

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.173 of 2013

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1. Srimati Samundari Devi, wife of Sri Girja Nandan Singh
 2. Srimati Asha Devi, wife of Sita Ram Prasad
- Both residents of Chintamanchak Dhimoh, PS Harnaut, District Nalanda,
presently residing at Mohalla Mahi Khandak, Town Bihar Sharif, PO and PS
Bihar Sharif, District Nalanda
.....(Defendants Appellants)

.... Appellants

Versus

1. Ram Kumar Verma
2. Ranjit Kumar Verma
3. Navin Kumar Verma, nos 1 to 3 all sons of Late Satish Chandra Verma
4. Amit Raj, son of Late Shrawan Kumar Verma
5. Nilam Devi, widow of Late Shrawan Kumar Verma
6. Shankar Kumar Verma, son of Late Satish Chandra Verma, nos 1 to 6 are all
residents of Mohalla Mahi Khandak, Town Bihar Sharif, PO and PS Bihar Sharif,
District Nalanda

.....(Plaintiffs.....Respondents)

..... Respondents 1st set

7. Srimati Rambarat Kuer widow of Late Ambika Prasad, resident of Mohalla
Mahi Khandak, Town Bihar Sharif, PO and PS Bihar Sharif, District Nalanda

..... (DefendantRespondent) Respondent 2nd set

8. Birendra Kumar Verma
9. Sunder Kumar Verma, nos 8 and 9 both sons of Late Prayag Narayan and Late
Savitri Devi, resident of Mohalla Mahi Khandak, Town Bihar Sharif, PO and PS
Bihar Sharif, District Nalanda

..... Respondents 3rd Set.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Khatim Reza

For the Respondent/s : Mr. Mahesh Prasad No. 2

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-02-2015

Heard Mr. Khatim Reza, learned Counsel for the appellants, and

Mr. Mahesh Prasad No. 2, learned Counsel appearing on behalf of the

respondents.

1. The defendants are the appellants in this appeal against the judgment and decree of affirmance.

2. The suit was filed by the plaintiffs for declaration of title and confirmation of possession over the suit land described in the schedule of the plaint with further relief also for declaration that the opening of the three windows opened by the defendants 1st set in the suit land is illegal and the defendants be directed to close those windows.

3. The plaintiffs have claimed to have purchased by sale deed dated 22.5.1954, 6 decimals of plot no. 90 along with 2 ½ decimals of adjacent plot no. 89. The plaintiffs have claimed that the suit land is part of their purchased land and the claim of the defendants over the same is illegal and baseless.

4. The defendants have also claimed to have purchased 3 decimals of land from the purchaser from Savitri Devi in this plot no. 90 and it is their case that the suit land is the part of their purchased land.

5. Both the courts below have, on consideration of the evidence led by the parties concurrently found that the said land has been part of the plaintiffs purchased 6 decimals and defendants have no right, title and interest over the same.

6. Mr. Khatim Reza, learned Counsel appearing for the appellants, has submitted that both the courts below have not considered the boundaries mentioned in the sale deeds and has canvassed that the boundaries are the crucial factors to be considered while determining the identity of a land. It has been further submitted by the learned Counsel that both the courts below though have not accepted that the defendants

have purchased 3 decimals of land but have also found that the original owner was left only with 1 decimal or less than that in the same. It has, therefore, been propounded that both the courts below should have at least declared the title and possession of the defendants over the remaining 1 decimal of land.

7. After perusal of the judgments of both the courts below and considering the submission, it is transparent that the plaintiffs have purchased altogether 6 decimals of land from Savitri Devi by sale deed dated 22.5.1954. The defendants have claimed to have purchased 3 decimals from the purchasers from Savitri Devi subsequently. The perusal of the judgments of both the courts below reflects a thorough scrutiny of oral and documentary evidence of the parties including the details mentioned in the sale deeds leading to the description of the subject matter of the dispute. The findings on the basis of appraisal of evidence, as recorded by both the courts below, do not appear to be unreasonable or perverse in any manner. It is well settled that the civil disputes are decided on the basis of preponderance of probability and the decision is rendered on the basis of the impression created by the totality of the evidence on record.

8. This Court, therefore, is not persuaded to hold that the findings by the courts below are vitiated in any manner. The submission by the learned Counsel for the appellants that the courts below should have granted relief by declaration of the right of the defendants over the remaining 1 decimal of land, is misconceived inasmuch as the suit has been filed by the plaintiffs and there is no counter claim by the defendants.

9. In the ultimate eventuate there is no substantial question of

law involved in this appeal. It is, accordingly, dismissed.

(V. Nath, J.)

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