

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.90 of 2009

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RAM NARESH SINGH & ANR

... .. Appellant/s

Versus

SUDHISH PRASAD SINGH & ORS

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arvind Kumar Sharma-1
For the Respondent/s : Mr.Awanish Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 04-01-2019

Heard learned counsel for the appellants and learned
counsel for the respondents.

The appellants are the plaintiffs. The appellants-
plaintiffs filed the suit that one Punyadeo Chaubey, Madan
Chaubey and Krishna Chaubey, sons of Lakshmi Chaubey
executed deed of mortgage on 17.01.1950 after receiving
Rs.500/- with regard to 16 kathas 17 dhurs of land to the father
of the appellants who came in possession. Punyadeo Chaubey at
his own behalf and on behalf of his minor brothers again
executed a mortgaged deed in favour of the plaintiff's father
after receiving Rs.700/- in which earlier Rs.500/- was set off
and again on 03.06.1992, the aforesaid Punyadeo Chaubey in
the same capacity executed another mortgage deed in favour of
the plaintiffs-appellants for Rs.1,000/- in respect of 2 bighas 8



kathas and 4 dhurs and put the appellants in possession. Punyadeo Chaubey again executed two deeds of mortgage on 08.07.1961 for Rs.700/- in respect of 5 kathas of land and 19 kathas 8 dhurs of land. Other mortgage deed remains in force. Further case of the plaintiffs-appellants is that Madan Chaubey and Krishna Chaubey brothers of Punyadeo Chaubey executed two sale deeds out of which one sale deed is executed for 10 kathas of land of Khata No.355 on consideration of Rs.2,000/- and other sale deed was executed for 5 kathas 4 dhurs land of Khata No.355 for consideration of Rs.1500/-. When the sale deed was not registered, the plaintiffs filed Registration Case No.21 of 1971 and the same was registered on 20.10.1971. The plaintiffs further stated that the respondents-defendants got forged and fabricated sale deeds executed by Punyadeo Chaubey in their favour on 06.01.1971 and they are putting hindrance in their possession. The defendants-purchasers from Madan Chaubey and Krishna Chaubey filed redemption suit against plaintiffs being Redemption Suit No.208 of 1971 and the suit was decreed. The plaintiffs came to know about the judgment and decree of redemption case and filed Misc. Case No.1 of 1981 under Order IX rule 13 C.P.C. which was dismissed on contest. Thereafter, the plaintiffs filed Misc.



Appeal No.57 of 1982 which was also dismissed in default. The plaintiffs again filed Misc. Case No.3 of 1991 which was dismissed on contest. Thereafter, the plaintiffs approached the High Court by filing Misc. Appeal No.236 of 1994 and the same was also dismissed on 19.11.1994. The plaintiffs again filed L.P.A. No.176 of 1994 against the order dated 19.11.1994 passed in Misc. Appeal No.236 of 1994 and the L.P.A. was dismissed on 06.11.1995. Thereafter, the plaintiffs filed the present suit for declaration of their title and confirmation of possession and also for declaration that the decree passed in redemption suit is void nullity and not binding on the plaintiffs.

The defendants appeared but did not file any written statement. The suit was dismissed that there is an ex parte judgment and decree passed against the plaintiffs in Redemption Suit No.208 of 1971 and the plaintiffs filed Misc. Case for setting aside the ex parte judgment and decree passed in redemption case but the same was dismissed upto High Court and the preparation for final decree in redemption suit is pending. Unless the judgment and decree passed in redemption suit is set aside, it cannot be held that the judgment and decree passed in redemption suit is a nullity and not binding on the plaintiffs. The first appellate court also dismissed the appeal



holding that unless so long as the judgment and decree passed in redemption suit is in existence, the same cannot be held to be nullity and not binding on the plaintiffs.

Learned counsel for the appellants submits that appellants purchased the land from Punyadeo Chaubey, Madan Chaubey and Krishna Chaubey and the sale deed was registered in view of Section 75 of the Registration Act vide order passed in Registration Case No.21 of 1971 but both the Courts have failed to appreciate that the plaintiffs have got title and possession over the lands and the judgment and decree passed in Redemption Suit No.208 of 1971 is not binding on the plaintiffs.

Learned counsel for the respondents on the other hand, submits that both the Courts have rightly held that in the present suit, the judgment and decree passed in redemption suit cannot be held to be a nullity as the plaintiffs have already exhausted all the remedies for setting aside the ex parte judgment and decree in absence of any fraud played on the plaintiffs.

From the pleadings of the plaintiffs, it is evident that the plaintiffs sought relief for declaration of judgment and decree passed in Redemption Suit No.208 of 1971 a nullity and not binding on the plaintiffs. According to the case of the



plaintiffs, Punyadeo Chaubey mortgaged the suit land on different dates in favour of the father of the plaintiff or later on in favour of the plaintiffs on his own behalf and on behalf of Madan Chaubey and Krishna Chaubey, his two minor brothers. The plaintiffs stated in the plaint that Punyadeo Chaubey, Madan Chaubey and Krishna Chaubey executed sale deeds but admittedly, the sale deeds were not registered and the plaintiffs filed Registration Case No.21 of 1971 before the Sub-Registrar and the sale deeds said to have been executed by Madan Chaubey and Krishna Chaubey were registered but prior to registration of the sale deed, Madan Chaubey and Krishna Chaubey executed sale deed in favour of the defendants who filed Redemption Suit No.208 of 1971 with regard to the suit land. The plaintiffs did not appear and the redemption suit was decreed. Preliminary decree was prepared and the same is pending for preparation of final decree. The plaintiffs filed Misc. Case No.1 of 1981 under Order IX Rule 13 C.P.C. but the same was dismissed on contest. The plaintiffs filed Misc. Appeal No.57 of 1982 against the order passed in Misc. Case No.1 of 1981 but firstly the same was dismissed in default. Thereafter, the plaintiffs again filed Misc. Case No.3 of 1991 which was also dismissed on contest. The plaintiffs filed Misc.



Appeal No.236 of 1994 in the High Court which was dismissed on 19.11.1994 and the L.P.A. No.176 of 1994 preferred against the order dated 19.11.1994 passed in Misc. Appeal No.236 of 1994 was also dismissed on 06.11.1995. Thereafter, the plaintiffs filed the present suit for a declaration that the judgment and decree passed in redemption suit is a nullity and not binding on the plaintiffs. The plaintiffs have already exhausted all remedies for setting aside the ex parte judgment and decree passed in Redemption Suit No.208 of 1971 with regard to the suit land. Therefore, in another suit, it cannot be held that the judgment and decree passed in redemption suit against the plaintiffs is not binding on them and thus, I find that both the Courts have rightly held that the judgment and decree passed in redemption suit is in accordance with law and effective and dismissed the suit. I find no substantial question of law involved in this Second Appeal.

Accordingly, this Second Appeal is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
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