

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.150 of 2013



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1. Mabul Mian.
 2. Abul Mian.
 3. Khwaku Mian @ Khusru Mian.
 4. Jakir Mian.
 5. Bibi Basia – all sons and daughter of late Abdul Mian resident of village- Khorimon, P.O.-Bausi, District-Banka.
 6. Harif Mian, son of late Sattee Mian.
 7. Sajina Khatoon wife of late Khawi Mian.
 8. Naga Ansari @ Naga.
 9. Riyaz Ansari
 10. Faiyaz Ansari
 11. Miraj Ansari, all son of late Khalid Mian.
 12. Ramjani Mian, son of late Malu Mian, all resident of village- Khorimoh, P.O. Maniyarpur, P.S. Bausi, District-Banka.

.... Appellant/s

Versus

1. Bibi Majjban wife of Md. Tejudui.
2. Md. Faruk Ansari.
3. Md. Sartaraj Ansari
4. Md. Ittakhar Ansari.
5. Md. Raseem Alam.
6. Md. Nisar Alam
7. Md. Izaz Ahmad, all son of late Md. Tajjudui
8. Nilofar Khatoon.
9. Gulsan Khatoon
10. Nanhi khatoon all daughters of late Md. Tajjudui.
11. Md. Akhtar Ansari son of late Karamat Hussain
12. Bibi Aisa Khatoon
13. Bibi Marium both daughter of late karamat Hussain.
14. Lagian Khatoon, wife of late Jamal Hussain Mian.
15. Md. Minnan Ansari (minor)
16. Md. Nayeem Ansari (Minor)
17. Md. Moinuddin (Minor)

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18. Md. Mintaz Alam (Minor)
 19. Bibi Sahzaz (minor)
 20. Bibi Anjum Khatoon wife of sri Jahir Hussain of village-Katria P.S. Pathargama, District-Godda.
 21. Bibi Lalina Khatoon wife of sri Mahaboob Alam
 22. Md. Ayub Ansari
 23. Md. Irsad Ansari.
 24. Md. Khursid Ansari.
 25. Bibi Narma Khatoon.
 26. Bibi Sahara Khatoon.
 27. Bibi Pala Khatoon, all daughters of late Md. Hussain.
 28. Bibi Kashira Khaton wife of late Md. Hussain.
 29. Md. Samsar Ansari.
 30. Md. Murshid Ansari., both sons of late Md. Hussain.
 31. Bibi Asmin
 32. Bibi Parmin, both minor daughter of late Md. Hussain. All minors through mother guardian and next friend Bibi Kashira Khatoon, Resident of Village-Ambatari, Mauza-Saraiya, P.S. Bausi, District-Banka.
 33. Mahboob Alam
 34. Md. Zahar Ansari.
 35. Kayum Ansari. All sons of late Samatali Mian resident of village-Kharimoh P.s. Bausi, District-Banka.
 36. Tetri Khatoon Natisa, Khatoon, both daughters of late Khalid Mian, resident of village-Kharimoh, P.O. Maniyarpur, P.S. Bausi, District-Banka.
 37. Most. Tetri wife of late Samtallu Mian.
 38. Mansoor Ali, son of late Santali Mian, all resident of village-Kharimoh, P.O. Maniyarpur, P.S. Bausi, District-Banka.
 39. Bibi Sakila wife Fakir Mian, resident of village-Chandrapura, P.O. Chalanania More, P.S. Dhoraiya, District-banka.
 40. Bibi Sagia Khatoon wife of Mehali Mian, resident of village Dhobni, P.O. Bhurha, P.s. Bausi District-Banka.
 41. Bibi Sakina Khatoon wife of Makboor Mian, resident of village-Bansipur P.O. and P.S. Bausi, District-Banka.

42. Sugia Khatoon wife of Sekhawah @ Sahadat Mian, resident of village-Khorimoh, P.O. Maniyarpur, P.S. Bausi, District-Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. V.N. Sahay, Adv.
Mr. K.K. Sharan, Adv.
Mr. Arun Srivastava, adv.
For the Respondent/s : Mr. Sanjay Kumar Jha, Adv.
Mr. Satyaveer, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

12 10-08-2015

Heard Mr. V.N. Sahay, the learned counsel for the appellants. The learned counsel for the respondents is also present.

