

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.482 of 2017

Most. Mahadevi and Ors	Versus	 Appellant/s
Bharat Singh and Ors		 Respondent/s

Appearance :

For the Appellant/s	:	Mr.Nagendra Rai, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

7 12-07-2019 Heard Mr. Nagendra Rai, learned counsel appearing
on behalf of the appellants.

2. Learned counsel for the appellants submits that the first appellate court allowed the appellants to adduce additional evidence and death certificate of Bedamiya Devi showing Bedamiya Devi died in the year 1930 issued by SHO of Dighwara which is available on record as Ext.D and if the death certificate is taken into consideration as genuine document, the sale deed (Ext.2/a) is forged and fabricated and void ab initio and, therefore, the findings of both courts are illegal.

3. It is submitted that this is the first substantial question of law involved in this case which is to be decided as to whether both the courts have considered the death certificate (Ext.D) in its true perspective and committed error in holding that the sale deed executed by Bedamiya Devi is genuine and



legal?

4. Having considered the submissions of the learned counsel for the appellants and from perusal of the judgments, it appears that the plaintiffs filed the suit for declaration that the suit land was owned by Bedamiya Devi and Bedamiya Devi executed the sale deed in favour of Baijnath Singh and Gorakh Singh on 05.01.1933 with regard to C.S. Plot Nos.2045, 2044, 2043 area 10 katha 4 dhoors. Bedamiya Devi came in possession over the land and Bedamiya Devi sold the land to the plaintiffs. The plaintiffs by virtue of sale deed came in possession. The defendants contested the suit claiming that Mohar Rai had four sons, namely, Gokul Rai, Shivdhari Rai, Shivtahal and Ram Bhajan Rai. Ram Bhajan Rai died leaving behind Mostt. Bedamiya. The defendants denied that Bedamiya executed any sale deed on 05.01.1933 in favour of Baijnath Singh and Gorakh Singh. In fact, Bedamiya Devi died in the year 1930 and the sale deed brought on record is said to have been executed by Bedamiya Devi in favour of Baijnath Singh and Gorakh Singh is forged and fabricated. It is further case of defendants that there was partition among four sons of Mohar Rai before revisional survey and they were in separate possession. Ram Bhajan Rai had no issue and Ram Bhajan Rai,



husband of Bedamiya reunited with Shivtahal Rai. Bedamiya died in 1930 in the stage of jointness with Shivtahal Rai and his sons. After death of Bedamiya Devi, Shivtahal Rai and his sons came in possession over the land left by Bedamiya Devi.

5. The court on consideration of pleadings besides other issues framed issue whether the sale deed executed by Bedamiya Devi in favour of Baijnath Singh and Gorakh Singh is legal, valid and operative and whether Shivtahal Rai inherited the property after the death of Bedamiya Devi and whether the plaintiffs have got title over the suit land. The court held that the sale deed was executed by Bedamiya in the year 1933 and the same is more than 30 years old. Under section 90 of the Evidence Act, there shall be a presumption of genuineness of the sale deed. The defendants did not bring on record any evidenced to show that Bedamiya Devi died in the year 1930 and she did not execute the sale deed in the year 1933. The defendants brought on record the death certificate but the same was not proved which was marked for identification as Ext.X and the court held that the sale deed is genuine and the plaintiffs have got right, title and possession over the land. The first appellate court during pendency of title appeal allowed to adduce additional evidence and produce Ext.D (death certificate



of Bedamiya Devi). The first appellate court considered the death certificate and found that the death register was not brought on record and SHO of Dighwara P.S. disclosed in his evidence that he cannot testify the genuineness of death certificate in absence of death register showing the death of Bedamiya Devi in the year 1930. The first appellate court came to the findings that in view of evidence of SHO of Dighwara P.S. the genuineness of death certificate (Ext.D) is doubtful and dismissed the appeal with concurrent finding that the sale deed executed by Bedamiya Devi on 05.01.1933 in favour of Baijnath Singh and Gorakh Singh is genuine, valid and legal.

6. Thus, I find that the evidence recorded by both the courts about the genuineness of the sale deed executed by Bedamiya Devi does not require any interference and, therefore, I find that there is no substantial question of law involved in this appeal. Accordingly, this second appeal is dismissed.

7. Consequently, I.A. No.5157 of 2018 filed for stay of Execution Case No.3/31 of 2017 pending in the Court of learned Munsif-2, Chapra stands dismissed.

(Prabhat Kumar Jha, J)

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