the details of this mortgage was not mentioned by the plaintiff in the plaint but the statement made in deposition by the plaintiff no.1 examined as P.W.5 discloses that the said mortgage was made in the year 1930. The plaintiff's further case was that the two daughters of Barkat Mian , after his death, sold their shares to Wali Mohammad by sale deed dated 07.09.1951 who filed the T.S.No.920/1951 for partition alongwith another purchaser as plaintiff against the heirs of Barkat Mian as well as the father of defendant nos.1 to 4. From the perusal of the preliminary decree (Ext.9) and final decree (Ext.9/A) it has been found by both the courts below that the said suit was decreed with regard to 9 ana 8 pie share in favour of the plaintiffs of that suit. Though the plaintiff has stated in the plaint that the purchaser Wali Mohammed and others mortgaged the suit property with Wakil Ahmed on 25.01.1955 (Ext.1/A) and the mortgagee Wakil Ahmed sub mortgaged the same property with Dharikshan Dushadh (Ext.1) but the courts below have found that the final decree (Ext.9/A) prepared on 21.10.1958 and the delivery of possession effected on 30.06.1962 did not mention the fact of this mortgage and sub-mortgage of the suit land nor delivery of possession was effected with encumbrance. It is evident that the suit land was admittedly



mortgaged on 25.01.1955 by Wali Mohammed (the predecessor of the plaintiffs) with Wakil Ahmed but he was not made a party in the present suit nor it was the case of the plaintiffs that the said mortgage was ever redeemed. In view of the further admitted fact that the defendant nos.1 to 4 were only the sub-mortgagee of the suit land from Wakil Ahmed, both the courts below have correctly come to the conclusion that Wakil Ahmed was a necessary party to the suit in these facts and circumstances.

Both the courts below have further found that the contesting defendant nos. 1 to 4 have claimed their title over the suit land on the basis of sale deed dated 31.05.1950 (Ext.A), and their possession over the suit property as purchasers and not as mortgagee was upheld by the Deputy Collector Land Reforms while dismissing the prayer of the plaintiffs by the order (Ext.7) passed in the proceeding initiated at the instance of the plaintiffs under Section 12 of the Bihar Money Lender's Act 1975. Significantly the trial court has further found that the case of the plaintiff to have tendered Rs. 422/- 15 Anna as mortgage money to the defendant nos. 1 to 4 was only a set up story on the ground of absence of any pleading of such mortgage for the said amount with defendant nos. 1 to 4 in the plaint, and further in view of the fact that this mortgage amount of Rs. 422/- 15 Anna was found mentioned in the sale deed dated 07.09.1951 (Ext.2) executed in favour of the predecessor of the plaintiff Wali

Mohammad by the daughters of Barkat Mian.

All the above mentioned material findings of fact have been made by both the courts below on the scrutiny of evidence which were acceptable and could have been relied upon. The entire submission on behalf of the appellants in this appeal has centered around reappreciation of evidence to persuade this Court to reach to another conclusion.

This Court in second appellate jurisdiction is not impressed with the submissions made on behalf of the appellants. In the opinion of this Court the conclusions arrived by both the courts below on the basis of evidence are not perverse or unreasonable in any manner.

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)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.10.2016
Transmission Date	