

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.380 of 2013

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Baij Nath Prasad son of Vishwanath Prasad, resident of village Pachrukhiya
kala, P.S. Koilwar, Pargana Barhgawan, District Bhojpur.

.... Appellant/s

Versus

1.Rajendra Prasad.

2.Dinesh Prasad.

3.Kashinath Prasad.

All sons of Jagarnath Sah

4. Surendra Prasad.

5.Satish Prasad

6.Suresh Prasad

7. Sidheshwar Prasad

8.Umesh Prasad.

All sons of Shionath Prasad, deceased

9.Ram Bhajan Sah, son of Bhalu Sah deceased.

All residents of village Pachrukhiya Kala, P.S. Koilwar, Pargana
Barhgawan, district Bhojpur.

.... Plaintiffs/Respondents First Set/Respondent 1st Set.

10.Lakhpati Kuar, wife of late Jagannath Prasad (expunged) and substituted
by order dated 19.03.2010.

10(a) Sheo Kumari Devi

10(b) Shakuntala Devi

11(c) Shanti Devi

10(d) Kanti Devi

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Appearance :

For the Appellant/s : Mr. Laxmi Narayan Das, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

4 09-03-2016 Heard Mr. L.N. Das, learned counsel appearing on

behalf of the appellant. The defendant no.2 in the suit is the

appellant in this second appeal against the judgment and decree

of affirmance granting the decree to the plaintiffs, as prayed.

2. The plaintiffs filed a suit for declaration that the

sale deed dated 03.02.2001 executed by defendant no 1 in favour

of defendant no. 2 is illegal, collusive, without consideration and

not binding upon the plaintiffs. The further prayer was with

regard to grant of permanent injunction against defendant no. 2.

3. In the suit the defendant no. 1 who was the vendor of defendant no. 2, appeared and filed his written statement supporting the case of the plaintiff and stating that as he was 85 year old person and the sale deed in question was obtained by defendant no. 2 by undue influence and fraudulent means. Defendant no. 2, however, contested the claim of the plaintiffs and supported the legality and validity of the sale deed in question. The trial court returned the findings on the issues in favour of the plaintiffs and granted the decree as prayed in appeal by the defendant no. 2. The appellate court below on reappraisal of evidence concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

4. Mr. Das, learned counsel appearing for the appellant, has submitted that both the courts below have erred in law in declaring the entire sale deed to be bad ignoring the fact that the vendor of the plaintiffs i.e. defendant no.1 was having some share in the suit land. It has been further also submitted that defendant no. 1, though he died during the pendency of the suit and substituted by his widow, was not examined in the suit and his widow was also not examined in the suit. The

submission therefore has been made that the findings by the courts below are vulnerable and fit to be interdicted at the second appellate stage.

5. After perusal of both the judgments and considering the submissions, it is manifest that the plaintiffs and defendant no. 1 are admittedly co-sharers. The sale deed dated 03.02.2001 was executed by defendant no. 1 in favour of defendant no. 2, wherein, there was a clear recital that the defendant no. 1 would give equivalent share to the other co-sharers in lieu of the transfer of the suit land to defendant no. 2. However, there was no evidence in the suit that such equivalent land was given in the share of other co-sharers by the defendant no 1. The findings by both the courts below as well as the relief sought for by the plaintiffs clearly show that the courts below have only granted the declaration that the sale deed would not be binding upon plaintiffs. This Court, therefore, does not find substance in the submission made on behalf of the appellant that learned courts below have wrongly declared the entire sale deed of the defendant no. 2 to be bad. The submission on behalf of the appellants that defendant no. 1 or after his death his widow was not examined in the suit has also been taken into notice by the courts below. This Court has not been persuaded to

find any unreasonableness or perversity in the findings by both the courts below.

6. 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)

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