

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.321 of 2013

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Smt. Parwati Devi W/O Naresh Prasad Singh Resident Of Village
Chakyarpur Nayatola Saristabad, P.O. G.P.O., P.S. Gardanibagh, District
Patna.

..... Appellant/s

Versus

Sri Dinesh Prasad Singh S/O Late Chhote Lal Yadav Resident Of Village
Chakyarpur Nayatola Saristabad, P.O. G.P.O., P.S. Gardanibagh, District
Patna.

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Naresh Sharma, Adv

For the Respondent/s : Mr. Kundan Bahadur Singh, Adv & Mr. Ajay
Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 18-01-2016 Heard Mr. Ram Naresh Sharma, learned counsel for

the appellant as also Mr. Kundan Bahadur Singh, learned

counsel for the respondents.

2. The defendant is the appellant in this appeal against
the judgment and decree of affirmance granting the decree for
redemption of mortgage as prayed by the plaintiff.

3. There is no dispute that the mortgage deed was
executed by the plaintiff in favour of the defendant on
13.02.1995 wherein the suit land was placed as security for the
amount of Rs. 38,000/-. The plaintiff thereafter filed the suit for
redemption of mortgage. The defendant came out with the case
that subsequent to the execution of the mortgage deed, the



plaintiff entered into an agreement with the defendant for sale of 66 decimals of land with the defendant who then paid Rs. 25,000/- by way of advance. It was also the case of the defendant that though the plaintiff executed the sale deed but subsequently as he failed to appear before the registering authority for accepting the execution, the said sale deed could not be registered.

4. Both the Courts below have come to the conclusion that the plaintiff is entitled to the decree for redemption of the mortgage. Accordingly, the suit was decreed and the appeal thereafter has been dismissed by the impugned judgment and decree in this appeal.

5. Mr. Sharma, learned counsel for the appellant, has submitted that as the plaintiff has executed the sale deed on 09.03.1995, for 66 decimals of land in favour of the defendant and also accepted Rs. 25,000/- by way of advance, his right of redemption has been lost. It has however, been accepted on behalf of the defendant-appellants that no suit for specific performance of contract was filed by the defendant against the plaintiff or recourse to the remedy under Section 77 of the Indian Registration Act was taken.

6. On perusal of the judgments of both the courts

below and after considering the submissions, it is manifest that in view of the admitted fact of the mortgage as evidenced by the mortgage deed dated 13.02.1995, the plaintiff has been granted the decree for redemption as prayed. The existence of the sale deed dated 09.03.1995 (Exhibit-C) would not be itself sufficient to extinguish the right of redemption of the plaintiff and moreso when no step has been taken by the defendant to claim his right by virtue of the sale agreement. The findings by both the Courts below have been recorded after the scrutiny of the evidence and in accordance with law and during the course of submission, no perversity has been established in the same.

7. 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)

Ranjan/-

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