

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.256 of 2016

- 1.1. Hira Mani Devi W/o Late Naresh Paswan, resident of Vilalge-Neema Wajid, P.O. and P.S.-Rafiganj, District-Aurangabad.
- 1.2. Dindayal Prasad son of Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.3. Pradeep Kumar son of Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.4. Sujit Kumar, Son of Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.5. Ajit Kumar, son of Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.6. Ranjeet Kumar, son of Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.7. Rina Kumari, D/o Late Naresh Paswan, resident of Village- Neema Wajid, P.O. and P.S.- Rafiganj, District- Aurangabad.
- 1.8. Ram Samari Devi, W/o Brahmdeo Paswan and D/o Late Naresh Paswan, resident of Village-Berka, P.S.-Goh, District-Aurangabad.
- 1.9. Kamlawati Devi, W/o Chandeshwar Paswan and D/o Late Naresh Paswan, resident of Village-Chewan, P.S.-Kasma, District-Aurangabad.

... .. Appellant/s

Versus

1. Ram Prasad Ram
2. Ram Vilash Ram
3. Kailash Ram All are sons of Late Anachh Dusadh All are resident of Village-Neema Wajid, P.O.P.S.- Rafiganj, District- Aurangabad.
4. Suresh Paswan
5. Kameshwar Paswan Both are sons of S/o Late Moti Paswan Both are resident of Village- Neema Wajid, P.O.P.S.- Rafiganj, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. K P Singh, Sr. Advocate with Mr. Bhanu Pratap Singh, Advocate
For the Respondent no. 1:		Mr. Aman Vishal, Advocate on behalf of Mrs. Leelawati Kumari
For the Intervenor	:	Mr. Shailendra Kr Jha, Advocate Mr. Niranjan Pd. Singh, Advocate Mr. Shradha Suman, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA



ORAL ORDER

9 17-10-2024 Heard the learned counsel for the parties.

2. This Second Appeal has been filed against the judgment and decree of affirmance dated 16.03.2016 passed by A.D.J.-IV, Aurangabad in Title Appeal No. 27 of 2002 / 61 of 2010 by which judgment and decree dated 30.04.2022 passed by Sub-Judge – V, Aurangabad in Title Suit No. 57 of 1999 / 12 of 2002 was upheld.

3. Plaintiffs are the appellants in the instant Second Appeal.

4. The plaintiffs filed Title Suit for declaration that the sale deed dated 25.07.1933 with respect to the suit land is void but to remain on safe side, the court be pleased to declare the title of the plaintiff on the suit land and further be declared the confirmation of possession and in case the court finds the plaintiffs out of possession, then for the recovery of possession through the process of court and also for permanent injunction.

5. In fact, the plaintiffs have not challenged sale deed dated 25.07.1933 in true sense and the suit was filed only for declaration of title and possession and alternatively recovery of possession.

6. Original plaintiff nos. 1 to 3 are the sons of Moti Dusadh and original plaintiff no. 4 is widow of Moti Dusadh.



Defendants are grandson of Bishun Dusadh, who was the purchaser of the sale deed dated 25.07.1933.

7. The present suit has been filed in the year 1999 questioning the registered sale deed executed by guardian of the father and husband of the plaintiffs respectively.

8. The case of the plaintiffs is that it is admitted fact that at the time of execution of sale deed, the father of original plaintiffs and husband of original plaintiff no. 4 was minor. It is also alleged that Dasai Dusadh in collusion with Bishun Dusadh fraudulently executed a deed which is void and illegal. The said Dasai Dusadh was not the guardian of the said Moti Dusadh. In absence of legal guardian, the said Dasai Dusadh had no power to execute the sale deed in favour of the ancestor of the defendants. It is submitted that the defendants and their father did not acquire any right, title and possession in the suit land and the sale deed dated 25.07.1933 is *abinitio*, void and not binding on the plaintiffs.

9. On summons, the defendants appeared and filed their written statement and contested the suit.

10. The case of the defendants is that the name of the grand father of the plaintiffs was Rangu Dusadh, who had one full brother, namely, Sharwan Dusadh. Both are sons of Sheo



Charan Dusadh. Rangu Dusadh died leaving behind two sons, Ambika and Chamari. Chamari Dusadh died issueless and Ambika Dusadh died leaving behind his widow and a minor son Moti Dusadh. The brother of Rangu Dusadh, namely, Sharwan Dusadh died leaving behind his two sons, namely, Dasai Dusadh and Lallu Dusadh. It is further contended that Ambika Dusadh and Dasai Dusadh were cousin and as Ambika died at a young age leaving behind his widow and minor son, namely, Moti Dusadh, widow of Ambika Dusadh remarried with Dasai Dusadh and that Dasai Dusadh was the cousin *Dewar* of the widow of Ambika Dusadh. Moti Dusadh was brought up by Dasai Dusadh. It is further contended that Moti Dusadh died at the age of 70 years leaving behind three sons, the plaintiffs, widow/plaintiff no. 4. Dasai Dusadh sold the suit property with consent of the mother of Moti Dusadh for his welfare as guardian and well wisher. During the life time, Moti Dusadh never challenged the sale deed and accepted the sale deed by his conduct. The defendants further contended that after purchase, his ancestor and successor-in-interest came in possession over the suit land.

11. Both the parties filed their documents and adduced evidences.



12. The defendants have filed Malikana rent receipts which are Exhibit-B/17 to B/31. After vesting of Zamindari, the defendants paid rent to the State of Bihar. During survey operation, survey parcha was issued in favour of ancestor and his successor-in-interest as Exhibit-C/2 to C/7.

13. On the other hand, the plaintiffs/appellants filed certified copy of compensation Return vide Case No. 5671 of 54-55, which is Exhibit-2 and has been filed by the ex-landlord in the name of Moti Dusadh for the purpose of depositing land revenue at the time of vesting. It is contended that the father of the plaintiffs died at the age of 60-65 years before 20 years of filing of the suit i.e. the evidence of witnesses was recorded on 01.06.2001, meaning thereby the said Moti Dusadh had died sometime about in the year 1980-81. He never challenged the sale deed executed in favour of the ancestor of the defendants. The defendants also filed Exhibit-A/1 which is sale deed dated 07.04.1983 executed by Suresh Paswan, plaintiff no. 2 in favour of Nand Kishore Paswan and another. Exhibit-C to C/7 are survey parchas and Exhibit-D is rent schedule prepared by the State of Bihar in the name of Bishun Dusadh. Exhibit-E is the notice issued by consolidation authority. The defendants adduced altogether 11 witnesses.



14. It is pertinent to mention that the total area of the land is 27 acres and 1 decimal out of which, 13 acres and 15½ decimals of land was sold to the ancestor of the defendants which has been challenged and claimed declaration on behalf of the plaintiffs.

15. Both the courts below especially learned appellate court which is the final court of facts have held that sale deed dated 25.07.1933 is valid, genuine and operative. The plaintiffs' father has not challenged the sale deed within three years of attainment of his majority as per the provision of Limitation Act.

16. The present suit has been filed in the year 1999 without seeking any relief against the sale deed dated 25.07.1933. The suit is barred by law of limitation.

17. Considering the aforesaid facts and circumstances as well as the materials on record, it is quite apparent that the judgment and decree of the courts below are covered by the findings of facts and no question of law much less substantial question of law involves for consideration in the instant Second Appeal.

18. Accordingly, the instant Second Appeal is dismissed at the stage of hearing under Order 41 Rule 11 of the



Code of Civil Procedure.

(Khatim Reza, J)

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