

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.453 of 2012

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1. Mostt. Shiv Dulari Devi W/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 2. Rajesh Kumar Dubey S/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 3. Shailesh Kumar Dubey S/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 4. Ravikesh Kumar Dubey S/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 5. Sonu Kumar Dubey S/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 6. Ranjita Kumari D/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah
 7. Archana Kumari D/O Late Ram Chandra Dubey R/O Village - P.O. & P.S. Bagaha, District - West Champaran At Bettiah

..... Plaintiff Respondent 1st party

.... Appellants

Versus

1. (i). Raju Thakur
(ii). Tuntun Thakur, both sons Bharat Thakur, R/O Village - Belwa, P.S. Laukariya, District - West Champaran, Bettiah
(iii). Sahila Devi, wife of Premchand Dubey, resident of Vilage Utwalia, P.S. Chainpur, District East Champaran
(iv). Sabita Devi, wife of Bharat Thakur, resident of Bhawanipur, P.S. Kangali, District West Champaran
(v). Mala Devi wife of Santosh Pandey R/O Village - Belwa, P.S. Laukariya, District - West Champaran, Bettiah Defendant Appellant
2. Praduman Mishra S/O Indrajit Mishra R/O Village - P.O. & P.S. Bagaha, At Present Vill. Jokaha, P.S. Chanpatia, District - West Champaran At Bettiah
..... Defendant No. 1 Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. VIJAY KUMAR SINGH NO. 1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-08-2016

Heard Mr. Dronacharya, learned Counsel appearing for the appellants.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit for specific

performance of contract filed by the plaintiff.

3. From perusal of judgments of both the courts below and submission on behalf of the appellants, the fact stands admitted that initially the suit land measuring 14 ½ dhurs was owned by defendant No. 1 and his sister Sitawati Devi jointly to the extent of half share each. The plaintiff has claimed to have entered into an agreement for sale with the defendant No. 1 on 14.5.1986 (Ext. 2) for purchase of the entire 14 ½ dhurs of land for Rs. 5800/-, out of which the plaintiff has claimed to have paid Rs. 1400/- by way of advance money. The plaintiff has pleaded in the plaint that there had been partition between the defendant No. 1 and his sister Sitawati Devi, wherein the suit land measuring 14 ½ dhurs was allotted entirely in the share of defendant No. 1 and in lieu of her share Sitawati Devi, sister of defendant No. 1, got money. The defendant No. 1 contested the case of the plaintiff, denying the payment of advance money and denial of agreement for sale. In his written statement, the defendant No. 1 disclosed that he had sold 7 dhurs of land to Rajbanshi Devi by registered sale deed dated 18.6.1986 (Ext. 'A') and also disclosed that the remaining area of the suit land was also sold to Rajbanshi Devi by his sister Sitawati Devi by registered sale deed dated 27.9.1986 (Ext. 'A/1'). The plaintiff thereafter got his plaint amended by incorporating the relief with regard to the sale deeds in favour of Rajbanshi Devi to be void and not binding upon the plaintiff and impleading Rajbanshi Devi as defendant No. 2. However, the sister of defendant No. 1, who admittedly got half share in the suit land was not impleaded by the plaintiff as party in the suit.

4. The trial court returned the finding on issues in favour of the

plaintiff and granted the decree as prayed. In appeal, filed by the defendant No. 2 Rajbanshi Devi, the appellate court below on reappraisal of evidence has reversed the finding of the trial court and set aside the judgment and decree of the trial court.

5. Mr. Dronacharya, learned Counsel for the plaintiff-appellant, has submitted that the plaintiff's case in the plaint itself was that sister of defendant No. 1 did not get any share in the suit property and in that view the plaintiff did not implead her as party through her transferee was impleaded as defendant No. 2 in the suit. It has also been submitted that the appellate court below has given no reasoning while setting aside the finding of the trial court. It has thus been canvassed that the judgment passed by the appellate court below is not sustainable.

6. After considering the submission and the facts and circumstances of the case, it is manifest that the plaintiff has omitted to implead the sister of defendant No. 1 as party defendant in the suit although the plaintiff has initially accepted that she was having half share in the suit property. The plaintiff had agreed to purchase the entire suit land from defendant No. 1 alone on the basis of the case that in partition the sister of defendant No. 1 did not get any share in the suit land which was allotted to defendant No. 1. In view of this case of the plaintiff it would be evident that the plaintiff cannot get the relief as prayed in absence of the sister of the defendant No. 1 as party in the suit. Further the plaintiff has impleaded defendant No. 2 as party defendant on the assertion that she was subsequent purchaser having knowledge of the agreement for sale in question but the fact is apparent that the plaintiff was aware that the defendant No. 2 was not purchaser of 7 dhurs of the

suit land from the defendant No. 1 (vendor of the plaintiff) rather she had purchased the said property from the sister of defendant No. 1 who has not been a party to the suit.

7. In the background of these facts, this Court finds that the plaintiff was not entitled for grant of the decree for specific performance of contract for the suit land measuring 14 ½ dhurs. Moreover, the finding of fact has been recorded by the appellate court below on the issue that the plaintiff was ready and willing to perform his part of agreement, against the plaintiff on the basis of scrutiny of evidence, which are acceptable and could have been relied upon. The appellate court below has also recorded finding that defendant No. 2 cannot be said to be a purchaser with the knowledge of agreement for sale of the suit land by defendant No. 1.

8. In view of the aforesaid discussion, this Court does not find that any substantial question of law is arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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