The plaintiffs are the appellants in this appeal against the judgment and decree of reversal dismissing the suit filed by the plaintiffs for declaration of their title and possession over the suit land.

The plaintiffs' case, in short, is that the suit properties which have been described in the schedule of the plaint are their ancestral properties and they have got title and possession over the same. The defendant no. 1 as well as the other defendants have filed their separate written statements contesting the claim of the plaintiffs.

The suit land as described in schedule-A of the plaint has been mentioned/ categorized by the appellate court below in three categories. The first category of land appertaining to Khata No. 220 of Village Faga has an area of 9.81 acres and the



defendants have come out with the case that this 9.81 acres of land was purchased by their predecessor from the plaintiffs' predecessor by registered sale deed executed in the year 1939. The next category of land i.e. 5.79 acres of land of village Khorimoh has been recorded in khata no. 20. It is the case of the defendants that they have purchased the same by registered sale deed in the year 1942. The case of the other defendants i.e. defendant no. 2 to 4 is that they have auction purchased this 5.79 acres of land and have acquired title and possession over the same. With regard to the third category of land i.e. 18 decimal of land, it is the case of the plaintiffs that they have got it by settlement. The defendants have refrained from making any reply on the ground that the plaintiffs have not disclosed the details of settlement including its date.

The trial court returned the findings in favour of the plaintiffs and besides other findings, it has been held by the trial court that the sale deed of the year 1939 which was the basis of the claim of the defendants over 9.81 acres of land was not a valid document as it was not in accordance with the law governing Hanifi School of Mohammdan law. With regard to the sale deed of the 1942 and the auction sale of the land in rent decree, it has been found by the trial court that the sale deed and the auction sale were

fraudulent and collusive. The appellate court, in appeal, after reappraisal of evidence has reversed the findings of the trial court, allowed the appeal and dismissed the suit.

Mr. Sahay, the learned counsel for the appellants has submitted that the appellate court below has not correctly appreciated the law and has also ignored the material evidence on record. It has been canvassed that the appellate court below has not recorded specific conclusion that the findings recorded by the trial court is erroneous. It has been propounded by the learned counsel for the appellants that even in absence of pleading or issue with regard to a question of fact if the trial court has recorded a finding on fact than it must be evaluated and reappraised by the appellate court. However, during the course of submission, the learned counsel for the appellants has accepted that there has been no pleading of the requisite facts showing lack of ingredients attracting the rules of Hanifi school of Mohammdan Law with regard to alienation and has further accepted that there has also been no pleading with regard to forgery and coercion and no relief has been claimed in the suit with respect to the sale deed and the auction sale. No other submission has been made on behalf of the appellants.

After considering the judgments of both the courts

below and the submissions on behalf of the appellants, it is evident that the plaintiffs have filed the suit for declaration of their title and possession besides the consequential reliefs. Admittedly, there is no relief with regard to the sale deed of the year 1939 executed by the predecessor of the plaintiffs in favour of the predecessor of the defendants for 9.81 acres of land as described in schedule-A of the plaint. Further, there is also no necessary pleading with regard to the invalidity of the said sale deed or another sale deed of the year 1942 as well as the auction sale of 5.79 acres of land of village Khorimoh as recorded in khata no. 20 (described as schedule-A of the plaint). It is well settled that in absence of pleading or issue or relief, no evidence can be adduced or looked into and the finding can be recorded. The plaintiff-appellants have not sought relief in the suit with regard to the said sale deed of the year 1939 or the sale deed of the year 1942 or even with regard to the auction sale. No evidence has also been adduced on behalf of the plaintiff-appellants to establish illegality in the transfers of the suit land in favour of the defendants. To cap it all, the plaintiff no. 2 has admitted in his deposition that the suit land (9.81 acres) is in possession of the defendant no. 1. The appellate court below has considered the material evidence and pleadings of the parties and this Court has not been persuaded to find perversity or

unreasonableness in any manner. The trial court has definitely committed error in recording the findings in favour of the plaintiffs in absence of pleadings or issues and this Court does not find any error in the judgment of the appellate court below in setting aside the judgment and decree of the trial court on this basis also.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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