

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.187 of 2012

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1. Kiran Prabha Devi W/O Dr. S.N. Yadav Resident Of Ram Babu Chowk,
Station Road, Samastipur, P.S + District- Samastipur.

.... **Appellant.**

Versus

1. Yogendra Rai S/O Munni Lal Rai Resident Of Bangali Tola, Ward No.
2, District- Samastipur.
2. Kailash Devi W/O Hari Narain Choudhary Resident Of Bangali Tola,
Ward No. 2, District- Samastipur.

.... **Respondents.**

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Appearance :

For the Appellant/s : Mr. Prakash Kumar

For the Respondent/s : Mr J.S.Arora, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 22-01-2015

Heard the learned counsel for the appellant in support of this appeal. Mr J.S.Arora, the learned counsel for the respondents is present.

The defendant is the appellant in this second appeal against the judgment and decree of reversal.

The factual exposes' are that the suit property admittedly was the purchased property of Sunil Kumar Mukharjee which he purchased by registered sale deed dated 09.05.1940 (Ext.6/A). The plaintiff has claimed his title and possession over the suit land as purchaser from Sunil Kumar Mukharjee by registered sale deed dated 22.03.1975. The plaintiff's case is that he had separated from his father long back and had purchased the



property by the sale deed (Ext.6) which is his exclusive property. The defendant-appellant has contested the claim of title and possession of the plaintiff staking her own claim over the suit land on the basis of purchase from Munilal Rai, the father of the plaintiff, by registered sale deed dated 21.02.1972 (Ext.G). The centrirorial issue in the suit, therefore, was the rival claim of title between the plaintiff and Munilal Rai (the vendor of the defendant-appellant) in view of the admitted title of Sunil Kumar Mukharjee. The other limb of the issue was also the deed of ratification dated 08.04.1976 (Ext.I) said to have been executed by the plaintiff with regard to the suit land.

After scanning of the pleadings and evidence of the parties, the trial court returned the finding on the issues against the plaintiff and dismissed the suit. In appeal by the plaintiff, the appellate court, on reappraisal of the pleadings and evidence, has overturned the findings and reversed judgment and decree of the trial court.

The learned counsel for the appellant, while calling in question the impugned judgment and decree of the appellate court below, has submitted that the appellate court below has not properly considered the evidence of the parties. It has also been submitted that the deposition of the material witnesses have

been ignored while setting aside the findings of the trial court .The learned counsel for the appellant has further canvassed that the trial court has elaborately discussed the evidence adduced on behalf of both the parties, and thereafter, has rightly come to the conclusion that the plaintiff has failed to establish his title and possession of the suit land.

After perusal of the judgments of both the courts below and careful consideration of the submissions on behalf of the appellant, it is limpid that both the parties have accepted the title of Sunil Kumar Mukharjee over the suit land by virtue of the sale deed dated 09.05.1940.(Ext.6/A). Sunil Kumar Mukharjee (P.W. 16) has been examined in the suit on behalf of the plaintiff and he has accepted the execution of the sale deed dated 22.03.1975 (Ext.6) for the suit land in favour of the plaintiff and has supported the title and possession of the plaintiff over the suit land. It could not be pointed out on behalf of the appellant during the course of the submission that the said witness anywhere has stated regarding transfer of the suit land in favour of Munilal Rai (vendor of the defendant no.1). The appellate court below, after scrutiny of the evidence as well as consideration of the facts and circumstances of the case, has come to the conclusion that the suit land in Plot Nos.547and 548 is the purchased property of the



plaintiff over which he has got title and possession. The defendant-appellant did not produce in evidence the sale deed dated 20.04.1967 said to be the document of title of her vendor Munilal Rai. Moreover the defendant-appellant also did not examine her in the suit in support of her claim of title over the suit land. Further the appellate court below has also considered the documents including the deed of ratification dated 08.04.1976(Ext.I) produced by the contesting defendant in support of her claim and on scrutiny thereof has come to the conclusion that those documents do not corroborate the claim of title and possession of the defendant-appellant over the suit land. The appellate court below has rightly held that a ratification deed cannot be the basis of title unless the pre-existing title, in dispute, is shown and established by evidence.

The learned counsel for the appellant has strenuously submitted that the evidence should be scrutinized at this stage also for evaluation of the findings recorded by the appellate court below. It is well settled that in second appellate jurisdiction the findings of fact recorded by the appellate court below cannot be interdicted on appreciation of evidence unless those findings are shown and established to be perverse in any manner. This Court has not been persuaded to conclude that the

findings of the appellate court below are perverse in any manner.

In the ultimate eventuate, this Court finds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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