

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.170 of 2012

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1. Harrendar Sah S/O Dahari Sah Village & P.O- Panjiwa, P.S- Raghunathpur, District- Siwan.
 2. Devanti Devi D/O Tetari Devi And W/O Chandra Deo Sah Resident Of Village- Bawan Diha, Deopura, P.S- Pasoolpur, District- Siwan.
 3. Vidyavati Devi D/O Tetari Dvi And W/O Krishna Sah Residen Tof Village- Sihauta, P.S & P.O- Maharajganj, District- Siwan.

.... Appellant/s

Versus

1. Naga Kuar S/O Suresh Kuar Resident Of Village & P.O- Panjuar, P.S- Raghunathpur, District- Siwan.
2. Sheopati Devi W/O Sheo Narain Kuar Resident Of Village & P.O- Panjuar, P.S- Raghunathpur, District- Siwan.
3. Dinesh Singh S/O Late Sheo Narain Kuar Resident Of Village & P.O- Panjuar, P.S- Raghunathpur, District- Siwan.
4. Manish Singh S/O Late Sheo Narain Kuar Resident Of Village & P.O- Panjuar, P.S- Raghunathpur, District- Siwan.
5. Ramawati Devi D/O Late Sheo Narain Kuar And W/O Umashanker Singh Resident Of Village-Ganpur,
6. Gautam Kuar S/O Naga Kuar Resident Of Village Panjuar Pargana Narhan, P.S- Raghunathpur, District- Siwan.
7. Kameshwar Kuar S/O Sheo Narain Kuar Resident Of Village Panjuar Pargana Narhan, P.S- Raghunathpur, District- Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. RAGHAV PRASAD

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-07-2015

Heard Mr. Binod Kumar Singh, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal.

3. The plaintiff filed the suit for declaration of title and possession over the suit land measuring 4 Katha 14 dhurs of Plot no. 2257 of Khata no. 114. The plaintiff has based her title over the suit land



on two sale deeds dated 1.6.1978 said to have been executed by Deo Ballam Singh. The defendants in their written statement have disputed the right, title and interest of Deo Ballam Singh, the vendor of the plaintiff, over the entire 4 Katha 14 dhurs and have come out with a case of partition in the family in which Deo Ballam Singh was allotted only 1 Katha 19 dhur 2½ dhurki land in Plot no. 2257. The defendants have further claimed their own title over the suit land on the basis of two sale deeds executed by co-sharer of said Deo Ballam Singh for 3 Katha 10 dhurs 12½ dhurki out of the suit land and have disputed the right, title and possession of the plaintiff to that extent over the suit land.

4. The trial court recorded the finding in favour of the plaintiff and decreed the suit. In appeal by the defendants, the appellate court below on reappraisal of evidence has reversed the findings, allowed the appeal and set aside the judgment and decree of the trial court.

5. From the perusal of the judgments of both the courts below and after considering the submissions on behalf of the appellants, it is evident that the plaintiff has claimed her title over the suit land on the basis of two sale deeds said to have been executed by Deo Ballam Singh. However, this fact has been accepted by the learned Counsel for the appellants and also recorded in the impugned judgment that the plaintiff has produced only one sale deed and has not explained non-production of the another sale deed to complete her basis of the claim of the suit land. It has also not been disputed on behalf of the appellants that the plaintiff has not presented herself for complete cross-examination during the trial of the suit and there was no reason/explanation assigned for the same. It has also not been disputed

that no relief has been claimed in the suit against the sale deeds on the basis of which the defendants have resisted the claim of the plaintiff over the suit land.

6. Mr. Singh, learned Counsel for the appellants, has submitted that the appellate court below should have granted part decree in favour of the plaintiff with regard to the lands over which the witnesses of the defendants have accepted her possession. It has been canvassed by the learned Counsel for the appellants that the appellate court has sufficient power/jurisdiction under Order 7 Rule 7 CPC to mould the relief appropriately for imparting justice.

7. After considering the submissions and perusal of the judgments of both the courts below it is manifest that the plaintiff has claimed title over the entire 4 Katha 14 dhur on the basis of two sale deeds. Even though the defendants have confined their prayer only over part of the suit land on the basis of their purchase but there is no evidence on record to demarcate or locate the portion of the suit land over which the plaintiff could have been granted the relief for title and possession. There is also no such prayer made by the plaintiff before the court nor she has appeared for completing her cross-examination. There is also no explanation for non production of the another sale deed which was the basis of title of the plaintiff and which might have become the basis for considering grant of the relief in part to the plaintiff. It also transpires that the plaintiff has not prayed for the relief against the sale deeds of the defendants and there has been no prayer for amendment in this regard on behalf of the plaintiff. The reliance by the learned Counsel for the plaintiff on the deposition of the defendants' witnesses as

mentioned in the trial court judgment is also misconceived inasmuch as the deposition of those witnesses have even not been believed by the trial court.

8. Taking into consideration all the aforesaid facts and circumstances this Court is of the opinion that power under Order 7 Rule 7 CPC could not have been exercised by the courts below on the basis of the materials on record. Moreover in absence of such a prayer before the appellate court below, the non consideration of the same cannot be a ground for maintaining a Second Appeal.

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

(V. Nath, J.)

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