

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.168 of 2005

- =====
1. Thakko Yadav, son of Sukhdeo Yadav, resident of Village Hansi, Tola Satuahi,
P.S. Biraul, District Darbhanga
2. Gajendra Sharma, son of Hasan Sharma, resiedent of Village Jai Kishan Pur,
P.S. Biraul, District Darbhanga
- Defendants Respondents

.... Appellants

Versus

1. (i). Mukhiyari Devi, wife of Late Tej Narain Yadav
(ii). Boye Lal Yadav
(iii). Dhirendra Yadav
(iv). Surendra Yadav, all sons of Late Tej Narain Yadav
(v). Chunia Devi
(vi). Fulvan Devi
(vii). Jibachhi Devi, all daughters of Late Tej Narain Yadav

All residents of Village Ganga Gamharia, P.S. Biraul, District Darbhanga
..... Plaintiffs Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. B.N.P.Singh, Sr. Advocate
Mr. Rajeshwar Rai, Advocate
Mr. Bijay Kumar Bose

For the Respondent/s : Mr. Surya Kant Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-02-2017

Heard learned Counsel for the parties.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal granting the decree of specific performance of contract to the plaintiff.

3. The plaintiff filed the suit praying for specific performance of contract for sale of the suit property on the basis of agreement for sale dated 6.11.1982 said to have been executed by the defendants. The defendants denied the assertions of the plaintiff and came out with the specific case that the agreement for sale (Mahdanama) did not bear the



signature of the defendants and was a forged and fabricated document.

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

4. Mr. B.N.P.Singh, learned Senior Counsel appearing for the appellants, has submitted that in view of the issue pertaining to the genuineness of the agreement for sale (Mahdanama) in question, the respective handwriting experts appointed by the parties gave their conflicting reports and in such a fact situation the appellate court below was bound to record a finding on the issue of validity of the signature appearing on the agreement for sale. It has also been submitted by the learned Senior Counsel that this is a moot point for consideration in this appeal. Elaborating his submissions, the learned Senior Counsel for the appellants has propounded that the court is expert of experts and, therefore, the appellate court below has abdicated its duty in not recording an expert view on the validity/ genuineness of the signature of the defendants appearing on the said Mahdanama. It has also been argued that though the agreement for sale is said to be with regard to 15 Katha of land, but in fact the defendant No. 1 had only $3\frac{1}{2}$ Katha land in his share and this fact also cast a doubt on the genuineness of the agreement for sale. It has also been canvassed that the appellate court below has not considered the reasons given by the trial court while recording the findings. It has also been submitted that the issue of possession has been decided against the plaintiff by the trial court but



the appellate court without determining the said issue has wrongly granted the decree to the plaintiff. No other submission has been made on behalf of the appellants.

5. After considering the submission and perusal of the judgments of both the courts below it is manifest that the suit for specific performance of contract was filed by the plaintiff on the basis of agreement for sale dated 6.11.1982. In view of the denial by the defendants on the genuineness of the said document particularly his signature appearing on the said document the parties adduced their evidence and after considering the evidence the appellate court below has reversed the finding of the trial court and come to the specific finding that the said document is not forged and fabricated document. The appellate court below has also taken into notice the fact that there was on record the two conflicting opinions of the experts and, therefore, the Court has proceeded to consider the other evidence in order to come to the conclusion regarding genuineness and validity of the agreement for sale in question. The appellate court below has also considered the fact that there was an earlier criminal case between the parties in which the agreement for sale was produced and the plaintiff was acquitted from the charge in the said criminal case. The submission on behalf of the appellant that the court is expert of experts and it was mandatory upon the court to record the finding on the signature of defendant No. 1, does not appear to have any substance in view of the fact that the appellate court below has recorded a specific finding that the Mahdanama in question is not a forged and fabricated document. These findings have been recorded on the basis of evidence on record, which were



acceptable and could have been relied upon. It is well settled that preponderance of probability is the key factor in determination of the issues in civil proceeding and the impression gathered from the totality of evidence is the decisive factor. It is not the case on behalf of the appellants that the findings have been recorded ignoring the material evidence or are de hors the settled principle of law. It is also not the case of the appellants that the view taken by the appellate court below could not have been the possible view on the basis of evidence on record.

6. This Court, therefore, comes to the conclusion that the findings of fact have been recorded by the appellate court below on the basis of evidence and there is no perversity or unreasonableness in the same.

7. 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	
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