

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.344 of 2013

=====

1. Nirmala Devi Widow Of The Ambika Prasad Resident Of Town Nawadah, Station Road, Nawadah, P.S. And District-Nawadah

2. Anila Devi Wife Of Kedar Prasad Resident Of Village-Dhamni, P.S.-Rajauli, District-Nawadah.

3. Manorma Devi Wife Of Kedar Prasad Resident Of Village-Resident Of Town Nawadah, Mohalla-Vijay Bazar, Nawadah, P.S. And District Nawadah

4 (a) Gautam Abhishekh (dead)

4(b). Rohan Verma, both sons of Late. Kedar Prasad Resident Of Town Nawadah, Mohalla-Vijay Market, Nawadah, P.S. And District Nawadah

4(f). Anshu Kumari, wife of Ganesh Kumar Sah, resident of Jasidih, P.S. Jasidih, District Deoghar

4(ii). Anamika Kumari, wife of Abhai Kumar, resident of Chhatar Bagicha, Lohardaga, P.S. and District Lohardaga

4(iii) Anpurna Kumari wife of Sachin Kumar, resident of town Kendua, P.S. Kendua, District Dhanbad (Jharkhand)

4(iv) Sanu Kumari

4(v). Kimmi Kumari, both daughters of Late Kedar Prasad, resident of Town Nawadah, Mohalla Vijay Market, P.S. and District Nawadah

.... Appellants

Versus

1. Prahlad Singh Son Of Dashrath Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

2. Sheo Shankar Singh Son Of Dashrath Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

3. Anil Singh Son Of Dashrath Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

4. Sunil Singh Son Of Dashrath Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

5. Dashrath Singh Son Of Kishun Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

6. Shanti Devi Widow Of Late Ramlal Singh Resident Of Village-Patwa Sarai, P.S. And District-Nawadah.

7. Naresh Prasad Singh, son of Shamlal Singh

8. Sanjay Kumar, son of Yogendra Singh, both Nos. 7 and 8 are residents of Village Ataua, P.S. and District Nawadah Defendants Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. VIDYA SAGAR

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-03-2016

Heard learned Counsel for the appellants.

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

3. The suit land admittedly belonged to defendant No. 6. It is the case of the plaintiff that defendant No. 6 had executed a gift deed for the suit land in favour of defendant Nos. 1 to 4. It is, however, the further case of the plaintiff that defendant No. 6 filed a suit against the defendant Nos. 1 to 4 praying for setting aside the gift deed. The said suit was decreed *ex parte*. The plaintiffs have come before the Court with the assertion that during pendency of that suit defendant Nos. 1 to 4 along with defendant Nos. 5 and 6 approached the plaintiffs and sold the suit land to the plaintiffs by registered sale deed. In this manner the plaintiffs have claimed their title and possession over the suit land and have prayed for declaration of the same with further relief for setting aside the decree passed in the earlier suit in between the defendant No. 6 and defendant Nos. 1 to 4. The defendant No. 6 alone contested the suit and denied the fact of collusion with defendant Nos. 1 to 4 as alleged by the plaintiffs and resisted the relief prayed by the plaintiffs.

4. The trial court returned the findings on the issues against the plaintiffs and dismissed the suit. The appellate court below in appeal by the plaintiffs after reappraisal of the evidence and pleadings has affirmed the findings of the trial court and dismissed the appeal.

5. Learned Counsel for the appellants at the outset has accepted that no relief has been claimed against defendant Nos. 1 to



4 by the plaintiffs on the basis of fraud played by them against the plaintiffs. It has, however, been submitted that the plaintiffs have alleged perpetration of fraud as against all the defendants and, therefore, both the courts below ought to have allowed the reliefs prayed by the plaintiffs. No other submission has been made on behalf of the plaintiffs.

6. After perusal of the judgments of both the courts below and considering the submission it is transparent fact that the plaintiffs have purchased the suit property during pendency of the suit filed by defendant No. 6 against defendant Nos. 1 to 4 for the reliefs for setting aside the gift deed said to have been executed by defendant No. 6 in favour of defendant Nos. 1 to 4 for the suit property. It has also not been in dispute that the said suit was decreed and the gift deed said to have been executed by defendant no. 6 in favour of defendant Nos. 1 to 4 was set aside. It is manifest that the vendors of the plaintiffs i.e. defendant Nos. 1 to 4 did not take any step for setting aside the decree passed in the said suit nor have they joined the plaintiffs in the present suit. Both the courts below also found that the plaintiffs have failed to establish the allegation of fraud and collusion against defendant Nos. 1 to 4 and defendant Nos. 5 and 6. The fact is also admitted that the plaintiffs being the pendentelite purchaser have not chosen to claim any specific relief against their vendors, defendant Nos. 1 to 4, either in this suit or in any other proceeding.

7. The concurrent findings by the courts below are based upon scrutiny of evidence on record and this Court has not been able

to find any unreasonableness or perversity in the same.

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

(V. Nath, J.)

Snkumar/-

U			
---	--	--	--