

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.126 of 2018

1. Dhirendra Kumar Singh, son of Late Bed Narayan Singh, resident of village Wajitpur, Gokulpur, P.S. Bidupur, District Vaishali.
2. Ram Briksh Singh, son of Late Hazari Singh, resident of village Wajitpur, Gokulpur, P.S. Bidupur, District Vaishali.

... .. Appellant/s

Versus

Aruna Devi, wife of Shir Baidya Nath Singh, resident of village Wajitpur, Gokulpur, P.S. Bidupur, District Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Braj Kishore Singh Chouhan, Adv. Mr. Kumar Harsh, Adv.
For the Respondent/s	:	Mr. J.S. Arora, Sr. Adv. With Mr. Pratik Kumar Sinha, Adv. Mr. Lalitesh Mani, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

19 05-05-2026 Heard Mr. Braj Kishore Singh Chouhan, learned counsel for the appellants as well as Mr. J.S. Arora, learned senior counsel assisted by Pratik Kumar Sinha, learned counsel for the respondent.

2. This Second Appeal has been preferred by the defendants/appellants/appellants against the judgment and decree of affirmance dated 25.01.2018 passed by the learned Fast Track Court, Vaishali at Hajipur in Title Appeal No. 12 of 2002 whereby the learned Appellate Court has upheld the judgment and decree dated 05.02.2002 passed in Title Suit No. 128 of 1994 by the learned Munsif-I, Vaishali at Hajipur whereby the learned Trial Court has decreed the suit on contest



with cost.

3. The plaintiff/respondent filed Title Suit No. 128 of 1994 for redemption of mortgage and recovery of possession.

4. The case of the plaintiff/respondent is that the land under mortgage is of R.S. Khata No. 14, Plot No. 280, Area 57 decimals from east. Total area of Plot No. 280 was 1 *bigha* 5 *katha* 5 *dhur*, which was recorded in Revisional Survey Khatiyan in the name of Kaushalya Singh, who sold 12 katha of land from west to the plaintiff *vide* registered sale deed dated 02.05.1986 for consideration of Rs. 4000/- since then, she came in possession of the said land and remaining area of that plot i.e. 57 decimals was mortgaged by Kaushalya Singh through registered mortgage deed dated 27.07.1988 for Rs. 2000/- to Ram Briksh Singh (defendant no. 1), who came in possession as mortgagee. Kaushalya Singh died leaving behind a son Surendra Singh. It is further pleaded that there was mutual partition between Kaushalya Singh and Surendra Singh of the entire property and both of them came in possession of their respective share. The said partition happened sometime after the mortgage and the disputed land was allotted to Surendra Singh in his share. Surendra Singh announced to sale that land under mortgage and he agreed to sale the land for consideration of Rs.



5000/- and accordingly, a sale deed was executed on 09.01.1989 in favour of Aruna Devi (plaintiff) and out of consideration money of Rs. 5000/-, Rs. 2000/- remained with the plaintiff Aruna Devi for payment of mortgage money to Ram Briksh Singh and remaining Rs. 3000/- was paid to Surendra Singh at the time of exchange of receipt of the sale deed and he endorsed on the receipt. The plaintiff obtained the sale deed, got her name mutated and paid the rent to the State of Bihar. It is further submitted that period of mortgage was *Baishakh* 1399 *Fasli* (1992). After the execution of sale deed Aruna Devi through her husband tendered Rs. 2000/- to Ram Briksh Singh for return of mortgage deed and to leave possession over the land which was refused by Ram Briksh Singh. Therefore, the plaintiff filed Miscellaneous Case No. 22 of 1993 under Section 83 of the Transfer of Property Act and deposited Rs. 2000/- and cost of Registry Rs. 50/- through *Challan* No. 81 of 24.09.1993. In the said Miscellaneous Case, the notice was issued, which was served upon Ram Briksh Singh. Despite valid service of notice, he did not appear in the said case. Neither he received the deposited amount nor he vacated the land in suit though the plaintiff is legally entitled to get the possession. Further, it has been pleaded that Ram Briksh Singh wrongly stated that the



amount of mortgage was paid to him and possession was delivered to Dhirendra Kumar Singh, who is own nephew of Ram Briksh Singh, as such, both might have committed mischief.

