

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.281 of 2014

- =====
1. Alama Khatoon wife of Late Sk. Nesar Ahmad
 2. Md. Imran son of Late Sk. Nesar Ahmad
 3. Md. Irfan @ Md. Irshad son of Sk. Nesar Ahmad
 4. Md. Rizwan @ Rizwan Ahmad son of Sk. Nesar Ahmad All resident of village - Siswa, Police Station - Banjaria, District - East Champaran.
 5. Ishrat Parween wife of Firoz Ahmad daughter of Late Nesar Ahmad Resident of Sripur, P.O. + P.S. - Sugauli, District - East Champaran.
 6. Nusarat Parween wife of Naseem Akhtar d/o Late Nesar Ahmad Resident of Mohalla - Miscot, P.O. Motipur, P.S. Motihari Town, District - East Champaran.
 7. Salatun Nesa wife of Sk. Kuddu daughter of Late Sk. Jubair resident of Sheikhi Chakla, P.O. Bara Chakia, P.S. Chakia, District - East Champaran.
 8. Munira Khatoon wife of Kamrul Hoda, daughter of late Sk. Jubair resident of at & P.O. Masahi, P.S. Chhauradano, District - East Champaran.
 9. Kabira Khatoon wife of Akhtar Hussain, daughter of Late Sk. Jubair Resident of Sripur, P.O. + P.S. - Sugauli, District - East Champaran.
 10. Gaphira Khatoon wife of Kaimul Alam, Daughter of Late Sk. Jubair Resident of Sripur, P.O. + P.S. - Sugauli, District - East Champaran.
 11. Sk. Jauwad son of late Sk. Jalil Resident of village - Siswa, Police Station - Banjaria, District - East Champaran. Defendant 1st party Appellants
 12. Sk. Shahid Hussain @ Shahid Hussain son of Late Sk. Abdul Mannan
 13. Bibi Sadrun Nesa wife of Late S. Majid Hussain
 14. Sk. Hamid Hussain @ Hamid Hussain son of Late Sk. Abdul Mannan All resident of village & P.O. - Siswa, Police Station - Banjaria, District - East Champaran.
 15. Jayada Khatoon wife of Sk. Idris daughter of Late Sk. Abdul Mannan resident of Madhopur, P.S. Turkaulia, District - East Champaran.
 16. Waheda Khatoon wife of Umash Akhtar d/o Late Sk. Abdul Mannan resident of village - Mohammadpur, P.O. Siswania, P.S. Banjaria, District - East Champaran.
 17. Ishteyaque Ahmad @ Sk. Isteyak son of Late Sk. Zubair resident of village + P.O. - Siswa, P.S. Banjaria, District - East Champaran.
..... Defendant 2nd party Appellants
..... Appellants

Versus

1. (a) Abda Khatoon, wife of Late Sk. Jahir
(b). Umais Akhtar
(c) Md. Ozair
(d) Md. Shoaib, sons of Late Sk. Jahir, All resident of At & P.O. Siswa, P.S. Banjaria, District - East Champaran.
(e) Husne Ara Khatoon, daughter of Late Sk Jahir, resident of Madhopur Kalharia, P.S. Turkaulia, District E.Champaran
(f). Sahra Khatoon, daughter of Late Sk Jahir, resident of Madhopur Madhumalat Tola Shikh Toli, P.O. Tansaria, P.S. Turkaulia, District East Champaran
2. Sk. Khatri
3. Sk. Amir
4. Sk. Manir



5. Sk. Sabir all minor sons of Late Sk. Majid under the guardianship of Bibi Sadrun Nesa, mother
6. Fardina Khatoon
7. Nasarana Khatoon both minor daughter of Late Sk. Majid under the guardianship of their mother Bibi Sadrunnisa. Defendant Respondents
8. Samasa Khatoon wife of Imtazul Haque daughter of Late Nasrullah resident of village & P.O. - Siswa, Police Station - Banjaria, District - East Champaran. Defendant Appellant 2(k)
9. Jaibun Nesa wife of Sk. Kalam daughter of Late Sk. Nasrullah Resident of village and P.O. Jaunarwa, P.S. Banjaria, District - East Champaran. Defendant Appellant 2(h)
10. Sabir Ahmad son of Late Sk. Nasrullah Resident of At and P.O. Siswa, Police Station - Banjaria, District - East Champaran. Defendant Appellant 2(g)
11. Nawan Ahmad son of Late Sk. Nesar Ahmad Resident of village Siswa, Police Station - Banjaria, District - East Champaran.
12. Ishrat Parween wife of Firoz Ahmad daughter of Late Sk. Nasrullah resident of village Sripur , P.O. and P.S. Sugauli, District - East Champaran.
..... Defendants Appellants 2(E) and 2(F)
.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Sanjay Sinha
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 19-01-2017

