

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No.371 of 2012

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1. Smt. Sushila Devi W/o Rajendra Mahton
 2. Santosh Kumar
 3. Chandani Kumari
 4. Rekha Kumari
 5. Goenka Kumari

All son and daughters of Rajendra Mahton, Minor under the guardian of Rajendra Mahton, father and next friend, resident of village & P.O.-Lay, P.S.-Surajgarha, Dist.-Lakhisarai

... .. Appellant/s

Versus

1. Rajendra Mahton, s/o Late Babulal Mahton
2. Upendra Singh, son of late Rampat Singh

Both resident of village & P.O.-Lay, P.S.-Surajgarha, Dist.-Lakhisarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Janardan Prasad Singh

For the Respondent/s : Mr. Devendra Prasad Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date : 29-07-2019

Heard Mr. Janardan Prasad Singh, learned senior counsel appearing on behalf of the appellants and learned counsel for the respondents.

(2) The appellants are the plaintiffs. The appellants filed this Second Appeal against the judgment and decree dated 03.04.2012 passed in S.T.A. No.17 of 2002 whereby learned



Additional District Judge, F.T.C. 1st, Lakhisarai dismissed the appeal and confirmed the judgment and decree dated 29.08.2002 passed in Title Suit No.6 of 1995 by Sub Judge II, Lakhisarai whereby the suit of the plaintiffs-appellants was dismissed.

(3) The plaintiffs-appellants filed the suit that the affidavit jointly sworn by the plaintiff, Smt. Sushila Devi and her husband, Rajendra Mahton on 12.04.1994 is in the interest of joint family and on such, Rajendra Mahton and his mother, Puniya Devi(now deceased) be restrained from executing any sale deed with regard to the lands mentioned in Schedule-III of the plaint. The plaintiff further seeks relief that the sale deed executed on 21.09.1995 by Rajendra Mahton, the husband of plaintiff No.1, in favour of Upendra Singh with regard to the land of Khata No.521 Plot No.23 area 96 decimals be declared illegal, void and not operative.

(4) The defendants, Rajendra Mahton and his vendee, Upendra Singh appeared and contested the suit that Rajendra Mahton executed the sale deed to meet the necessity of the joint family and by such an affidavit sworn by Rajendra Mahton and Smt. Sushila Devi(his wife), defendant No.1 cannot be restrained from exercising his legal right to sell the land falling in his share.



(5) Learned Sub Judge dismissed the suit holding that the affidavit sworn by husband and wife on 12.04.1994 is not a legal document and no person can be restrained on the basis of affidavit sworn by him to exercise his own legal right. It is further held that Rajendra Mahton being the karta of his family executed the sale deed on 21.09.1995 in favour of Upendra Singh to meet the need of the joint family and to pay the debts incurred by him for the legal necessity of joint family. Learned Additional District Judge also returned with the concurrent finding.

(6) Mr. Janardan Prasad Singh, learned senior counsel for the appellants submits that interpretation of Ext. I, the joint affidavit sworn by the plaintiff No.1, Smt. Sushila Devi and her husband, Rajendra Mahton, is required in this second appeal. The interpretation of a document itself is a substantial question of law and the same cannot be held illegal at the stage of admission of the second appeal. Citing the judgment of Hon'ble Supreme Court reported in **AIR 2018 Supreme Court 1930(Uma Pandey and another v. Munna Pandey and others)**, learned senior counsel further submitted that the interpretation of any document including its contents or its admissibility in evidence or its effect on rights to the parties to



lis constitutes substantial question of law and the appeal is required to be admitted to decide that substantial question of law.

(7) Having considered the submission of the learned counsel for the appellants and learned counsel for the respondents and on perusal of the judgments, it is evident that Ext. I is the affidavit jointly sworn by plaintiff No.1, Smt. Sushila Devi and her husband, Rajendra Mahton that in future, if any necessity arises, they shall jointly execute sale deed to meet such necessity of the family. The case of the plaintiff is that Rajendra Mahton, who himself bound by swearing such an affidavit, executed sale deed on 21.09.1995 in favour of Upendra Singh, defendant No.2 with regard to the ancestral property inherited by Rajendra Mahton and his children. On appreciation of the evidence on record, I come to a finding that Rajendra Mahton executed a sale deed to pay the debts incurred by him for the marriage and other legal necessities of the family. By swearing the affidavit, no person can be restrained from exercising his own legal right and both the Courts by concurrent findings held that the affidavit putting any restriction on exercise of legal right of the person is illegal and not binding. It is not a case of non-consideration of any evidence. Therefore, I



do not find any reason to interfere into the concurrent findings.

Consequently, this second appeal is dismissed as no substantial question of law arises for consideration in this second appeal.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.08.2019
Transmission Date	N/A

