

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.52 of 2014

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Ramashary Bhagat Son Of Late Ghanshyam Bhagat Resident Of Village Rampur
Tola Panditpura Pergana Kuwari P.S. & P.O. Bhorey District Gopalganj

..... Defendant 2nd set Respondent 2nd set

.... Appellant

Versus

1. Mosmat Chathiya Wife Of Late Khedu Baitha Resident Of Village Tintolwa
Tola Banahara, Pergana Kuwari P.S. Mirganj District Gopalganj

..... Plaintiff..... Appellant

2. Parma Baitha

3. Sharma Baitha

4. Mukundi Baitha Sons Of Late Mahesh Baitha Respondent No. 2 To 4 Resident
Of Village Rampur Tola Pandit Pura, Pergana Kuwari P.S. & P.O. Bhorey
District Gopalganj

..... Defendant 1st set Respondent 1st set

.... Respondents

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Appearance :

For the Appellant/s : Mr. ARUN KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-04-2017

Heard learned Counsel for the appellant.

2. The defendant No. 4 in the suit is the appellant in this appeal
against the judgment and decree of reversal granting the decree as
prayed by the plaintiff.

3. The plaintiff filed the suit for declaration that the gift deed
dated 12.8.1989 executed by her in favour of defendant Nos. 1 to 3 and
sale deed dated 12.8.1989 executed in favour of defendant No. 4 with
regard to Schedule II land are void and ineffective documents tainted
with fraud, misrepresentation and under influence.

4. The plaintiff's case was that she never put her thumb
impression on any document of gift or sale in favour of the defendants
nor did she execute any such document which in fact had been obtained
by the defendants by fraud, misrepresentation and under influence. The



defendants contested the assertion of the plaintiff and claimed legal validity of the gift deed and sale deed in question.

5. The trial court returned the finding on the issues in favour of the defendants and against the plaintiff primarily on the basis that the gift deed and sale deed in question were registered documents and therefore presumption under Section 114 of the Evidence Act would follow. The appellate court below, however, in appeal by the plaintiff has reversed the findings of the trial court on reappraisal of evidence.

6. During the course of submission it could not be pointed out on behalf of the appellant that after the denial of the execution of the deeds in question by the plaintiff including her thumb impression on the said deeds, any hand writing expert was prayed to examine the thumb impression of the plaintiff on those deeds. It is also apparent from the findings of the appellate court below that there were evidence on record to show that the plaintiff was aged nearly 80 years on the date of alleged execution of those sale deed and gift deed. However, the plaintiff has been examined in the suit and in her deposition she has supported her stand that she never put her thumb impression on the gift deed and sale deed in favour of defendant Nos. 1 to 3 and defendant No. 4 respectively. It would be pertinent to mention here that defendant Nos. 1 to 3 have not assailed the judgment and decree against them holding the legal invalidity of the gift deed in their favour and it is only defendant No. 4, who claims to be purchaser from the plaintiff of the suit land described in Schedule II of the plaint, who has filed the present appeal assailing the findings by the appellate court below.

7. From perusal of the judgment of the appellate court below it transpires that defendant No. 4 did not examine himself in the suit and



there is also no explanation for such non examination although he was the best person to disclose the fact regarding payment of consideration money to the plaintiff.

8. The learned Counsel for the appellant, however, has pointed out that the son of defendant No. 4 has been examined in the suit, but has expressed his inability to point out that any explanation has been furnished for non examination of defendant No. 4. It is also transparent that no attesting witness of the sale deed in question or the scribe of the said sale deed has been examined to support the assertions made by the appellant. In sum and substance there is total lack of evidence on behalf of the defendant No. 4-appellant to establish by cogent evidence the valid execution of the sale deed in question by the plaintiff after payment of consideration.

9. The appellate court below has recorded its findings on the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to hold that the findings by the appellate court below are perverse or unreasonable.

10. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Snkumar/-

(V. Nath, J.)

AFR/NAFR	
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