

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.285 of 2011

=====

Gaffar Khan, Son of Late Ali Raza Khan, R/o Village- Champapur , P.O. & P.S.-
Ramgarhwa, District-East Champaran.

.... Appellant.

Versus

1. Bharat Pd. Gupta Son of Ramashish Sah, R/o Village- Champapur , P.O. & P.S.-Ramgarhwa, District-East Champaran.
2. Mumtaz Khan, Son of Late Ali Raja Khan.
3. Munaf Khan, Son of Late Ali Raja Khan.
Both Residents of Village- Champapur , P.O. & P.S.-Ramgarhwa, District-East Champaran.
4. Raifun Nisan Wife of Late Ali Raja Khan.
5. Bibi Zahida Khatoon Wife of Late Kalam Khan.
6. Nasir Khan Son of Late Kalam Khan.
7. Bashir Khan Son of Late Kalam Khan.
All R/o Village- Champapur , P.O. & P.S.-Ramgarhwa, District-East Champaran.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. IMAMUDDIN KHAN

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-11-2016

Heard Mr.Bajrangi Lal, learned counsel
appearing for the appellant.

The plaintiff is the appellant in this appeal against
the judgment and decree of reversal.

The suit was filed by the plaintiffs for partition
and for declaration that the sale deed executed on 23.03.1973 by his
mother defendant no.3 alongwith the brother of the plaintiff in favour
of the defendant no.7 was void and not binding upon the interest of
the plaintiff over the suit property. The suit was contested by the



defendant no.7.

The trial court returned the finding in favour of the plaintiff and granted the decree as prayed. However, in appeal by the defendant no.7, the appellate court below on reappraisal of evidence has reversed the findings of the trial court, allowed the appeal and set aside the judgment and decree in favour of the plaintiff as granted by the trial court.

Mr. Bajrangi Lal, learned counsel appearing for the appellant has submitted that the appellate court below has committed error in ignoring the material evidence on record. It has been propounded that the crucial issue in the suit was as to whether the mother of the plaintiff could have transferred the entire suit property alongwith her one son Kalam Khan in favour of the defendant no.7 but this issue has been wrongly determined by the appellate court below. The learned counsel has also submitted that the starting point of limitation for filing the suit would be the date of knowledge of the sale deed as acquired by the plaintiff and therefore the suit was not barred by limitation as claimed by the appellate court below. No other submission has been made on behalf of the appellant.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the crucial issue in the suit was the legal validity of the transfer by sale deed



dated 23.03.1973 (Ext.D) executed by defendant no.3 (mother of the plaintiff) alongwith her son Kalam Khan (since deceased) in favour of the defendant no.7. It has been taken into notice by the appellate court below that the plaintiff has accepted in his plaint regarding the knowledge of the transfer by the defendant no.3 and Kalam Khan in favour of defendant no.7. It has been found by the appellate court below that the plaintiff attained majority in 1989 and therefore was required to file the suit questioning the said alienation within three years of attaining majority. The appellate court below thereafter has come to the conclusion that the suit filed in the year 1996 was barred by limitation. The matter has been examined from another angle also by the appellate court below and it has been found that the suit property was mortgaged by the admitted owner Ali Raja Khan by executing mortgage deeds (Ext.C Series). It has been further found that the defendant no.7 had redeemed the said mortgage after purchasing the suit property from the defendant no.3 and Kalam Khan who sold the said property in accordance with the direction by Ali Raja Khan. The appellate court below has found that the alienation in question was done as there was necessity to pay off the debt and therefore the alienation was valid for the said reason also.

During the course of submission on behalf of the appellant the fact of the execution of mortgage deed by Ali Raja Khan



as evidenced from Ext. C Series and the redemption of those mortgagees by defendant no.7 as evidenced by Ext. B Series could not be shown to have been denied or disputed. The findings by the appellate court below have been recorded on the basis of scrutiny of evidence which were acceptable and could have been relied upon and this Court has not been persuaded to find the same to be 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/-

U			
---	--	--	--

