

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.263 of 2014

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1. Rakesh Kumar Shukla Son of Late Devendra Shukla.
 2. Janki Devi Wife of Late Devendra Shukla Both are Resident of Village-Bishunpur Gambhir alias Jalalpur, P.O.-Jalalpur, P.S.-Lalganj, District-Vaishali at Hajipur.

..... Defendants Respondents

.... Appellants

Versus

1. Ram Balak Shukla Son of Bashishtha Shukla
2. Prabhawati Devi Wife of Ram Balak Shukla Both are Resident of Village-Bishunpur Gambhir alias Jalalpur, P.O.-Jalalpur, P.S.-Lalganj, District-Vaishali at Hajipur. Plaintiffs Appellants
3. Sapan Kumar Shukal alias Rakesh Kumar Shukla Son of Late Devendra Shukla
4. Pravesh Kumar Shukla Son of Late Devendra Shukla Both are Resident of Village-Bishunpur Gambhir alias Jalalpur, P.O.-Jalalpur, P.S.-Lalganj, District-Vaishali at Hajipur. Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Jitendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned Counsel for the appellants.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of reversal. The plaintiffs filed the suit for declaration of their title and recovery of possession over the suit land described fully in the plaint. The plaintiffs claimed their title over the suit land on the basis of sale deed executed by the co-sharer of the suit land. The genealogy as set up by the plaintiffs has not been denied.

3. The defendants came out with the defence that the said co-sharer Ramdhar Shukla had no right to sell out the sold land in favour of the plaintiffs. However, it has not been disputed on behalf of the



appellants that no challenge to the sale deed in favour of the plaintiffs by Ramadhar Shukla was made by preferring a suit by the defendants.

4. The trial court dismissed the suit determining the findings on the issues in favour of the defendants. However, in the appeal the appellate court below on reappraisal of the pleadings and evidence has reversed the findings of the trial court, allowed the appeal granting the decree as prayed by the plaintiffs by the impugned judgment and decree.

5. The learned Counsel for the appellants has submitted that the appellate court below has failed to take into notice the plea of the defendants as raised in the written statement that Ramadhar Shukla was not having title to sell out the suit land by executing the registered sale deed in favour of the plaintiffs. It has been contended that Ramadhar Shukla could not have acquired title over the suit land on the basis of *Ladabi* (deed of relinquishment) executed by a stranger to the family in whose name the said land was recorded in the survey proceeding. It has, however, been accepted on behalf of the appellants that even after having the knowledge of the sale deed in favour of the plaintiffs the same was not challenged by the defendants by filing a suit claiming requisite relief against the said sale deed or by setting up counter claim in the said suit. The learned Counsel has also submitted that the defendant-appellants have been in possession over the suit land which fact has been supported by the witnesses examined on behalf of the defendants, which showed that the sale deed in favour of the plaintiffs has remained an inoperative document. No other submission has been made on behalf of the appellants.



6. After considering the submission and perusal of the judgments of both the courts below it is evident that the plaintiffs have claimed their title and recovery of possession over the suit land on the basis of a sale deed executed by the admitted co-sharer of the suit land. The fact that the said co-sharer (vendor of the plaintiffs) was not having legal title to transfer the suit land in favour of the plaintiffs or the said transfer remained inoperative would have been examined only when the legal validity of the sale deed in favour of the plaintiff would have been assailed in accordance with law. Having not done so the defendants could not deny and set up a case that the sale deed did not confer a valid right, title and possession over the suit land upon the plaintiffs. The findings by the appellate court below have been recorded on scrutiny of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to conclude that the findings by the appellate court below are perverse or unreasonable in any manner.

7. For the aforesaid reasons and discussion, 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	
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