5. On summons, written statement was filed on behalf of defendant-Ist set, Ram Briksh Singh stating therein that he had received the mortgage amount on 31.05.1993 from Dhirendra Kumar Singh and made endorsement on the original deed and gave the document to Dhirendra Kumar Singh and also handed over the possession of the land to him. It is further submitted that there was no partition between Kaushalya Singh and his son Surendra Singh. Kaushalya Singh was the *Karta* of the joint family and he dealt with the property for the benefit of the joint family. He admitted that Kaushalya Singh sold the western part of the disputed plot to the plaintiff. Kaushalya Singh and his son also sold the eastern part to Dhirendra Kumar Singh (nephew of defendant no. 1) through registered sale deed executed on 10.11.1989. He denied the fact that the plaintiff either herself or through her husband had made request to receive the mortgage money and to leave possession over the land in suit. It has been pleaded that there was no reason for filing Miscellaneous Case No. 22 of 1993 under Section 83 of



the Transfer of Property Act and defendant no. 1 had not received any notice and the judgment dated 02.04.1994 passed in Miscellaneous Case No. 22 of 1993 have been obtained by playing fraud. Dhirendra Singh had shown the sale deed dated 10.11.1989 in the court in which there was statement about the mortgage money and he tendered the mortgage money, which was received by defendant no. 1, who handed over the possession to Dhirendra Kumar Singh.

6. A separate written statement has also been filed by Dhirendra Kr. Singh admitting the statement of Ram Briksh Singh (defendant no. 1) and denying the story of partition. Kaushalya Singh and Surendra Singh both remained joint and Kaushalya Singh died leaving behind his son Surendra Singh in the state of jointness. The husband of Aruna Devi wrongly obtained the sale deed on 09.01.1988 in the name of his wife. The sale deed was executed without consideration money. It is further pleaded that both Kaushalya Singh and his son Surendra Singh have agreed to sale disputed land to defendant no. 2 for consideration mentioned in agreement to sale dated 06.12.1988. The order passed in Miscellaneous Case No. 22 of 1993 is not binding upon defendant no. 2 and no notice was served to him. The mortgage money was paid to Ram Briksh Singh and he



obtained the original mortgage deed and came in possession of the land in question.

7. The learned Trial Court after considering the pleadings, the evidence adduced by the parties and materials on record observed that both the parties have accepted that Kaushalya Singh sold 12 katha of the land from western side of the plot *vide* registered sale deed dated 02.05.1986 over which the plaintiff is in possession and the remaining 13 katha 5 dhur land equivalent to 57 decimals was mortgaged with Ram Briksh Singh, who came in possession over the land as mortgagee, and when the son of Kaushalya Singh, namely, Surendra Singh became major before 1989 then he executed a registered sale deed on 09.01.1989 in favour of the plaintiff/respondent for consideration of Rs. 5000/-, in which it was mentioned that amount of mortgage of Rs. 2000/- was left with the plaintiff to pay to Ram Briksh Singh for redemption of mortgage and to obtain possession over the land. The defendant has pleaded that Kaushalya Singh and Surendra Singh have executed *Mahadnama* (agreement to sale) in favour of Dhirendra Kr. Singh (defendant-2nd set) on 06.12.1988 and accordingly, they executed the sale deed in his favour on 10.11.1989, as such, has got lawful title and he has redeemed the mortgage. It is further



held by the learned Trial Court that it is admitted fact that Miscellaneous Case No. 22 of 1993 was filed by the plaintiff in which summons and notice was issued upon defendant no. 1 but he did not appear in the said case. Therefore, *ex parte* order was passed in favour of the plaintiff. The plaintiff Aruna Devi got right of redemption for which amount of Rs. 2000/- was deposited in the court *vide Challan* No. 81 dated 24.09.1993. Hence, the plaintiff is entitled to get the relief and all issues were decided in her favour and decreed the suit.

8. Being aggrieved by the judgment and decree dated 18.02.2002 passed in Title Suit No. 128 of 1994 by the learned Munsif-I, Vaishali at Hajipur, the defendants/appellants preferred Title Appeal No. 12 of 2002. After hearing the parties and considering the materials on record, the learned Fast Track Court, affirmed the judgment and decree of the learned Trial Court and dismissed the appeal *vide* judgment and decree dated 25.01.2018.

