

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.515 of 2012

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Sudama Singh, Son of Late Nawalakh Singh, resident of Village Chanda, P.O.
Purana Bhojpur, PS Dumraon, District Buxar

Defendant No. 2..... Appellant Appellant
Versus

1. Gopal Jee Lal, son of Kalika Lal
2. Shankar Lal, son of Late Kesho Lal

Both serial no. 1 and 2 are resident of Chanda, PO Purana Bhojpur, PS
Dumraon, District Buxar

Plaintiffs.....Respondent 1st set Respondent 1st set

3. Harihar Singh, son of Late Nawalakh Singh, all resident of Village Chanda, PS
Dumraon, District Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma
Mr. Binod Kumar Singh

For the Respondent/s : Mr. Nagendra Rai
Mr. Satpal Singh

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-01-2015

Heard Mr. Jitendra Kishore Verma, learned Counsel appearing
for the appellant. Mr. Nagendra Rai, learned Counsel appearing for the
respondents is present.

2. Defendant no. 2 in the suit is the appellant in this appeal
against the judgment and decree of affirmance.

3. The suit has been filed by the plaintiffs for declaration of title
and removal of encroachment. The suit land has been described in
Schedule 2 of the plaint and it has been further also elaborately shown in
Schedule 3 of the plaint which is a sketch map.

4. The factual expose are that the plaintiffs are admitted title
holder of plot no. 123 area 56 decimals. The defendant nos. 1 and 2
purchased lands from the plaintiffs by a registered sale deed dated



29.9.1980. Thereafter defendant no. 2 alone purchased further lands in the said plot by registered sale deed dated 20.5.1997. By the later sale deed an area of 1 Katha has been purchased which fact is not in dispute whereas the area purchased by the earlier sale deed dated 29.9.1980 has been in dispute inasmuch as the defendant no. 2 claimed that a total area of 27.5 decimals land of plot no. 123 has been purchased but the plaintiffs claimed that only an area of 27½ dhurs of land of the said plot has been sold by them. It is the case of the plaintiffs that defendant no. 2 after the later purchase in the year 1997 encroached upon the land of the plaintiffs described in Schedule 2 of the plaint.

5. The centrirorial issue between the parties with regard to the area transferred by the sale dated 29.9.1980 has been determined by both the courts below which have concurrently found that the plaintiffs have sold only an area of 27½ dhurs of land and not 27.5 decimals of land as claimed by the defendants.

6. Learned Counsel for the appellants has not assailed the finding of fact that the defendants by sale deed dated 29.9.1980 have purchased only 27½ dhurs of land. However, learned Counsel has submitted that the relief in the suit was also for removal of encroachment and, therefore, the courts below were required to get a scientific measurement done by survey knowing Pleader Commissioner in order to determine the area of the encroachment and thereafter should have decided the said issue. It has been canvassed by the learned Counsel for the appellants that in the present case defendant no. 2 is admittedly purchaser of part of the plot no. 123 from the plaintiffs and, therefore, the scientific measurement becomes more important. It has been

propounded that in cases of encroachment the appointment of Pleader Commissioner has always been favoured by the courts and the reliance has been placed on the decision in the case of ***Sita Ram Thakur Vs. Nandu Jha (1986 BBCJ 496)***.

7. After perusal of the judgments of both the courts below and considering the submissions of the parties, it is apparent that the plaintiffs specific case was that the defendants had purchased only 27½ dhurs of land by sale deed dated 29.9.1980, and defendant no. 2 has encroached over the area, described in Schedule 2 and explained through sketch map at Schedule 3, which was in excess of his purchase.

8. Defendant no. 1 who was the brother of defendant no. 2 and a co-purchaser in the registered deed dated 29.9.1980 did not support the case set up by defendant no. 2 regarding purchase of 27.5 decimals and in his written statement and his deposition he has stated that he is in possession of half of 27½ dhurs of the purchased land, after partition with defendant no. 2. It is evident from the pleadings and deposition, as discussed by the courts below, that the defendant no. 2 claimed his title and possession over the Schedule 2 land which has been alleged to have been encroached, on the sole basis that the purchased area of the sale deed dated 29.9.1980 was 27.5 decimals. Once the finding has been recorded that the area purchased by the defendants by sale deed dated 29.9.1980 was 27½ dhurs, the claim of the defendant no. 2 regarding his entitlement over Schedule 2 land falls apart.

9. Both the courts below and particularly the appellate court below in para 17 has considered this aspect of the matter. The reliance by the learned Counsel for the appellants on the decision of ***Sita Ram***

Thakur (supra) is misplaced because it is nowhere the case of the defendant no. 2 that he is in possession of the Schedule II otherwise then on the basis of his claim of purchase of 27.5 dec. of land. In this backdrop of facts this Court does not find substance in the submission advanced on behalf of the appellants that a survey knowing Pleader Commissioner should have been appointed..

10. The issues arising between the parties have now been concluded by concurrent findings of fact. This Court does not find any substantial question of law arising in this appeal for consideration. The appeal is, accordingly, dismissed.

(V. Nath, J.)

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