

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.59 of 2014

=====

Rajendra Mahto Son Of Nabi Mahto Resident Of Village- Mukhtiarpur Salkhani
Tole Bahapar, Ps- Dalsingsarai, District- Sitamarhi

..... Defendant 1st party Appellant

.... Appellant

Versus

1. (i). Ram Pari Devi Wife of late Baidyanath Matho
(ii). Ram Narayan Mahto Son of late Baidyanath Mahto
(iii). Jagdish Matho Son of late Baidyanath Mahto
(iv). Laldeo Mahto Son of late Baidyanath Mahto
(v). Pramod Matho Son of late Baidyanath Mahto All resident of Village-
Mukhtiarpur, Salkhani, tola Bahapar, P.S.- Dalsingsarai, District-
Samastipur.
(vi). Nilam Devi wife of Ram Dayal Singh, daughter of late Baidyanath Mahto
Resident of Village- Gaonpur, P.O.- Gaonpur, P.S.- Ujjiarpur, District-
Samastipur.
(vii). Manju Devi Wife of Mahesh Singh, daughter of late Baidyanath Mahto
resident of Madhepur, P.S. Madhepur Via Bidyapati Nagar, District-
Samastipur.
(viii). Rina Devi Wife of Suraj Kumar Mahto, daughter of late Baidyanath
Mahto resident of Village- Basahi, P.O.- Churawan Chak Via Teghara,
District- Begusarai.
..... Plaintiffs Respondent 1st party
2. Ramashray Mahto Son Of Dhani Chandra Mahto Resident Of Village-
Mukhtiarpur Salkhani Tole Bahapar, Ps- Dalsingsarai, District- Samastipur
..... Defendant 2nd party Respondent 2nd party
.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Vijay Anand, Advocate
For the Respondent/s : Mr. J.S.Arora, Sr. Advocate
Mr. Ritesh Kumar No. 1, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-02-2017

Heard Mr. Ganpati Trivedi, learned Senior Counsel appearing
for the appellant. Mr. J.S.Arora, learned Senior Counsel for the
contesting respondent is present.

2. The defendant No. 1 in the suit is the appellant in this
appeal against the judgment and decree of affirmance granting the



decree as prayed by the plaintiff.

3. The matrix of fact discloses that the suit property admittedly belonged to the joint family of defendant No. 2 and defendant No. 3 whose relationship as father and son is not in dispute. The plaintiff claimed his title over the suit property on the basis of purchase by registered sale deed dated 11.3.1981 from defendant No. 3 (father). The defendant claimed the title over part of the purchased land of the plaintiff on the basis of registered sale deed executed by defendant No. 2 (son) in favour of defendant No. 1 on 5.10.1988. The defendant came out with the case that there had been partition in the year 1978 in between the defendant Nos. 2 and 3 and thereafter defendant No. 2 executed an agreement for sale of the suit land in favour of defendant No. 1 and put the defendant No. 1 in possession of the suit land in pursuance to the said agreement for sale. It was the further case of the defendant that consequently on 5.10.1988 defendant No. 2 has executed the sale deed in favour of defendant No. 1.

4. Both the courts below have recorded concurrent findings of fact on the material issues in favour of the plaintiff. The suit was decreed and thereafter the appeal by the defendant No. 1 has been dismissed by the impugned judgment and decree.

5. Mr. Trivedi, learned Senior Counsel appearing for the appellant has submitted that the appellate court below has not reappraised the evidence on behalf of defendant No. 1 and, therefore, the impugned judgment by the appellate court below is vitiated. It has been canvassed that the consistent case of the contesting defendant was that the sale deed in favour of the plaintiff was executed without



there being any necessity, but the plaintiff has failed to discharge the burden in that regard by leading cogent evidence with regard to necessity for transfer of the suit land by defendant No. 3 in favour of the plaintiff. It has been further also contended that the appellate court below was required to independently consider the pleadings and evidence of the parties and not follow the findings given by the trial court blindly. 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 it is pellucid from the aforesaid facts that the suit property once upon a time was a joint family property of the defendant Nos. 2 and 3. The defendant No. 3, who was father of defendant No. 2, transferred the suit property in favour of the plaintiff by registered sale dated 11.3.1981. The contesting defendant who has claimed his title over the suit property on the basis of transfer by defendant No. 2 in his favour has come out with the case of partition between defendant Nos. 2 and 3 in the year 1978. In that view of the matter it was incumbent upon the contesting defendant to establish the partition between defendant Nos. 2 and 3 by cogent evidence and the burden squarely was lying on him. The defendant No. 2 Ramashray Mahto (vendor of defendant No. 1) was the best evidence to establish the said fact of partition but he though examined in part but did not offer himself for cross-examination. The courts below therefore have rightly not relied upon the depositions made by defendant No. 2 in his examination in chief. The inevitable consequence would be the adverse inference in law against the defendant No. 1 in this regard. It is also not the case of the contesting defendant or presence of evidence aliunde that the sale deed executed



by defendant No. 3 in favour of the plaintiff was challenged by the defendant No. 2 on the ground of absence of legal necessity for such transfer. It is well settled that the sale deed executed by the karta or manager of the joint family would not be void but is voidable at the instance of coparceners. From perusal of the judgments of both the courts below it does not appear that the findings have been recorded ignoring the evidence of the parties or dehors the settled principle of law. Before this Court also the learned Senior Counsel for the appellant could not point out any material which if considered by the courts below would have turned the table in favour of the defendant.

7. This Court, therefore, has not been persuaded to find perversity or unreasonableness in the findings of the courts below which have been recorded on the basis of appreciation of evidence which were acceptable and could have been relied upon.

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

