

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.210 of 2013

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1. Gupteshwar Singh
2. Tapeswar Singh
3. Kanhaiya Kant Singh
Sons of Late Ram Nihora Singh,
All resident of Village and P.O. Fatehpur Sikaraul, PS Sikarahata, District
Bhojpur
..... Plaintiffss Appellants
..... Appellants

Versus

Parwati Devi, wife of Ram Ashish Singh @ Bhuteli Singh, resident of Village and
P.O. Fatehpur Sikaraul, PS Sikarahata, District Bhojpur
..... Defendant Respondents
..... Respondents

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Appearance :

For the Appellant/s : Mr. Nagendra Rai
Mr. SRI KRISHNA RANJAN
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-04-2015

Heard Mr. Nagendra Rai, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance. The suit has been filed for declaration of title of the plaintiffs over the suit property described in Schedule I of the plaint with other consequential reliefs.

3. The necessitous facts, which are required to be taken into notice for appreciating the submissions made on behalf of the appellants, are that R.S. Plot No. 876 admittedly belonged to Ram Kishun Singh alias Ram Kishun Mahto, who died in the year 1968 leaving behind his widow Ram Dulari Kuer and a minor daughter, Parwati Devi. The plaintiffs have purchased 6 dec. of the said plot by



registered sale deed dated 14.6.1973. The admitted fact is that Chak Plot No. 614 for 6 dec. of land has been carved out in the name of the plaintiffs. However, another Chak Plot no. 613 area 2 dec. has also been carved out from this plot in the name of defendant. It will be pertinent to mention here that the suit land in dispute is only 2 dec. of land. It is the case of the plaintiffs that an area of 2 dec. was acquired by the Land Acquisition Department and thereafter only 6 dec. of land was left in Plot no. 876 which was transferred to the plaintiffs by Most. Ram Dulari Devi, widow of original owner Ram Kishun Mahto.

4. The defendant contested the claim of the plaintiffs by filing written statement and also filed a counter claim assailing the sale deed executed by Ram Dulari Devi in favour of the plaintiffs on the basis that entire area of Plot no. 876 was 8 dec. and after the death of the original owner Ram Kishun Mahto, his widow Mostt. Ram Dulari Devi was entitled to only 4 dec. of land and the remaining 4 dec. came by succession to his daughter Parwati Devi (defendant).

5. The centrirorial issue, whether the plaintiffs have got title over the suit land of area 2 dec., was taken up by the trial court along with the counter claim of the defendant assailing the sale deed of the plaintiffs also. After scrutiny of the evidence, the trial court came to the finding that the plaintiffs have failed to establish the acquisition of 2 dec. of land of Plot no. 876. It has, however, been also found by the trial court that the counter claim filed by the defendant had no merit. The trial court has further found that the plaintiffs has got title and possession and is in possession over 6 dec. of land which he purchased from Ram Dulari Devi, and he has no claim of right, title and interest over the suit land. The suit was therefore dismissed and the counter claim was also

dismissed.

6. No appeal was filed against the dismissal of the counter claim by the defendant. However, the plaintiffs filed the appeal against the judgment and decree of the trial court. The appellate court after reappraisal of the pleadings and evidence has concurred with the finding of the trial court and dismissed the appeal by the impugned judgment and decree.

7. Mr. Rai, learned Counsel for the appellants, while assailing the impugned judgment, has submitted that the appellate court has committed error in making observations about the validity of the sale deed of the plaintiffs ignoring the fact that the counter claim has been dismissed. It has been propounded by the learned Counsel that the observations by the appellate court below that the sale deed of the plaintiffs was valid only to the extent of 4 dec. will prejudice the right of the plaintiffs on the basis of the sale deed through which they have purchased 6 dec. of land. It has been further submitted by the learned Counsel that there has been no specific denial by the defendant to the acquisition of 2 dec. of land of Plot No. 876 as claimed by the plaintiffs and, as such, it would amount to admission of the said fact. It has thus been canvassed that both the courts below have committed error in law in ignoring this aspect. It has been further propounded by the learned Counsel that the courts below have not correctly appreciated the material facts and evidence on record and the judgment of both the courts below are vitiated on this score also.

8. After perusal of the judgments of both the courts below and considering the submissions it is limpid that the plaintiffs filed the suit for declaration of their right, title and interest over 2 dec. land of Plot



no. 876. It has been accepted on behalf of the plaintiffs that Chak Plot no. 613 has been carved out for 2 dec. of land out of Plot no. 876 but simultaneously it has also been accepted that Chak Plot no. 614 area 6 dec. has been carved out of the purchased land of the plaintiffs. In the plaint as well as in the depositions which has been taken into notice by the courts below, the plaintiffs have accepted to be in possession over their purchased 6 dec. land only. It is nowhere the case of the plaintiffs that 2 dec. land, which is the suit land, is included in the 6 dec. of the purchased land of the plaintiffs. In this view of the matter, the appellate court has rightly come to the finding that the plaintiffs have filed the suit without any valid cause of action and have not come before the court with clean hands rather have also concealed the necessary facts. The courts below have also taken into notice the evidence adduced on behalf of the plaintiffs with regard to acquisition of 2 dec. of land but after scanning the evidence have disbelieved the said story. In view of the admission of the plaintiffs in their plaint as well as in the depositions that they are in peaceful possession over the purchased 6 dec. of land as owner thereof which has also been carved out in Chak Plot no. 614 in their names, this Court is not persuaded to find any illegality or irregularity in the findings by the courts below non-suiting the plaintiffs.

9. The other submission on behalf of the appellants with regard to the observations by the appellate court below with regard to the sale deed, it appears from the perusal of the last portion of para 16 of the appellate court's judgment that the said observations have been made in response to the submission made by the learned counsel for the appellants and raised in the memo of appeal also. The last portion of para 16 of the judgment reads as follows:-

“However, here I want to note that counter claim filed by the defendant has been dismissed by the lower court and the defendant has filed no appeal. So nothing is required to go in detail on this point but since the learned counsel of the appellant has argued this point during course of hearing of appeal and this fact finds place in memo of appeal, so this point has been discussed here.”

10. The submission on behalf of the appellants that the observations by the appellate court with regard to the validity of the sale deed of the plaintiffs will prejudice their claim is clearly misconceived in view of the aforesaid observation in the last portion which substantially also dilutes the effect of any earlier observation. Manifestly after the dismissal of the counter claim whereby the validity of the sale deed in favour of the plaintiffs was specifically challenged by the defendant and the defendant having preferred no appeal, the said issue had attained finality between the parties. In this view of the matter, this Court does not find substance in this submission on behalf of the appellants.

11. Ex. Consequenti, this Court does not find any substantial question of law arising for consideration in this Second Appeal, which is accordingly dismissed.

(V. Nath, J.)

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