

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.87 of 2011

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Buddhu Turi, S/O Late Hemlal Turi, resident of Village-Nawada, Tola-Dhawatand, P.S. + P.O. Chandramadih, District-Jamui.

... .. Plaintiff-Appellant-Appellant.

Versus

1. Smt. Dhano Devi, W/O Damodar Sah, resident of Village-Nawada, Tola-Dhawatand, P.S. + P.O. Chandramadih, District-Jamui.

... .. Defendant Ist Party-Respondent-Respondent

2. Rohan Sah, S/O Sukar Sah.

3. Rameshwar Sah, S/O Baijnath Sah. Both residents of Village-Nawada, Tola-Dhawatand, P.S. + P.O. Chandramadih, District-Jamui.

....Defendants-2nd Party-Respondents-Respondents.

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Appearance :

For the Appellant : Mr.Baidya Nath Thakur, Advocate.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

7 20-02-2020 Heard learned counsel for the appellant under Order-XLI,
Rule-11 of the Code of Civil Procedure.

2. This Second Appeal has been preferred by the plaintiff-appellant against the judgment dated 03.11.2010 and decree dated 15.11.2010, passed by Sri Krishna Kumar Srivastava, A.D.J.-II, Jamui, in Title Appeal No. 20 of 2007 upholding the judgment dated 28.08.2007 and decree dated 03.09.2007, passed by Sri Sunil Kumar Sinha 'Mukul', Munsif, Jamui, in Title Suit No. 39 of 1997.



3. The appellant who was plaintiff in the court below filed Title Suit No. 39/1997, for declaration of title, confirmation of possession, and also for declaration that the Sale Deed dated 30.05.1997 executed in favour of defendant-1st set and sale deed dated 30.10.1968 executed in favour of defendant 2nd set is illegal, void, and inoperative, and further prayed that the defendants be restrained, not to interfere in peaceful possession of the plaintiff by granting injunction, and in case if the plaintiff dispossessed from the suit land, possession of the plaintiff be restored through the process of the court.

4. It was case of the plaintiff in the court below that the disputed land was recorded in the name of Gopal Garait who had three sons, Natho Turi, Dilo Turi and Muso Turi. Natho Turi was blessed with Baso Turi, Dilo Turi blessed with Geno Turi and Muso Turi blessed with two sons Chhotu Turi and Hemlal Turi. The wife of Baso Turi died issueless in the lifetime of her husband and accordingly, Baso Turi used to reside with Hemlal Turi and died issueless. It was further case of the appellant that as there was partition of 1/3 between three sons of Gopal Garait and as Baso Turi died issueless the share of Baso Turi was inherited by Hemlal Turi and accordingly, Hemlal Turi came in possession and plaintiff is heir of Hemlal Turi. It was



further case of the plaintiff that the defendant-2nd set has got executed a Sale Deed fraudulently without any consideration in favour of defendant-1st set on the basis of the Sale Deed executed by Jaswa Devi, so called wife of Baso Turi, but in fact Jaswa Devi was a fictitious lady having no concern with Baso Turi and as such the defendants have got no right title over the suit land.

5. Defendants appeared and filed written statement denying the case of plaintiff with their case that Baso Turi was firstly married with Jarwa Devi and out of wedlock of Jarwa Devi and Baso Turi one Nunpatiya was born and after death of Jarwa Devi, Baso Turi remarried with Jaswa Devi out of whom Baso Turi blessed with one daughter Shobhni Devi, and Shobhni Devi was blessed with two sons Ramji Turi and Bhutka Turi, and it was further stated in the written statement that the plaintiff has not given true Genealogical Table and it is wrong to say that Baso Turi died living with Hemlal Turi, and it was further case of the defendants that Jaswa Devi executed a Deed of Sale in favour of Baijnath Sah, Sarjeet Sah, Rohan Sah on 30.10.1968 and accordingly, Vendee came in possession who thereafter executed a Sale Deed on 30.05.1997 to Dhano Devi who came in possession and got mutated and as such, suit be dismissed.



6. After framing of issue and holding trial the learned Trial Court dismissed the Suit vide judgment and decree dated 28.08.2007 and 03.09.2007 respectively.

7. Being aggrieved from the judgment and decree dated 28.08.2007 and 03.09.2007, the plaintiff/appellant filed a Title Appeal No. 20/2007 which was also dismissed by the Appellate Court vide judgment dated 03.11.2010. Hence, the present appeal has been preferred.

8. Learned counsel for the appellant has tried to persuade this Court by framing substantial questions of law which are as follows:-

(i) Whether the Sale Deed dated 30.10.1968 (Ext. B/2) executed by Jaswa Devi in favour of her Vendee is void for want of her Title thereover or not?

(ii) Whether the relationship of wife and husband between Baso Turi and Jaswa Devi can be accepted as proved on oral accounts only without complying with the provisions of Section 50 of the Evidence Act.

9. Learned counsel for the appellant has drawn



attention with regard to the finding of the learned Trial Court with respect to Issue No. 5 wherein the learned Trial Court has given finding categorically discussing all the oral evidence hold, that Jaswa Devi was the wife of Baso Turi, and has also discussed the deposition of the plaintiff, who himself accepted in cross-examination regarding the status of Jaswa Devi and accepted that defendant has got a Sale Deed executed by Jaswa Devi wife of Baso Turi, and in fact this is an admission of the plaintiff in his deposition and as such once the plaintiff has admitted existence of Jaswa Devi being wife it is need not to be further prove, and since it is a case of defendant that he got Sale Deed executed by Jaswa Devi certainly after death of Baso Turi his wife got valid right to execute Sale Deed and as such question of law formulated by the learned counsel for the appellant with regard to valid right title of Jaswa Devi is answered negative.

10. So far the second question of law formulated by the learned counsel for the appellant regarding the compliance of Section 50 of the Evidence Act is concerned, again it appears from the finding recorded by the both court below who has discussed the oral evidence adduced on behalf of the plaintiff, has admitted existence of Jaswa Devi there is no need to further



prove existence of status of wife as it appears that the plaintiff himself has admitted saying Most. Jaswa Devi wife of Baso Turi executed a Sale Deed in favour of Baijnath Sah, Suraj Sah and Rohan Sah and as such it need not further any evidence and as such second question answered negative.

11. Further it appears that there is concurrent finding of the both court below on all the issues and the learned counsel for the appellant has not shown any perversity in the finding, and as such, the appeal is dismissed at the admission stage itself. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

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