

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.306 of 2013

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1. Ramesh Singh @ Fekan Singh S/O Late Rajendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 2. Ajay Singh S/O Late Rajendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 3. Sheo Pujan Singh S/O Late Rajendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 4. Bhim Singh S/O Late Rajendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 5. Krishna Singh S/O Late Rajendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 6. Ram Prabesh Singh S/O Late Doman Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 7. Birendra Singh S/O Late Doman Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 8. Kamala Kuer W/O Late Surendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 9. Rakesh Kumar Singh S/O Late Surendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 10. Shailesh Kumar Singh S/O Late Surendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 11. Mamta Kumari D/O Late Surendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 12. Rinku Kumari D/O Late Surendra Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad. Plaintiffs Respondents..... Appellants Ist set
 13. Bishram Singh S/O Late Nathuni Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 14. Sumitra Devi W/O Jagdish Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad.
 15. Janardn Singh S/O Naurang Singh Resident Of Village Dhanibar, P.S. Baroon, District Aurangabad. Defendants Respondents Appellants IInd set

.... Appellants

Versus

1. Janakraj Kuer W/O Late Suresh Singh Resident Of Village Dhanibr, P.O. Sunderganj At Present Resident Of Village Bumroo, P.S. Kutumba, District Aurangabad.
2. Laukesh Singh S/O Late Ranbir Singh Resident Of Village Dhanibr, P.O. Sunderganj At Present Resident Of Village Bumroo, P.S. Kutumba, District Aurangabad.
3. Randhir Kumar Singh S/O Late Ranbir Singh Resident Of Village Dhanibr, P.O. Sunderganj At Present Resident Of Village Bumroo, P.S. Kutumba, District Aurangabad.
4. Ranjit Kumar Singh S/O Late Ranbir Singh Resident Of Village Dhanibr, P.O. Sunderganj At Present Resident Of Village Bumroo, P.S. Kutumba, District Aurangabad.
5. Meena Kuer D/O Late Ranbir Singh Resident Of Village Dhanibr, P.O. Sunderganj At Present Resident Of Village Bumroo, P.S. Kutumba,

District Aurangabad.

..... Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh
Mr. Shailesh Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

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05-01-2016

Heard Mr. Bindhyachal Singh, learned Senior Counsel

appearing on behalf of the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal. The suit was filed by the plaintiffs for partition of their share in the suit property and also for declaration that the settlement by parwana dated 15.6.1942 of the suit property in favour of defendant No. 2 was fraudulent and the said deed was a forged and fabricated document.

3. The basis of the case of the plaintiffs was that the suit property was a joint family property. The defendant No. 2 filed a contesting written statement with the case that the suit property was his personal property which he acquired by way of settlement through parwana dated 15.6.1942. The trial court returned the finding in favour of the plaintiffs and granted the decree as prayed. The appellate court on reappraisal of evidence has reversed the finding of the trial court and dismissed the suit.

4. Mr. Singh, learned Counsel appearing for the appellants, has submitted that there was ample evidence on record to establish that the suit property was joint family property and the story of



settlement as propounded by the defendant No. 2 was not tenable. It has been canvassed that the learned appellate court below has wrongly reversed the findings of the trial court in this regard and has refused to consider those evidence on the ground that there was no pleading with regard to the fraud and forgery with regard to the settlement by deed of parwana dated 15.6.1942. The learned Counsel, however, has accepted that after filing of the written statement by the defendant No. 2 the plaintiffs' prayer for amendment in the plaint by incorporating the relief with regard to the parwana was allowed. No other submission has been made on behalf of the appellants.

5. After perusal of the judgments of both the court below and considering the submissions it is manifest that the plaintiffs' claim for partition of the suit property on the basis that it was joint family property, was dependant on the declaration by the court that the settlement of the suit land with defendant No. 2 by parwana dated 15.6.1942 was a fraudulent act. The defendant No. 2 in his written statement has specifically pleaded the fact of settlement and has claimed the suit land to be his exclusive property. The plaintiffs thereafter got the plaint amended incorporating only the relief against the said settlement by parwana dated 15.6.1942 but did not choose addition of averments relating to fraud and forgery in the deed of settlement. The appellate court below in para 23 of the judgment has pointedly noticed that the plaintiffs have not made any pleading regarding the fraud played in the grant of the settlement of the suit land to the defendant No. 2. There is also no pleading with regard to

the forged and fabricated nature of the deed of parwana dated 15.6.1942. The appellate court below, therefore, has rightly concluded that no evidence can be admissible or considered relating to the fraud or forgery as alleged by the plaintiff-appellants. It has also been found that the plaintiffs led evidence to the effect that the defendant No. 2 was not born in the year 1942 or he was minor at that time in order to establish invalidity of the settlement in his favour but again the plaintiffs have omitted to make relevant averments in the plaint regarding the age of defendant No. 2 at the time of settlement. However, the appellate court below has also considered the evidence with regard to the age of defendant No. 2 and has come to the conclusion on scrutiny that those evidences are not tenable. The findings of fact on record by the appellate court below are based on reappraisal of evidence and no unreasonableness or perversity in any manner could be established on behalf of the appellants during course of argument.

6. In view of the aforesaid discussions, this appeal is dismissed as no substantial question of law is arising for consideration in this appeal.

(V. Nath, J.)

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