9. The learned lower Appellate Court has held that admittedly the land in dispute is of Plot No. 280, Area 57 decimals and total area of the disputed plot is 1 bigha 5 katha and 5 dhur recorded in the Survey Khatian in the name of Kaushalya Singh. It is admitted fact that Kaushalya Singh had



already sold 12 katha land from west to the plaintiff *vide* registered sale deed dated 02.05.1986 and remaining 57 decimals was mortgaged to Ram Briksh Singh on 27.07.1988 for mortgage money of Rs. 2000/-. Both Kaushalya Singh and Surendra Singh are father and son and they got the partition between them and the disputed land was allotted to the share of Surendra Singh, who sold the land to the plaintiff on 09.01.1989. Kaushalya Singh had no share in the said plot. DW-2 is Ram Naresh Singh, who stated that both Kaushalya Singh and Surendra Singh have executed *Mahadnama* (agreement to sale) for consideration of Rs. 19000/- out of which Rs. 8000/- was paid in advance. DW-17 is Dhirendra Kr. Singh, who has stated that Kaushalya Singh and Surendra Singh are father and son and they remained joint. The said witness has stated that Plot No. 280 has 1 bigha 5 katha land and he concealed the fact that earlier Kaushalya Singh had already sold the land to Aruna Devi and thereafter, he has also not stated that when Kaushalya Singh had earlier sold his share, then how he subsequently sold the remaining land. In his cross-examination, he denied his knowledge that Kaushalya Singh had already sold 12 katha land to the plaintiff in the year 1986, so evidence of the witnesses is not true. It appears from Exhibit 1 that Kaushalya Singh has



mortgaged the land to Ram Briksh Singh for Rs. 2000/- by registered deed of mortgage on 27.07.1988 and it appears that Surendra Singh has sold the land to the plaintiff Aruna Devi on 09.01.1989 for consideration of Rs. 5000/-. It has been mentioned in the sale deed that out of consideration money, purchaser will pay Rs. 2000/- for redemption of the mortgage. This fact has not been challenged. In the recital of the sale deed, it has been mentioned that the land was allotted to him as his share of the ancestral land. The sale deed was executed by Surendra Singh and at that time Kaushalya Singh was alive and this is admission of Surendra Singh about partition. So, it is binding upon him. It appears from Exhibit-4 that Aruna Devi had deposited Rs. 2050/- in Miscellaneous Case No. 22 of 1993 and despite notice, Ram Briksh Singh did not appear to contest the miscellaneous case and consequently, the order was passed *ex parte*. The said Ram Briksh Singh did not file petition to set aside the *ex parte* decree against him. Therefore, the judgment and decree is binding upon him. There was no apparent error found in the judgment and decree passed by the learned Trial Court. Accordingly, the first appellate court affirmed the judgment and decree of the Trial Court and dismissed the appeal as having no merit in it.



10. Having regard to the facts and circumstances of the case, as discussed above, it is quite apparent that the sale deed executed by Surendra Singh, son of Kaushalya Singh on 09.01.1989 was neither challenged by the father of Surendra Singh nor by the defendants. The sale deed executed in favour of defendant no. 2 Dhirendra Singh was much after execution of sale deed dated 09.01.1989. However, the mortgage money has been deposited in Miscellaneous Case No. 22 of 1993 through *Challan* No. 81 dated 24.09.1993 which was decreed on 02.04.1994 and was never challenged by defendant no. 1. Moreover, the defendants have not proved the *Mahadnama* (agreement to sale) dated 06.12.1988 (Exhibit B), on that basis, the sale deed dated 10.11.1989 claimed to have been executed. The subsequent sale deed in respect of the same land has no force to prevail upon the earlier sale deed dated 09.01.1989 executed in favour of the plaintiff which was never challenged by the defendants.

11. Considering the facts and circumstances of the case as well as findings of the both the courts below, I am not inclined to interfere with the concurrent findings of the courts below. There is no question of law inasmuch as no substantial question of law is involved in this case.



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

13. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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