

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.217 of 2008

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Smt.Ratanmala Devi @ Radha Devi, W/o Raghunandan Gupta, D/O of Late Debu Sah.

.... Appellant.

Versus

1.Shiv Narayan Ram, son of narayan Ram, resident of Village Udakishanganj, P.S. Udakishanganj, District-Madhepura.

.... Plaintiff-Respondent Ist set-Respondent Ist set.

2. Smt. Sharda Devi @ Sharda Devi wife of late Anandi Sah, daughter of Late Debu Sah, Village-Khurhan, P.S. Alamnagar, at present Village- Kishunganj, P.S. Udakishunganj, District madhepura.

.... Defendant 2nd set-Respondents 2nd set-respondents2nd set

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Appearance :

For the Appellant/s : Mr. SHARDA NAND MISHRA
Mr. Dhananjay Kumar Gupta
Mr. Deepak Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 28-06-2018

Heard learned counsel for the parties.

This is second appeal of defendant No. 1, who is aggrieved by the judgment and decree dated 15-01-2008, passed by learned Additional District Judge F.T.C. 5 Madhepura in Title Appeal No. 17/05 whereby he has dismissed appellant's appeal against judgment and decree dated 13-04-2005 passed by learned Sub Judge III, Madhepura in Title Suit No.44/89, decreeing the suit in favour of the plaintiff, with an order to defendant No. 1 to hand over the possession of suit land to the plaintiff within 60 days.



Briefly narrated, the case of the plaintiff/respondent No.1 is that he had purchased the disputed land having description as C.S. Plot no. 146, C.S. Khata No. 260 (RS Plot no. 176) admeasuring 6 Dhurs through a sale-deed dated 08.11.1969 executed by Sharda Devi, respondent No. 2 herein. The said Sharda Devi was daughter of first wife of one Debu Sah, who originally owned the disputed land. According to the plaintiff, Debu had died in 1958 leaving behind respondent No. 2 Sharda Devi, being the daughter of the first wife, his widow Tetri Devi and his daughter Ritambhra Devi (the appellant). It was the plaintiff's case that the disputed land fell in the share of Sharda Devi which he had purchased through the said sale-deed dated 08.11.1969. The defendant-first party contested this suit with filing of written statement taking a plea that Debu Sah had died in the year 1953 in jointness with his brothers Suraj Sah and Ramu Sah, all sons of Jai Shree Sah. Thereafter, in 1959, a partition had taken place among the two brothers and widow of late Debu Sah, namely Tetri Devi and accordingly she acquired 1/3rd share in the land of the family and came in possession over the same. Jamabandi was accordingly recorded in the name of Tetri Devi. The appellant is daughter of said Tetri Devi. With this statement, the appellant resisted the claim of the plaintiff's title on the ground that respondent No.2 Sharda Devi did not have any title over the suit property so as to execute transfer deed in favour of the plaintiff.

Based on the rival pleadings, the trial Court framed 5 issues including issue No. 3 as to whether the plaintiff had derived title over the suit land on the basis of the sale-deed executed by Sharda Devi on 08.11.1969.

It is evident from the materials on record that the main dispute which the trial Court was required to decide was whether Debu Sah had died in 1953 or in 1958 i.e to say before coming into force of Hindu Succession Act 1956 or



thereafter. The parties adduced their evidence; both oral and documentary. Whereas, the plaintiff's witnesses supported the plaintiff's case that Debu Sah died in 1958, the defendant's witnesses consistently deposed that Debu Sah had died in 1953. It transpires from the judgment of the Court below that the plaintiff got exhibited sale-deed dated 04.10.1958 executed by Tetri Devi, the mother of the present appellant, in favour of one Ram Das Ram, in respect of one katha 7 dhurs of land. The recital of the deed reads that the said Debu Sah, the husband of the executant had died 7 days ago and hence the executant was in need of money to perform *Shradh* ceremony of her husband which was compelling her to sell the said land. Defendant No.2 also admitted in her cross-examination that her mother had sold the land to meet the expenses of *Shradh* ceremony of her father. Relying on the said document which could not be disputed, the trial Court disbelieved the evidence of the plaintiff's witnesses that Debu Sah had died in 1953 and came to a definite conclusion that Debu Sah had in fact died in 1958. After having recorded this finding the trial Court held that Sharda Devi was entitled for her share in the property left by Debu Sah and she was therefore entitled to sell her share of property and thus decreed the suit.

An appeal preferred by the appellant before the first appellate Court also came to be dismissed upon affirming the finding that Debu Sah died in the year 1958. The finding recorded by the Courts below that Debu Sah died in 1958 being concurrent, requires no interference by this Court in the absence of any material to suggest that such finding is perverse. As a consequence of the said finding, there can not be any gainsay that Sharda Devi inherited the property left by her father to the extent of her share out of which she transferred the disputed land in favour the plaintiff. The finding recorded by the Courts below that the defendant No. 2 had title over the suit property which she transferred through the sale deed in favour of



the plaintiff can not be said to be the erroneous or infirm. I do not find any merit in this Second Appeal which does not involve any substantial question of law.

This Second Appeal does not deserve admission and accordingly dismissed under Order 41 Rule 11 of CPC.

(Chakradhari Sharan Singh, J)

A.K.V./Anjula

AFR/NAFR	
CAV DATE	NA
Uploading Date	10-07-2018
Transmission Date	

