

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.331 of 2017

1. Banshidhar Choubey
2. Dharnidhar Choubey.
3. Haldhar Choubey.
All are sons of Late Shivshankar Choubey, resident of Village and Post Office Dalsagar, Police Station Industrial Buxar, District Buxar.
4. Lalti Devi wife of Late Ramashankar Tiwary.
5. Rishikesh Tiwary.
6. Dayashankar Tiwary.
7. Santosh Tiwary.
All are sons of Late Ramashankar Tiwary, residents of Village- Sidhipur, Police Station Navanagar, District Buxar.

... .. Appellant/s

Versus

1. Sri Kishun Prasad Singh, son of Dhurphekan Singh, resident of Village- Mahila, Police Station- Itarhi, District Buxar.
2. Ramdayal Koeri, son of Late Dinanath Koeri
3. Shivdayal Koeri, son of late Dinanath Koeri.
4. Lacchiya Devi, wife of Late Ramyash Koeri.
5. Umesh Singh, son of Late Ramyash Koeri
6. Goverdhan Singh, son of Late Ramyash Koeri.
7. Pappu Singh, son of Late Triveni Singh
8. Raju Singh, son of Late Triveni Singh.
9. Laljee Singh, son of Late Bachu Koeri.
10. Babuaram Choubey, son of Late Ramchandra Choubey
11. Rabindranath Choubey, son of Late Ramchandra Choubey,
All are resident of Village and Post Office Dalsagar, Police Station Industrial, Buxar, District Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. kamal Nayan Choubey, Sr. Advocate Mr. Abhishek Kumar, Advocate Mr. Ajit Kumar Singh, Advocate
For the Respondent/s	:	Mr. Shitanshu Shekhar Mishra, Advocate Mr. Syed Hussain Majeed, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 18-07-2024 Heard Mr. Kamal Nayan Choubey, learned senior



counsel for the appellants and Mr. Syed Hussain Majeed, learned counsel for the respondents.

2. The plaintiffs are the appellants in this Second Appeal.

3. This Second Appeal has been filed by the plaintiffs/appellants against the judgment and decree dated 22.03.2017 passed by Fast Track Court -1, Buxar in Title Appeal No. 30 of 2003, whereby the judgment and decree dated 30.05.2003 passed by Munsiff-II, Buxar in Title Suit No. 54 of 1991 has been affirmed.

4. The plaintiffs had filed the aforesaid Title Suit No. 54 of 1991 for declaring that the consolidation orders are void and inoperative and for declaring the title of the plaintiffs over the suit property and also for permanent injunction.

5. Case of the plaintiffs is that plaintiff no. 2, namely, Rama Shankar Tiwary was the purohit of the family of Sheo Pujan Koeri. The father of the plaintiff no. 2 died when he was child, but in spite of the minority of the said plaintiff no. 2, the said family of the Sheo Pujan Koeri always paid respect to the plaintiff no. 2. *Dan Dakshina* was also paid to the plaintiff no. 2 as usual. A partition effected between the said Sheo Pujan Koeri and his son, namely, Jamuna Koeri. Jamuna Koeri had executed



a registered deed of gift in favour of plaintiff no. 2 on 02.03.1962 with respect to the suit property. Sheo Pujan Koeri also admitted the said gift deed. Further case of the plaintiffs is that the defendant no. 1 by undue influence obtained a registered sale deed dated 26.08.1963 from plaintiff no. 2, Rama Shankar Tiwary of the suit property when he was minor at that time. At that time, plaintiff no. 2 was student of Murar High School, Murar and there was no necessity to execute sale deed by plaintiff no. 2. Despite the sale deed, plaintiff no. 1 was cultivating the suit property on *batai* and was giving usufruct to the plaintiff no. 2. Plaintiff no. 2 became major in the year 1967 as per his date of birth dated 01.06.1949, and he was not competent to execute any sale deed in the year 1963. As such, the sale deed executed by plaintiff no. 2 was inoperative and void. The survey operation of the village was going on in village since before said gift deed and survey khatian was prepared in the name of Sheo Pujan Koeri with respect to the suit property. When the plaintiff no. 2 became major, no objection was raised by Sheo Pujan Koeri in whose favour survey Khatian was prepared. In Chakbandi, name of the Rama Shankar Tiwary was entered because of which survey record was corrected by the consolidation officer, but ultimately consolidation record was



finally prepared in the name of defendant no. 1. In the meantime, defendant no. 1 also executed sale deed in favour of defendant 2nd set. Plaintiff no. 2 also executed sale deed in favour of plaintiff no. 1 by which the plaintiff no. 1 acquired title and interest. As such, sale deed dated 26.08.1963 is illegal and on the basis of the said sale deed, any sale deed executed by defendant no. 1 to defendant 2nd set *ipso facto* becomes illegal and void. The consolidation orders regarding title is itself illegal, void and inoperative.

