

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.64 of 2012

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1. Md. Babar Khan S/O Late Tazamul Hussain Khan R/O Mohalla- Mehsaul Chowk Ward No. 23, Distt- Sitamarhi.
2. Md. Nisar Khan S/O Late Tazamul Hussain Khan R/O Mohalla- Mehsaul Chowk Ward No. 23, Distt- Sitamarhi.

..... Defendant 2nd party Appellants

.... Appellants

Versus

1. Md. Samiur Rub @ Rabbi S/O Md. Washiur Rub At Present R/O Mohalla- Bhavadepur, Ward No. 14, Distt- Sitamarhi

..... Plaintiff Respondent 1st party Respondent 1st party

2. Smt. Rita Jha Window Of Late Madan Mohan Jha R/O Vill- Rewsipakari Tole, Dhanukhi, P.S- Riga, Distt- Sitamarhi, At Present Bhavadepur, Sitamarhi, North Of Sitamarhi Sadar, Hospital, T.B. Ward P.S+ Distt- Sitamarhi.

..... Defendant 1st party Respondent 2nd party... Respondent 2nd party

3. Md. Zahid Khan S/O Late Tazamul Hussain Khan Mohalla- Mehsaul Chowk, Ward No. 23, Distt- Sitamarhi.

.... Defendant 2nd party..... Appellant Respondent 3rd

.... Respondents

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Appearance :

For the Appellant/s : Mr. ALOK KUMAR JHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-06-2015

Heard learned Counsel for the appellants.

2. The defendant 2nd set in the suit are the appellants in this appeal aggrieved by the grant of decree in part to the plaintiff to the extent of recovery of possession for Schedule II property.

3. The necessitous facts are that the plaintiff has filed the suit praying for relief of specific performance of contract with regard to the land described in Schedule I which consists of the area of land of Plot no. 276 and has further prayed the relief for recovery of possession with regard to the land mentioned in the plaint in Schedule I and Schedule II. The Schedule II land consists of the area of Plot no. 277. The plaintiff has



claimed his title over Schedule II land on the basis of purchase by registered sale deed of the year 1985. The relief of specific performance of contract for the land mentioned in Schedule I of the plaint is based upon the case of the plaintiff that one Janardan Jha who was the title holder of Schedule I land entered into an oral agreement for sale of the said land with the plaintiff and accordingly before his death he instructed his son to honour the commitment and execute the sale deed in favour of the plaintiff for the said land. It is, however, the further case of the plaintiff that son of late Janardan Jha did not execute the sale deed as instructed in favour of the plaintiff but executed the sale deed on 27.8.1986 for the land mentioned in Schedule I in favour of the defendant 2nd set. It has also been the case of the plaintiff that defendant 2nd set forcibly dispossessed the plaintiff from the land as mentioned in Schedule II of the plaint which the plaintiff has purchased in 1985.

4. The defendants contested the case of the plaintiff and have come out with the case that some part of Plot no. 276 which they have purchased has been included in the adjacent Plot no. 277 (as mentioned in Schedule II of the plaint) and therefore the defendants were entitled to the said part also. The defendants have also asserted that there was no agreement for sale for the land as claimed by the plaintiff.

5. The trial court after considering the pleadings and evidence decided the issues in favour of the plaintiff and granted him the relief for specific performance of contract for Schedule I land as prayed and also the relief for recovery of possession over Schedule I and Schedule II land. It has been held by the trial court that the plaintiff has got subsisting title over Schedule II land. In appeal, the appellate court

below, however, overturned the judgment and decree with regard to the grant of relief of specific performance of contract to the plaintiff but confirmed the decree for recovery of possession to the plaintiff over Schedule II land.

6. It has been submitted by the learned Counsel for the appellants that this Second Appeal is confined to the grant of relief to the plaintiff by both the courts below with regard to recovery of possession over Schedule II land after the relief for specific performance of contract and recovery of possession over Schedule I land was declined. During course of submission learned Counsel for the appellants has also pointed out that the issues arising for consideration in this appeal are entirely distinct and not related to the issues arising in the Second Appeal which has been filed by the plaintiff against the part dismissal of the suit.

7. Learned Counsel for the appellants has submitted that both the courts below have wrongly decided the issue that plaintiff has got subsisting title over the land of Plot no. 277 as mentioned in Schedule II of the plaint. It has been propounded by the learned Counsel that in the written statement the defendants have come out with the specific case that the part of Plot no. 276 has been included by mistake of the survey authorities, during the municipal survey operation, in Plot no. 277. Learned Counsel has urged that the evidence is on record showing that boundary of the land purchased by defendant 2nd set from the defendant 1st set in Plot no. 276 includes part of Plot no. 277 but the same has been ignored and this aspect is a substantial question of law for consideration in this appeal. It has also been submitted that impugned judgment suffers from the vice of non-consideration of the material

evidence in correct perspective.

8. After perusal of the judgments of both the courts below and consideration of the submissions, it is limpid that the plaintiff's relief for specific performance of contract with regard to Schedule I land has been declined at the appellate stage but the appellate court has confirmed the finding of the trial court with regard to the relief of recovery of possession for the land mentioned in Schedule II of the plaint. From perusal of the finding in this regard, as recorded by the appellate court below, it is manifest that a detailed analysis of the evidence on reappraisal has been made and thereafter the conclusion has been arrived that the plaintiff has got subsisting title over the land purchased by him in Plot no. 277 as mentioned in Schedule II of the plaint and on that basis the plaintiff has been held to be entitled to the decree for recovery of possession over the said property. The submission on behalf of the appellants that the courts below have not properly considered the evidence on record particularly the report of the survey knowing Pleader Commissioner, which in fact, has been considered, has got no force for the simple reason that reappraisal of evidence cannot be done at the second appellate stage and that too when no unreasonableness or perversity in the findings by the courts below could be established.

9. Learned Counsel for the appellants has also relied on the decision of the Apex Court in the case of **Rame Gowda Vs M. Varadappa Naidu & anr. AIR 2004 SC 4609**, for his contention that long possession in absence of the proof of better title must be maintained. But the fact in the present case is otherwise and does not show long possession and better title of the defendant-appellant, who

have purchased the Schedule I land in the year 1986, dispossessed the plaintiff from Schedule II land claiming it to be part of their purchased land and the suit has been filed in 1987. This Court is therefore not persuaded to align with the submission on behalf of the appellants that their alleged long possession over the suit property will be sufficient to deny the relief for recovery of possession as prayed by the plaintiff with regard to Schedule II land on the basis of title.

10. After careful consideration of the entire mater this Court comes to the conclusion that there is no substantial question of law arising for consideration in this Second Appeal, which is accordingly dismissed.

(V. Nath, J.)

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