

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.249 of 2013

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1. SMT. KRISHNA PANDEY. Wife of Dr. Vikramaditya Pandey. Resident of village - Bikramganj, P.S.- Bikramganj, District - Rohtas. At present resident of Mohalla - Pakari, Ward No. 12 (Old), present ward No. 15, in front of Circuit House, Ara, P.S.- Nawadah, District - Bhojpur.

.... Appellant/s

Versus

1. SMT. MALTI DEVI. Wife of Dr. Shyam Nandan Mishra.
2. Dr. Shyam Nandan Mishra. Son of Late Laxmi Kant Mishra. Resident of Mohalla - Pakari, Ward No. 12 (Old), present Ward No. 15, P.S.- Ara, Nawadah, District - Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 06-05-2015 Heard Mr. Anish Chandra Sinha, learned counsel
for the appellant.

2. The plaintiff is the appellant in this appeal
against the judgment of affirmance dismissing the suit.

3. From the matrix of facts, it is evident that the
suit land along with other lands belonged to Justice Jawala
Prasad. His descendants sold 2 katha 18 dhurs and 7 dhurki land
from north east corner of plot no. 845 to the plaintiff through
registered sale deed dated 10.01.1975. In the boundary of the land
which had been sold, a 14 ft. wide Rasta was mentioned in
southern side. By earlier sale deed dated 21.10.1974, same persons
had sold an area of 2 katha 13 dhurs and 16 dhurki of land of plot



no. 845 in favour of Shail Kumari and Raghunath Prasad and in the northern boundary of the sold land was the 14 ft. Rasta. Subsequently, the same persons, who were admittedly owners of entire plot no. 845 along with plot nos. 844 and 846 sold 11 katha 13 dhurs and 5 dhurki to defendant nos. 1 and 2 by executing registered sale deed on 3.12.1975. The defendants later on purchased some more land from Shail Kumari and Raghunath Prasad by the sale deed dated 2.11.1977 in plot nos. 843 and 845.

4. The plaintiff filed a suit claiming her easementary right over 14 ft. wide Rasta shown in the boundary of her sale deed dated 10.01.1975 with further declaration that the construction made over the said 14 ft. wide Rasta by the defendants was illegal and without authority.

5. The defendants contested the suit of the plaintiff and claimed exclusive right, title and possession over the entire land of plot nos. 844, 845 and 846 except the land purchased by the plaintiff in north east of plot no. 845 by sale deed dated 10.01.1975.

6. After scrutiny of pleadings and affidavits, the trial court returned the findings on the issues against the plaintiff and dismissed the suit. In appeal by the plaintiff, the lower appellate court on reappraisal of the evidence concurred with the

findings of the trial court and dismissed the appeal by the impugned judgment and decree.

7. Mr. Anish Chandra Sinha, learned counsel for the appellant has submitted that the evidence adduced on behalf of the appellant has not been properly considered by both the courts below. It has been canvassed by the learned counsel for the appellant that the oral evidence of the plaintiff has not been considered in its entirety and as such the impugned judgments are bad in law. Mr. Sinha has further laid emphasis that in view of the fact that 14 ft. wide Rasta has been mentioned in the boundary of the sale deed of the plaintiff, the right of easement is clearly established and ought to have been declared as such. A prayer has also been made on behalf of the appellant to call for the lower court records for better appreciation of the controversies between the parties. No other submission has been made on behalf of the appellant.

8. After perusal of the judgments of both the courts below and considering the submissions, it is evident that the suit has been filed for declaration of easementary right of the plaintiff over 14 ft. wide Rasta mentioned in the boundary of the land purchased by the plaintiff. During the course of submission, the fact has not been disputed that the right of user of 14 ft. wide



Rasta has not been granted to the plaintiff by her vendor by mentioning this fact in the sale deed. The fact has also been accepted that 14 ft. wide Rasta was the part of the land belonging to the vendors of the plaintiff. The vendors of the plaintiff had sold their entire land in plot nos. 843, 844, 845 and 846 and the defendants, by purchasing the same by registered sale deed dated 3.12.1975 (executed by the vendors who had also sold the land in favour of the plaintiff) and sale deed dated 2.11.1977 executed by the purchasers from the vendors of the plaintiff herself, have definitely acquired the title and possession over the same. Both the courts below after analysis of the evidence have come to the concurrent finding that the entire land in plot no. 845 except the land purchased by the plaintiff has been purchased by the defendants by registered sale deeds as far back as in the year 1975 and 1977.

9. Further more, the plaintiff in her affidavit has also stated that in the boundary of her purchased land, there is a pucca road known as 'circuit house main road' and the said road is being used as egress by the plaintiff. It has also been found by the courts below that in the sale deeds of the defendants, there was no mention of Rasta in the northern boundaries rather the land purchased by the plaintiff has been mentioned in the northern

boundaries. Both the courts below have also found possession of the defendants over their purchased land, and existence of their boundary wall since after the purchase has also been found. Moreover, it is also manifest that the material oral evidence has been considered by both the courts below along with the documentary evidence and the conclusions have been arrived after elaborate scanning of the same. No perversity or unreasonableness in the findings by the courts below could be established on behalf of the appellant during the course of submission. The controversy in the appeal now stands concluded by concurrent findings of fact.

10. Ex consequenti, this Court does not find any substantial question of law involved in this appeal. This appeal is, accordingly, dismissed.

(V. Nath, J)

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