

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.8 of 2015

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1. Kamta Choudhary S/o Late Khedu Choudhary
2. Birendra Choudhary S/o Late Khedu Choudhary
3. Surendra Choudhary S/o Late Khedu Choudhary
4. Rajendra Choudhary S/o Late Khedu Choudhary all 1 to 4 are resident of village-
Chaurahi, PO- Aurai, PS- Dawath, District- Rohtas
5. Sunita Devi Daughter of Late Khedu Choudhary resident of village- Karam
Dehri, PS- Sasaram, District- Rohtas

.... Appellants

Versus

1. Awadh Bihari Sah son of Late Deonarain Sah Resident of village and PO- Arthu,
PS- Dinara, District- Rohtas
2. Birendra Prasad Son of Late Deonarain Sah Resident of village and PO- Arthu
PS- Dinara, District- Rohtas at present Buxar by Pass Road, PO and PS- Buxar,
District- Rohtas
3. Ram Chandra Prasad Son of Late Deonarain Sah
4. Jagadish Sah Son of Late Deonarain Sah Both 3 and 4 are Resident of village and
PO- Arthu, PS- Dinara, District- Rohtas

.... Respondents

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Appearance :

For the Appellant/s : Mr. Suresh Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-04-2017

Heard Mr. Upendra Prasad No.2, learned counsel
appearing for the appellants.

The defendant 1st set in the suit are the appellants in this
appeal against the judgment and decree of reversal granting the
decree to the plaintiff as prayed.

The suit was filed by the plaintiff for declaration that the
registered sale deed dated 26.09.2003 executed by the defendant no.2
in favour of defendant no.1 in respect of suit property as shown by



letters A,B,C & D in the sketch map is illegal, void, fraudulent , collusive and not binding upon the plaintiff.

It was the case of the plaintiff that the suit property was originally the part of the joint family property of the plaintiff and defendant 2nd set but the same was partitioned by metes and bounds on 12.06.1968 by the father Devnarayan Sah wherein the specific shares were allotted to Devenarayan Sah and his son including the plaintiff and the defendant 2nd set. It was also the case of the plaintiff that subsequently a memorandum of partition was also prepared on 06.02.2001 alongwith the map which was signed by all the four brothers including the plaintiff and defendant no.2. It was the specific case of the plaintiff that the defendant no.2 had earlier sold the property allotted in his share to the defendant no.1 by registered sale deed dated 23.02.2001 but later on he executed another sale deed in collusion with the defendant no.1 on 26.09.2003 with regard to the properties allotted to the share of the plaintiff. The defendant no.2 and 3 did not file any written statement, and though the defendant no.1 and 4 filed their written statement but did not adduce any evidence in support of the averments made in the written statement. It was however pleaded in the written statement filed by defendant no.1 that there had been no partition as claimed by the plaintiff on 12.06.1968 and the properties of the family was still joint among the brothers. It



was averred that the defendant no.3 had validly executed the sale deed in question in favour of the defendant no.1 and handed over the possession over the sold property.

The trial court returned the findings on the issues against the plaintiff and dismissed the suit. In appeal by the plaintiff, however, the appellate court below on reappraisal of evidence, has reversed the findings of the trial court, allowed the appeal and granted the decree to the plaintiff as prayed by the impugned judgment and decree.

The learned counsel for the appellant has submitted that the findings by the appellate court below has been recorded on the basis of surmises and conjectures excluding from consideration the material evidence on record. It has also been submitted that the reasoning assigned by the trial court has not been taken into notice by the appellate court below and therefore also the impugned judgment by the appellate court below is vulnerable. It has been contended that the appellate court below ought not to have placed reliance upon the memorandum of partition (Ext.1), which was not a registered document. No other submission has been made on behalf of the appellant.

After considering the submissions and the perusal of the judgments of both the courts below , it is pellucid that



the plaintiff and the defendant 2nd set belong to a joint family and the suit property was also the part of the joint family property. It is, however, the case of the plaintiff that there has been partition of the joint family property wherein the specific properties have been allotted in the shares of the family members including the plaintiff and defendant no.2. The plaintiff has assailed the sale deed dated 26.09.2003 executed by defendant no.2 in favour of defendant no.1 on the ground that the property sold by the said sale deed, in fact, has been allotted in the share of the plaintiff, and the defendant no.2, therefore, has no right to transfer the same in favour of the defendant no.1. The defendant no.2 did not contest the suit by filing written statement and defendant no.1 did not adduce evidence in order to establish the facts averred in his written statement. The appellate court below ,however, has taken into notice the admitted earlier sale deed dated 23.02.2001 executed by the defendant no.2 in favour of defendant no.1 wherein there is categorical averment that the property subject matter of the said sale deed was allotted to the vendor defendant no.2 in his share through family partition. As there was no pleading and evidence to the contrary by the defendant no.2, the appellate court below has rightly come to the conclusion that the admission of the fact of family partition by defendant no.2 in the sale deed in favour of the defendant no.1 would be binding upon the defendant no.1. The appellate court



below has further considered the memorandum of partition (Ext.1) and has come to the conclusion on scrutiny of the boundaries mentioned therein alongwith the boundaries mentioned in the admitted sale deed dated 23.02.2001 that the property subject matter of the sale deed dated 26.09.2003 in question is in fact the property allotted in the share of the plaintiff. It is also evident that the defendant-appellant did not lead any evidence in the suit to establish the case as pleaded in the written statement. The findings by the appellate court below is based upon the evidence, which were acceptable and could have been relied upon. The submission on behalf of the appellants has centered around the reappraisal of evidence to interdict the finding of fact at the second appellate stage which is not permissible in law as this Court has not been persuaded to find perversity or unreasonableness in the findings by the appellate court below.

This Court thus comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is , accordingly, dismissed.

(V. Nath, J)

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