6. The defendants had filed written statement in that suit and had denied the claim of the plaintiffs by filing their written statement on the ground that the suit is barred by law of limitation and hit by the principle of estoppel resjudicata and also barred by Section 4(b) of the Consolidation Act. It is further contended that the father of plaintiff no. 2 died when plaintiff no. 2 was minor and at that time of execution of sale deed of the year 1963, he was not minor and was also not student of Murar High School. He was also in need to sale the land and executed sale deed in favour of defendants *vide* sale deed dated 26.08.1963 executed by plaintiff no. 2 was legal document. It is further contended that the defendant Sri Kishun Prasad Singh became the absolute owner and no fraud was committed by the



said defendants.

7. There are two sets of defendants. 1st set only filed their written statement jointly with defendant 2nd set, but did not contest the suit. As such, the learned trial court dismissed the suit exparte against the defendant 1st set and also dismissed the suit with costs against others.

8. The learned trial court after analyzing the evidence adduced by the parties and materials on record has held that the plaintiffs have not proved their case and did not challenge the sale deed dated 26.08.1963. Plaintiffs have neither filed the suit within three years of attaining majority of Rama Shankar Tiwary nor within 12 years of execution of sale deed. The present title suit has been filed in the year 1991. Apart from this, the plaintiffs did not prove that at the time of execution of sale deed dated 26.08.1963, Rama Shankar Tiwary was a minor.

9. Learned appellate court considered all aspects of the matter and held that plaintiffs, in their plaint, made out a case that on the day of execution of sale deed in favour of defendant no. 1, the vendor Rama Shankar Tiwary was a minor. It is well settled principle of law that if the plaintiffs raises any question, the burden of proof lies upon the plaintiffs. For proving the same, the plaintiffs filed duplicate School Transfer



Certificate, issued from Murar High School, which is Exhibit-1.

The Learned appellate court further held that during the trial of the suit, the plaintiffs never tried to call for the original record of the school and the plaintiffs also took plea that the original School Transfer Certificate is lost. It is well settled principle of law that the duplicate School Transfer Certificate cannot be proved specially when the plaintiffs did not take effort to call for the original.

10. It is submitted that neither the sale deed dated 26.08.1963 executed in favour of defendant no. 1 by plaintiff no. 2, namely, Rama Shankar Tiwary nor the admitted document deed of gift dated 02.03.1962 in favour of the plaintiffs no. 2 shows any such minority.

11. Learned senior counsel for the appellants submits that the duplicate School Transfer Certificate should have been accepted to prove that at that time of execution of sale deed dated 26.08.1963, plaintiff no. 2 was a minor. The appellate court fully relied upon the findings of the order of the Consolidation Officer passed in Consolidation Case No. 76 of 1983/84.

12. On the other hand, learned counsel for the defendants/respondents submitted that the trial court on



consideration of the entire evidence and material on records, came to conclusion that the plaintiffs have not proved their case and did not challenge the sale deed dated 26.08.1963 and the present suit has not been filed within 3 years of attaining of majority of Rama Shankar Tiwary nor within 12 years of execution of sale deed. Moreover, the plaintiffs did not prove that at the time of execution of sale deed dated 26.08.1963, he was minor.

13. On Appeal, the learned appellate court affirmed the findings of the trial court and discussed the issues involved in this case in detail. The learned appellate court held that during the trial of the suit, the plaintiffs never tried to call for the original record of the suit and the plaintiffs also took plea that original school transfer certificate is lost. Duplicate school transfer certificate was filed by the plaintiffs which is Exhibit-1, cannot be proved especially when the plaintiffs took no effort to call for the original. Learned appellate court further held that plaintiff no. 2 failed to establish that he was minor at the time of execution of sale deed dated 26.08.1963.

14. Learned counsel for the respondents submitted that material evidences both oral and documentary adduced by the plaintiffs have been duly discussed by the lower appellate



court. The findings of facts recorded by the lower appellate court is based on consideration of evidence. The lower appellate court has affirmed the findings of the trial court. The concurrent findings of fact could not be interfered in Second Appeal. In this regard, reliance has been placed in the case of ***Budhu Dusadh and Others Vs. Mangani Devi and Other*** reported in ***AIR 1984 Pat 123***. It is further submitted that findings as to genuineness of sale deed, which is a finding of fact, cannot be interfered with in Second Appeal. In this regard, reliance has been placed in the case of ***Jaggarnath Singh and another v. Laxmi Singh and other*** reported in ***AIR 1988 Pat 296***.

15. Learned counsel for the respondents further vehemently submitted that if deed was executed by the plaintiff no. 2 when he was minor and it was void, he had two option to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. The plaintiffs did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation. There is presumption that if a registered document is validly executed, it would be, prima facie, valid in law. The onus of proof, thus, would be on the person who leads evidence



to rebut the presumption. In the present case, plaintiffs/appellants has not been able to rebut the said presumption. This view has been considered in the case of *Prem Singh and Others v. Birbal and Others* reported in (2006) 5 SCC 353. It is settled law that the High Court in the Second Appeal could not have without sufficient and just reasons interfered with the concurrent findings of fact of the courts below.

16. In view of the preceding analysis, it is quite apparent that the judgment and decree of the courts below are covered by the findings of fact and no question of law much less substantial question of law arises for consideration in the instant Second Appeal which is, accordingly, dismissed at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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