

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.381 of 2009

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1. Baldeo Ram, Son of Late Lotan Ram.
 2. Laldeo Ram, Son of Late Lotan Ram.
 3. Mostt Kamlawati Devi, Wife of Late Mundrika Ram.
 4. Laddu Ram @ Lattu Ram, minor son of late Mundrika Ram.
 5. Kaddu Ram @ Guddu Ram, minor son of Late Mundrika Ram.
 6. Munni Devi, minor daughter of Late Mundrika Ram.

All nos. 4 to 6 under the guardianship of their natural guardian mother
Mostt Kamlawati Devi appellant no.3 represented by her.

7. Shivpati Devi @ Sheopati Devi, daughter of Late Lotan Ram.
8. Jiupati Devi @ Jewopati Devi, daughter of Late Lotan Ram.
9. Rampatiya Devi, daughter of Late Lotan Ram.

All residents of village- Safapur, P.O.-Dharamparsa, P.S.- Manjhagarh,
District-Gopalganj. **Appellants.**

Versus

1. Ram Dayal Singh, Son of Hiralal Singh, Resident of Village-
Kamanpura, P.O.- Dharampars, P.S.- Manjhagarh, District-Gopalganj.
2. Baidyanath Pandey, Son of Late Mahadeo Pandey, Resident of Village-
Bishambharpur, P.O.-Dharampars, P.S.-Manjhagarh, District-
Gopalganj. **Respondents.**

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Appearance :

For the Appellant/s : Mr. Naresh Chandra Verma, Adv.
Mr. Subodh Paswan
Mr. Arun Kumar Lal

For the Respondent/s : Mr.
Mr. Shubh Narain Singh

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 24-12-2014

Heard Mr Naresh Chandra Verma, the learned
counsel appearing on behalf of the appellants.

The defendants in the suit are the appellants in



this second appeal against the judgment and decree of reversal. The suit was filed by the plaintiff for declaration of title and in the alternative for confirmation of recovery of possession and further relief has been sought for demarcation of the land claimed to have been purchased by the plaintiff. During the pendency of the suit, the intervention application was allowed and the defendant no.8 was impleaded as party defendant in the suit. In his written statement the defendant no.8 supported the case of the plaintiff and himself claimed to have purchased the part of the suit land.

The suit land comprising in Plot No.399 area 2 katha 14 dhur admittedly belonged to Pundeo Pandey. There is also no dispute that by the registered sale deed dated 09.12.1975 (Ext-B) Pundeo Pandey sold 12 dhurs of the said plot to the contesting defendant nos. 1 to 7. The plaintiff has purchased 1 katha 1 dhur from the widow of Pundeo Pandey (after his demise) by registered sale deed dated 09.02.1993 (Ext.2). The defendant no.8 has claimed to have purchased the remaining 1 katha 1 dhur by registered sale deed dated 09.02.1993 (Ext.-2) executed by the widow of Late Pundeo Pandey.

The contesting defendants resisted the claim of the plaintiff mainly on the ground that the remaining part of the suit plot after the purchase by the contesting defendants was

acquired by the government in a land acquisition proceeding and nothing remained with the widow of the original owner Pundeo Pandey to alienate by sale in favour of the plaintiff or defendant no.8.

After considering the pleadings and evidence, the trial court returned the finding that the remaining land of Plot No.399 had been acquired in the land acquisition proceeding, and therefore, the widow of the original owner Pundeo Pandey was left with no title to transfer in favour of the plaintiff. The suit was therefore dismissed. Two separate appeals thereafter were preferred by the plaintiff and the defendant no.8 respectively. The said two appeals have been heard analogously and have been allowed by the impugned common judgment setting aside the judgment and decree passed by the trial court and granting the decree as prayed. The contesting defendants who were respondents in both the appeals have preferred this second appeal against the judgment and decree passed in T.A.No.29/2005 which was filed by the plaintiff. The learned counsel for the appellants has submitted that the appellants have not preferred appeal against the judgment and decree passed in T.A.No.27/2005 which was filed by the defendant no.8 as they were not aggrieved by the findings in favour of the defendant no.8 with whom they had no contest.



Mr Verma, the learned counsel for the appellants has submitted that the impugned judgment of the appellate court is vitiated inasmuch as the reliance by the appellate court on Ext.3 was totally misplaced because the said document nowhere shows that the land acquisition proceedings wherein the remaining land of original owner Pundeo Pandey was acquired, has been dropped. It has been canvassed by the learned counsel that the trial court has considered the material evidence, and thereafter, has recorded the findings against the plaintiffs but the appellate court below by relying solely on Ext.3 has reversed those findings, and therefore, the impugned judgment cannot be sustained.

After perusing the judgments of both the courts below and the submissions by the learned counsel for the appellants, it is limpid that the Plot No.399 area 2 katha 14 dhur belonged to Pundeo Pandey who transferred 12 dhur out of the said plot by registered sale deed dated 09.12.1975 (Ext.B) to the defendants. After the said transfer, the area of 2 katha 2 dhur in the said plot remained which was inherited by the widow of Pundeo Pandey after his death. The plaintiffs have claimed to have purchased 1 katha 1 dhur of the said plot by registered sale deed dated 09.02.1993 and the defendant no.8 claimed to have purchased 1 katha 1 dhur which was the remaining area of the said

plot by registered sale deed dated 09.02.1993. The crucial issue between the parties, as also evident from the judgments of both the courts below, was as to whether any remaining area in Plot No. 399 after purchase by the contesting defendants remained with the original owner or his successor or the same had been acquired in the land acquisition proceeding by the State of Bihar. The trial court has come to the conclusion that no area remained in the said Plot No.399 after the acquisition by the State of Bihar and only 12 dhur of that plot remained with the contesting defendants. As both the plaintiffs and the defendant no.8 have claimed to have purchased the remaining area of the said plot, the two title appeals respectively were preferred by them against the judgment and decree of the trial court. Both the appeals by the plaintiffs and the defendant no.8 have been disposed of by common judgment with the finding by the appellate court that the remaining area of Plot No.399 was not acquired by the State of Bihar in the land acquisition proceeding. In this view of the matter, when there is no appeal against the judgment and decree passed by the appellate court below in Title Appeal No.27/2005 filed by the defendant no.8, the issue whether the remaining area of Plot No.399 was acquired in the land acquisition proceeding or not as being the common issue between the parties has attained finality. The

contesting defendants noticeably have not put forward any separate and distinct defence against the defendant no.8. As the common judgment has been passed mainly on the basis of this crucial issue, the finding which has attained finality will operate as res judicata against the appellants in the present appeal inasmuch as in case of success by the appellants in this appeal the said finding will have to be reversed which will result in conflicting decrees. In this view of the matter, this Court holds that the present appeal filed by the plaintiff cannot proceed and is barred by principle of res judicata. Consequently, this second appeal is dismissed.

(V. Nath, J)

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