

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.182 of 2015

1. Smt. Panmati Devi @ Manmati Devi W/o Sri Akhileshwar Singh
2. Sabitree Kuar W/o Late Sarveshwer Singh
3. Anand Kumar Singh @ Anand Kumar S/o Late Sarveshwar Singh All 1 to 3 resident of Village- Jhauwan Mahuani, P.S.- Dighwara, District- Saran.

... .. Respondents/Appellants/ Appellant/s
Versus

1. Smt. Sitapati Devi W/o Sri Arun Kumar Singh R/o Village- Jhawan Mahuani, P.O.- Jhauwan, P.S.- Dighwara, District Saran.
2. Chandraket Singh S/o Tufani Singh
3. Asha Dev W/o Sri Harindra Singh
4. Nirmala Devi W/o Sri Sohan Singh, D/o Chandra Singh All 2 to 4 resident of Village- Jhauwan Ka Tola, P.O.- Jhauwan, P.S.- Awatar Nagar, District Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Md. Waliur Rahman, Adv. Mr. Krishna Kant Tiwari, Adv.
For the Respondent/s	:	Mr. Jitendra Kishore Verma, Adv. Mr. Abhishek Kumar Srivastava, Adv. Ms. Kumari Shreya, Adv. Mr. Achyut Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

3 03-04-2025 Heard Mr. Md. Waliur Rahman, learned counsel for the appellants and Mr. Jitendra Kishore Verma, learned counsel for the respondents.

2. This Second Appeal has been preferred against the judgment and decree dated 16.06.2015, passed by the learned Additional District Judge-V, Saran at Chapra, in Title Appeal No. 03 of 2013, whereby the learned appellate Court affirmed the judgment and decree dated 09.11.2012, rendered by the



learned Munsif- II, Saran at Chapra, in Title Suit No. 66 of 1985. The said suit was filed for the redemption of the mortgaged property by making a payment of Rs. 4,000/- (Rupees Four Thousand only) to the defendants-appellants and for the return of the conditional mortgage deed and recovery of possession of the property.

3. The case of the plaintiff, in brief, is that defendant nos. 3 and 4, with the consent of defendant no. 5, executed a sale deed in favour of the plaintiff on 06.06.1982 in respect of 5 kathas and 15 dhurs of land. The sale deed is marked as Exhibit-2. Further, the plaintiff purchased 2 kathas 17 dhurs of land from Ramchandra Singh, son of Ram Gopal Singh, who was the vendee of defendant no. 5, through a sale deed dated 30.09.1982, which has been marked as Exhibit-2/a. The further case of the plaintiff is that defendant no. 5, beyond his share, wrongfully mortgaged the suit land in favour of defendant no. 1 on 04.12.1981. The said mortgage deed has been brought on record and marked as Exhibit-A. The period of redemption for the said mortgage was fixed as May 1987. The plaintiff asserts that she is the owner of the entire mortgaged land, which consists of a total area of 8 kathas and 12 dhurs. It is further pleaded that the cause of action for the suit arose on 25.06.1985,



when the plaintiff approached defendant nos. 1 and 2 for repayment of the mortgaged money and sought redemption of the property. However, the defendants refused to accept the money and declined to vacate the suit property.

4. On summons, the defendants-appellants appeared and filed their written statement and pleaded that the suit is not maintainable as the plaintiff is not the mortgagor. They argued that the plaintiff has no *locus standi* to file the suit in view of the provisions laid down under Order XXXIV, Rule 7 of the Code of Civil Procedure (CPC). Further, the defendants pleaded that a stranger has no right to sue for redemption of mortgaged property. The mortgaged property entirely belongs to defendant no. 5. It is also contended that the mortgage deed in question is also a conditional sale.

5. Learned counsel for the appellants submits that the learned Trial Court erroneously decreed the suit in a summary manner, without passing the preliminary decree as required under Order XXXIV, Rule 7 of the Code of Civil Procedure (CPC). It is further contended that as per the proviso to Section 58(c) of the Transfer of Property Act, 1882 no such transaction shall be deemed to be mortgage, unless the condition is embodied in the document which effects or purports to effect the



sale.

