

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.156 of 2012

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Mahatam Singh S/O Late Minti Singh R/O Village- Baligao Tole Balha,
P.O.- Marar, P.S.- Parsa, Distt.-Saran

.... Appellant/s

Versus

1. Jhulan Prasad S/O Ramphal Prasad R/O Village- Baligaon Tole, P.O.-
Latrahiya, P.S.-Parsa, Distt.- Saran
2. Ramjanam Manjhi S/O Babu Lal Hazra R/O Village- Baligaon Tole,
P.O.- Latrahiya, P.S.-Parsa, Distt.- Saran
3. Ramjee Manjhi S/O Babu Lal Hazra R/O Village- Baligaon Tole, P.O.-
Latrahiya, P.S.-Parsa, Distt.- Saran
4. Ramagya Rai S/O Dhuri Rai R/O Village- Baligaon Tole, P.O.-
Latrahiya, P.S.-Parsa, Distt.- Saran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manojeshwar Prasad Sinha, Sr. Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

13 11-03-2015 Heard Mr. Manojeshwar Prasad Sinha, learned Senior

Counsel appearing on behalf of the appellant on I.A.No. 3759 of

2012 for condoning the delay in filing the appeal.

Learned counsel for the respondents has also been heard.

There is no counter affidavit filed on behalf of the
respondents to controvert the averments made in the petition.

In the facts and circumstances of the case, I.A.No. 3759
of 2012 is allowed and the delay in filing the appeal is condoned.

Heard Mr. Manojeshwar Prasad Sinha, learned Senior
Counsel appearing on behalf of the appellant in support of this
appeal.

The plaintiff is the appellant in this appeal. He has filed

this appeal against the judgment and decree of affirmation by the appellate court below dismissing the suit. The suit has been filed for declaration of title and possession of the plaintiff over the suit land.

Mr.Sinha, learned Senior Counsel, appearing on behalf of the appellant has argued that the sale deed in favour of the appellant was executed long back and on that basis the appellant had also redeemed mortgage of the suit property and came in possession over the suit property but the defendants or their vendor did not file a suit within the prescribed period under Article 59 of the Limitation Act for cancelling the sale deed in favour of the appellant. It has, therefore, been contended that in the suit filed by the plaintiff on the basis of the said sale deed the same cannot be ignored or challenged as the defendant's claim is barred by limitation. It has also been propounded by the learned Senior Counsel for the appellant that the court has not considered the evidence particularly the deposition of the witnesses and the findings are based upon only surmises and conjectures. However, the learned counsel for the appellant has accepted that the appellant has not claimed his rights in the suit on the basis of adverse possession.

After perusing the judgment of both the courts below and considering the submissions on behalf of the appellant it is

pellucid that the sale deed has been executed in favour of the appellant for the suit land by the vendor Ram Pravesh claiming his right, title and interest in the suit land on the basis that his co-sharer Janak Manjhi died issueless in the year 1953 and he became entitled to his share by survivorship.

The crucial issue in the suit, therefore, was as to whether Janak Manjhi died issueless in the year 1953 or after 1956 and further whether Bhuteshwari was the daughter of Janak Manjhi from whom the defendants have obtained the sale deed for the suit property. Both the courts below after scrutiny of the evidence have recorded the concurrent finding that Bhuteshwari was the daughter of Janak Manjhi, who died after coming into force of Hindu Succession Act, 1956. No cogent reason has been assigned during the course of argument on behalf of the appellant that this finding is unreasonable or could not have been recorded on the basis of the evidence on record. In this view of the matter, the courts below have rightly concluded that Ram Pravesh, the vendor of the plaintiff, had no title over the suit property to convey to the plaintiff through the sale deed and it has also been rightly held that the case of redemption of mortgage by the plaintiff which also could not be established by cogent evidence, even could not have conferred title upon the plaintiff.

The proposition advanced by the learned Senior Counsel

for the appellant that the defendants could not have questioned the sale deed of the plaintiff as they or their vendors did not file a suit within prescribed period of limitation under Article 59 of the Limitation Act is also devoid of substance. It is well settled that there is no limitation for raising a defence, as laid down in the case of Bajranglal Shivachandrai Ruia –v- Shashikant N. Ruia reported in 2004 (5) SCC 272.

The civil disputes are decided on the basis preponderance of probability after considering the totality of evidence on record. The perusal of the judgments of both the courts below demonstrates that the findings are based upon analysis of the pleadings and evidence and there is no perceptible element of surmises and conjectures as argued on behalf of the appellant.

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

(V. Nath, J)

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