

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.34 of 2017

=====

Kailash Chaudhary son of late chanarik Chaudhary as wrongly mention in
decree son of Bishnu Chaudhary, Resident of village - Koilwan, Pargana
Ancha, P.S. - Haspura, District - Aurangabad Bihar.

... .. Appellant/s

Versus

1. Smt. Kaushaleya Devi w/o Sri Nanku Ram, Resident of Village Koilwan
wrongly Poilwan, Pargana Ancha, District - Aurangabad Bihar.
2. Rameshwar Chaudhary, son of Bishnu Chaudhary, Resident of village -
Koilwan, Pargana Ancha, P.S. - Haspura, District - Aurangabad Bihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Yogendra Pd. Sinha-1
Mr. Bindeshwar Prasad Singh

For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

5 24-02-2023 Learned counsel for the appellant is present.

This Second Appeal has been filed against the
judgment of affirmance.

This Second Appeal has been filed against the
judgment and decree dated 03.11.2016, passed by Additional
District Judge VI, Aurangabad in Title Appeal No. 38 of
2011/51 of 2015, whereby judgment and decree dated
27.08.2011, passed by Munsif, Sub-divisional Civil Court,
Daudnagar, Aurangabad in Title Suit No. 58 of 2001 has been
affirmed.

It is admitted fact that khata no. 188/180 and plot no.
1187/614 was owned and possessed by defendant no. 1 and his



brother Chanarik Chaudhary, i.e. defendant no. 2. It is also admitted fact that an amicable partition had taken place in the year 1953-54 between two brothers Rameshwar Chaudhary and Chanarik Chaudhary. Rameshwar Chaudhary was elder brother of defendant no. 2. It is further case of the plaintiff that said Rameshwar Chaudhary and Chanarik Chaudhary executed two sale deeds in favour of plaintiff on 10.05.2000 and possession was also given to the plaintiff. It is further case of the plaintiff that after execution of the sale deed, Chanarik Chaudhary and defendant no. 1, Rameshwar Chaudhary (original defendant) handed over possession over the house situated on the suit land. It is contended that Rameshwar Chaudhary settled at another place and began to reside there. Defendant no. 2 could not manage himself for separate residence. Hence, he requested the plaintiff for one room till 31.10.2000 which is the suit land. It is the further case of the plaintiff that defendant did not vacate within time prescribed and even after passing seven months, he again requested but he refused to vacate the same.

After appearance, a written statement was filed on behalf of the defendant no. 2, Chanarik Chaudhary who contested the suit, but defendant no. 1 did not file any written statement.



It is the case of the defendant that in the year 1953-54, some differences were raised between the two brothers regarding same plot for which these defendants filed a case before the Gram Kutchery where a compromise took place between both the brothers, and as a result they got an award and judgment from Gram Kutchery, wherein defendant no. 1 Rameshwar Chaudhary sold his half share allotted to him in this plot to defendant no. 2 for consideration of Rs. 1300/- and delivered the possession to the defendant no. 2. Thereafter defendant no. 1 deserted village and settled in village Karma Bigha and since then he has no concern with the village or with the said land. Since then defendant no. 2 has been coming in peaceful possession over the entire area of the suit plot and his right, title, and interest as well as possession has been confirmed.

Learned counsel for the appellant submits that learned appellate court has failed to consider the sale deed dated 09.05.2000 (Exhibit 2B & 2C) which is not admissible. Learned counsel for the appellant further submits that learned appellate court neither discussed the exhibit filed by the parties and only relied upon the finding of the trial court nor the trial court discussed the evidence in detail.



It is the case of the defendant that nowhere mentioned about the non-execution of the sale deed and never challenged the sale deed executed by him on 09.05.2000.

The appellate court, after considering the documents filed by the parties, held that the documents filed by the plaintiff clearly shows that property in the sale deeds was owned and possessed by vendor after getting it in partition by metes and bounds and he has all rights over the same. About the sale deeds executed by Chanarik Chaudhary, it has been held that he also owned and possession property mentioned therein by getting it in partition by metes and bounds. Both sale deeds are registered sale deeds and unless and until it is declared void both sale deeds will be presumed to be legal, genuine and operative.

On the other hand, both the courts below has held that defendant has neither brought any sale deed executed before Gram Kutchery nor any order of Gram Kutchery as exhibit. Once partition held by metes and bounds, it is partitioned for always. Any exchange or sale made before Gram Kutchery has no legal value unless and until the aforesaid deed is registered. Moreover, neither any deed of either exchange or sale is brought on record. The witnesses of the sale deeds have proved that sale



deed was duly executed before them. It has not been proved void by the defendant.

Both the learned courts below after considering the pleading and evidence of the parties, came to definite conclusion that registered sale deeds no. 1654 and 1687 dated 09.05.2000 executed by Chanarik Chaudhary and Rameshwar Chaudhary in favour of Kaushaleya Devi. These documents prove that property in sale deeds was owned and possessed by the vendors after getting it partition by metes and bounds and they have all rights over the same. It is held that unless and until sale deeds is declared void both the registered sale deeds will be presumed to be legal, genuine and operative. The defendant has neither brought any sale deed executed before Gram Kutchery nor order of Gram Kutchery as exhibits. The learned appellate court held that the defendants have pleaded that the sale deed executed by defendant no. 1 in favour of plaintiff is void but it is not pleaded as to how it is void and on which ground it is void either by impersonation or by fraud. The witness of the sale deeds have proved that sale deed was executed before them. As such both the sale deeds executed by both the brothers will be presumed to be true in the eye of law and binding upon them and also followed by government rent receipts Ext. 1.



In the said circumstances, this Court does not find any illegality in the impugned judgment and decree of the learned courts below nor does find any substantial question of law in this Second Appeal, which is, accordingly, dismissed at this stage of hearing under Order XLI, Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

premchand/-

U			
---	--	--	--