6. The learned Trial Court, after considering the pleadings of the parties, the materials on record, and after examining the the evidence, decreed the suit in favour of the plaintiff holding that the suit land originally belonged to Tufani Singh, the father of defendant nos. 3, 4, and 5. The plaintiff is stated to have purchased an area measuring 5 Kathas and 15 Dhurs of the suit land from Defendant Nos. 3 and 4 by virtue of a registered sale deed dated 06.06.1982 (Exhibit 2). Thereafter, she is also said to have acquired an area measuring 2 Kathas and 17 Dhurs of land from Ramchandra Singh, son of Ram Gopal Singh, who was the vendee of Defendant No. 5, through a registered sale deed dated 30.09.1982 (Exhibit 2/a). The mortgage deed executed by Defendant No. 5 on 04.12.1981, (Exhibit A), in respect of the suit land, contains a stipulation for repayment of the mortgaged amount of Rs. 4,000/- (Rupees Four Thousand only) by May, 1987. The learned Trial Court further observed that defendant nos. 1 and 2 failed to establish that defendant no. 5 had an exclusive right to mortgage the entire land, measuring 8 kathas and 12 dhurs, in their favour on the basis of any allotment through a *bakhudah batwara*. Defendant Witness No. 5, the husband of Defendant No. 1,



failed to produce any material evidence to establish that a partition had taken place among the three brothers i.e., defendant Nos. 3, 4, and 5 nor was there any documentary proof in support of such partition. In his testimony, DW5 further deposed that Defendant No. 5 was of unsound mind. He further stated that Defendant No. 5 had executed only a conditional mortgage under normal circumstances and possession of the property had also been delivered. However, the defendants failed to produce any document to substantiate the alleged mental illness of defendant no.5. It is evident from the records that Defendant No. 5 executed a sale deed in respect of 2 Kathas and 17 Dhurs of land in favour of Ramchandra Singh, son of Ram Gopal Singh (Exhibit 2/b). Subsequently, the said Ramchandra Singh transferred the same piece of land to Sitapati Devi (Plaintiff No. 1) by virtue of a registered sale deed (Exhibit 2/a). The trial Court further held that the provisions of the Bihar Money Lenders Act, 1975 (hereinafter referred to as 'the Act of 1975'), are not applicable to the present case.

7. Being aggrieved by the judgment and decree of the Trial Court, the defendants-appellants preferred a Title Appeal. The learned Appellate Court, after a thorough analysis of the Trial Court's judgment and the evidence on record, dismissed



the appeal and observed that it is an undisputed fact that the suit property originally belonged to the father of Defendant Nos. 3, 4 and 5. The sale deed executed by Defendant Nos. 3 and 4 in favour of Sitapati Devi/Plaintiff No. 1 (Exhibit 2), and the sale deed executed by Defendant No. 5 in favour of Ramchandra Singh, son of Ram Gopal Singh(Exhibit 2/b), who in turn executed a sale deed in favour of Sitapati Devi/Plaintiff No.1 (Exhibit 2/a), were never challenged by the contesting Defendant Nos. 1 and 2. The learned Appellate Court, therefore, held the sale deeds in question to be valid and enforceable. It was further held that Defendant No. 5 had no legal right to mortgage the entire suit property beyond his own share. The Appellate Court, after due consideration of the pleadings, oral and documentary evidence, concluded that the plaintiff had successfully establish her case. On the other hand, the defendants-appellants failed to establish their case and also did not succeed in proving that the suit was barred under the provisions of the Act of 1975.

8. After hearing the submissions made on behalf of the parties and on perusal of the materials available on record, including the judgments rendered by the learned courts below, this Court finds that the learned Appellate Court, being the



final Court of facts, after considering the pleadings of the parties and the evidence, both oral and documentary adduced by them, arrived at a clear finding that the sale deed executed by Defendant No. 5 in favour of Ramchandra Singh, son of Ram Gopal Singh, which is marked as Exhibit 2/b, relates to the disputed land bearing Khata No. 926, Plot No. 3870, admeasuring 2 kathas and 17 dhurs of land. The boundary details in the said sale deed (Exhibit 2/b) indicate that the land situated towards the southern side is recorded in the name of '*Neez Bedran*' (brother of the vendor), which supports the conclusion that defendant No. 5 was not exclusively allotted the entire disputed plot in question under the family arrangement. The Court also held that the defendants had no right to mortgage the entire suit land. It was further held that the plaintiff had the right to sue and the suit was maintainable in view of Section 91(a) of the Transfer of Property Act, 1882. Since Exhibits 2, 2/a, and 2/b were never challenged, the rights and interests of the vendees under the said sale deeds, have remained intact and unaffected.

9. Considering the aforesaid facts and materials on record, I am not inclined to interfere with the concurrent findings of the learned courts below, and there is no question of



law, much less substantial question of law, arises for consideration in the Second Appeal.

10. Accordingly, this Second Appeal is dismissed at the stage of Hearing under Order XLI Rule 11 of the C.P.C.

(Khatim Reza, J)

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