

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.293 of 2013

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Smt. Sushila Devi, wife of Sri Jai Karan Prasad Singh Resident of Village-Gosaichak, P.O.-Nawada Bazar, P.S.-Anchal, Rajoun, District-Banka.

..... Defendant Appellant

.... Appellant

Versus

1. Anita Devi, Wife of Sri Shankar Singh Resident of Village-Sibanchak, P.S-Dhoraiya, District-Banka.
 2. Anil Singh
 3. Nukul Prasad Singh Both are sons of Late Ram Narayan Singh Resident of Village-Gosainchak, P.O.-Nawada Bazar, P.S.-Rajoun, District-Banka.
 4. Gopal Singh
 5. Pratipal Singh @ Bhutan Singh @ Mithun Kumar Singh Both are sons of Late Janaradan Prasad Singh
 6. Srawan Kumar Singh
 7. Bibhishan Kumar Singh Both are sons of Sri Gopal Singh 4 to 7 are Resident of Village-Village-Kathail, P.S.-Amarpur, District-Banka.
- Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Jha

For the Respondent/s : Mr. Satish Chandra Mishra
Mr. Md. Nurul Hoda

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

11 09-12-2015

Heard learned Counsel for the appellant.

2. The defendant in the suit is the appellant in this appeal against the judgment and decree of affirmance. The factual expose are that the plaintiffs purchased the suit land of Plot No. 367 by sale deed dated 17.6.1994 from the sons of the admitted recorded tenant. The defendant also got a sale deed executed in his favour on 19.8.1994 from the recorded tenant with regard to a different plot. Later on, after the death of the recorded tenant in the year 2003, the son of the recorded tenant who was also vendor of the plaintiffs executed a deed of rectification on 13.2.2006 in favour of the



defendant by substituting the Plot No. 380 which was mentioned in the sale deed of the defendant to Plot No. 367 which was mentioned in the earlier sale deed. The plaintiffs therefore filed the suit in the year 2006 for declaration of their title and possession over the suit land and for further declaration that the rectification deed dated 13.2.2006 was not binding on the plaintiffs and was void *ab initio*.

3. Both the courts below returned the finding on the issues in favour of the plaintiffs and granted the decree as prayed.

4. Learned Counsel for the appellant has submitted that both the courts below have failed to consider that the boundary mentioned in the sale deed of the plaintiffs as well as the sale deed of the defendant is the same and the defendant has been coming in possession over the suit land since then. It has been further contended that the sale deed of the plaintiffs executed by son of the recorded tenant was not a legal and valid document as the property subject matter of that sale deed was the self acquired property of the recorded tenant and, therefore, his son could not have a transferable title over the same. Learned Counsel for the appellant, however, has accepted that no steps were taken by the recorded tenant or by the defendant for annulling the sale deed of the plaintiffs or seeking appropriate declaration against the same.

5. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiffs have purchased the suit land by registered sale deed dated 17.6.1994 from the son of the recorded tenant. The defendant purchased Plot No. 380 by the subsequent sale deed dated

19.8.1994 from the recorded tenant. The recorded tenant admittedly died in the year 2003 and had not challenged the sale deed executed by his son in favour of the plaintiffs. However, on 13.2.2006 the son of the recorded tenant, who was also vendor of the plaintiffs and was well aware of the transfer of Plot No. 367 to the plaintiffs by the earlier sale deed, executed the rectification deed in favour of the defendant by which Plot No. 367 was inserted/added/rectified as the plot sold in place of Plot No. 380 in the sale deed dated 19.8.1994 of the plaintiffs.

6. Both the courts below have taken into notice the fact that there has been no evidence led on behalf of the defendant to show that the property was self acquired property of the recorded tenant. The fact is also glaring that the sale deed of the plaintiffs which was earlier to the defendant was never challenged by the recorded tenant or his son and the litigation had started only when the defendant obtained the rectification deed in the year 2006 nearly after lapse of 12 years. This Court finds that the conclusions recorded by the courts below are based upon scrutiny of evidence and there is no unreasonableness or perversity in the same.

7. Ex consequenti, this Court does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

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