Heard learned Counsel for the appellants.

2. The defendant 1st set are the appellants in this appeal against the judgment and decree of affirmance.

3. The plaintiff filed the suit assailing the legal validity of the two sale deeds dated 9.12.1963 and 20.10.1982 standing in the name of the defendants on the ground that the said two sale deeds did not confer valid title to the defendants over the suit land. The matrix of fact discloses that there was partition between Sk. Md. Aklu and Sk. Md. Shakoor in the year 1960. Though the panchnama was also produced on behalf of the plaintiff in support of the said partition but in absence of the pleading the trial court has discarded the said panchnama holding that it has no



evidentiary value. It was the case of the plaintiff that Md. Aklu executed a gift deed on 7.12.1963 in favour of the plaintiff for the suit land and prior to that Sk. Md. Shakoor by registered sale deed dated 4.12.1963 (Ext. 3) had sold his land to his uncle Sk. Md. Aklu. However, after two days of the execution of the gift deed, sale deed (Ext. 'A' dated 9.12.1963) came to be executed by Sk. Md. Shakoor for Plot No. 5756 and not the suit Plot 5755 in favour of Sk. Mannan (father of the defendant 2nd set). The subsequent sale deed dated 20.10.1982 was executed by the defendant – 2nd set in favour of defendant 1st set. The defendants contested the claim of the plaintiff and resisted the relief prayed by the plaintiff.

4. Both the courts below have concurrently returned the finding on the issue in favour of the plaintiff. The suit was decreed and thereafter the appeal by the defendants was also dismissed by the impugned judgment and decree.

5. Learned Counsel appearing for the appellant has submitted that both the courts below have recorded the findings without considering the evidence adduced on behalf of the defendants. It has also been submitted that the revenue records have been created in the name of the defendants for the suit land but the same has not been considered by both the courts below. The learned Counsel has also canvassed that the suit was barred by limitation as it has been filed beyond three years or even beyond twelve years as required by the Limitation Act. The learned Counsel has placed the finding by the courts below in detail in order to persuade this Court that those findings are vulnerable. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the



judgments of both the courts below the fact is admitted that there was a partition between Sk. Md. Aklu and Sk. Md. Shakoor. The plaintiff's case is that in that partition Sk. Md. Aklu was allotted the land of Plot No. 5755 i.e. the suit plot and by gift deed dated 7.12.1963 he transferred the suit land in favour of the plaintiff. The defendants' claim over the suit land on the basis of sale deed dated 9.12.1963 said to have been executed by Sk. Shakoor for suit Plot No. 5755 has been found to be illegal and without any title as both the courts below have come to the concurrent finding that the suit plot No. 5755 in fact was not transferred by Sk. Shakoor in favour of the defendants and further also that Sk. Md. Shakoor had no title left to transfer as the said suit Plot No. 5755 belonged to the plaintiff. Both the courts below have elaborately scrutinised the material evidence on behalf of the parties and thereafter come to the conclusion that the plaintiff has succeeded in establishing the case as pleaded. The submission on behalf of the appellant that the findings have been recorded without considering the evidence of the defendants does not find support from perusal of the judgments of both the courts below. During the course of submission it could not be shown as to how the revenue records would have been relevant for determination of the issue of title over the suit plot between the parties.

7. The findings by the courts below have been recorded on the basis of evidence which were acceptable and could have been relied upon. This Court is not persuaded to come to the conclusion that the finding by both the courts below on the issue of fact are perverse or unreasonable in any manner.



8. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.04.2017
Transmission Date	N/A

