

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.234 of 2013

Siphat Sah @ Siphait Sah Son Of Late Nagar Sahoo @ Nangar Sahu Resident Of
Village- Simar, P.S.- Mahishi, District- Saharsa

..... Defendant Appellant

.... Appellant

Versus

1. Anil Kumar Yadav,

2. Jitendra Yadav,

3. Hari Nandan Yadav,

4. Lalan Kumar Yadav,

5. Sushil Kumar Yadav,

6. Bijay Kumar Yadav, Respondent No. 2 To 7 Are Major Son Of Bhagwat Mandal.

7. Bhubheshwari Yadav S/O Late Bhogi Lal Mandal

8. Mostt. Indira Devi, Widow Of Bhup Narayan Yadav

9. Kishori Mandal S/O Late Bhogilal Mandal,

10. Chandrashekhar Yadav, Son Of Kishori Mandal

11. Sunil Kumar Yadav Son Of Kishori Mandal

12. Sudhir Kumar Yadav S/O Kishori Mandal

13. Janardan Yadav S/O Jaleshwar Mandal

14. Taranand Yadav S/O Jaleshwar Mandal,

15. Ashok Kumar Yadav, Major Son Of Janardan Yadav, Null

16. Arun Kumar Yadav Major Son Of Janardan Yadav,

17. Om Prakash Yadav Major Son Of Janardan Yadav,

18. Deo Narayan Yadav Son Of Taranand Yadav, All Residents Of Village- Baliya, P.S.- Mahishi, District- Saharsa

..... Plaintiffs Respondents

..... Respondents

19. Chandan Sah S/O Late Ramswarup Sahu

20. Yogendra Sahu S/O Late Ramswarup Sahu

21. Mahendra Sahu S/O Late Ramswarup Sahu

22. Dinesh Sahu S/O Late Ram Swarup Sahu

23. Bindu Sahu S/O Late Ram Swarup Sahu

24. Siro Sahu S/O Late Babulal Sahu

25. Fagu Sahu S/O Late Babulal Sahu

26. Gajdhar Sahu S/O Siroo Sahoo

27. Asharfi Sahu S/O Rami Sahu

28. Ajodhi Sahu S/O Rami Sahu All Residents Of Village- Simar, P.S.- Mahishi, District- Saharsa

..... Defendants Appellants

.... Respondents

Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh

Mr. AMARNATH JHA

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-04-2015

Heard Mr. Ajay Kumar Singh, learned Counsel appearing for the appellant.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance, by which the plaintiffs have been granted the decree.

3. The plaintiffs filed a suit for declaration of title and confirmation of possession over the suit land.

3. The necessitous facts are that the suit land originally belonged to the defendant's family. The plaintiffs have claimed their title and possession over the same by three registered sale deeds of the year 1906, 1907 and 1911, executed by predecessor of the defendants. It is the case of the plaintiffs that the plot numbers of the land in question have been wrongly mentioned by mistake of the Scribe in the sale deeds, but the boundaries have been correctly described. It is the further case of the plaintiffs that they have been continuing in possession over the same for the last 80 years, after their purchase and necessity for the suit has arisen due to interference of the defendants in the possession of the plaintiffs.

4. The defendant appeared and filed written statement contesting the claim of the plaintiffs, *inter alia*, on the ground that the suit land was never sold to the plaintiffs through the three sale deeds. The defendant has also asserted his own title and possession over the suit land.

5. The trial court after scrutiny of the evidence of the parties,



returned the finding that the plot numbers of the suit land was wrongly mentioned in the concerned sale deeds executed by the ancestors of the defendant in favour of the plaintiffs. It was further found that the boundaries of the plot numbers, consisting of the suit land, however, were correctly mentioned. The trial court also came to the finding that the plaintiffs have been coming in peaceful and continuous possession over the suit land. The suit was, therefore, decreed. In appeal by the defendant, the appellant court reappraised evidence of the parties and concurred with the findings of the trial court, while dismissing the appeal.

6. Mr. Singh, learned Counsel for the appellant, has raised the sole submission that the courts below have erred in allowing the claim of the plaintiffs both on the basis of title as well as adverse possession. It has been propounded by the learned Counsel that the claim of adverse possession cannot go along with the claim of title, but the learned courts below have ignored this settled principle of law and wrongly granted the decree. By placing the issues framed in the suit with regard to title and possession as well as adverse possession, it has been canvassed that the error committed by the courts below is apparent. Learned Counsel, therefore, has submitted that the impugned judgments of both the courts below are not sustainable in law.

7. After perusal of the judgments of both the courts below and consideration of the submissions, it is pellucid that the plaintiffs' claim of title and possession over the suit land is based upon the registered sale deeds admittedly executed by the ancestors of the defendant. The plaintiffs have claimed that though the suit land is also included in the sale deeds, but by mistake of scribe, the khata numbers and plot



numbers of the suit land have been wrongly mentioned. The plaintiffs have claimed to be continuing in possession over the suit land since after their purchase. The courts below have taken into notice the statement by the defendant in his deposition wherein he has stated that he is not concerned with the lands sold to the plaintiffs through three sale deeds executed by his ancestors. The evidence on record, both oral and documentary, have been scrutinized by the courts below for coming to the finding that the suit land was included in the concerned sale deeds but the plot numbers and khata numbers of the same have been wrongly mentioned by the scribe. Further, on the basis of consideration of evidence it has also been concurrently found that the plaintiffs are coming in possession over the suit land. The submission on behalf of the appellant that the learned courts below have wrongly decreed the suit by considering the claim on the basis of adverse possession simultaneously with title on the basis of sale deed, is clearly misconceived. It does not appear that the claim of title of the plaintiffs over the suit land has been upheld only on the basis of adverse possession. To the contrary, it has been concurrently found by both the courts below that the plaintiffs have acquired title and possession over the suit land on the basis of sale deeds. The observation and finding in the judgment of the trial court that the plaintiffs are coming in possession over the suit land for more than 80 years has apparently been given a twist by the learned Counsel for the appellant in order to establish the case of adverse possession. However, from the judgment of the appellate court below it does not appear that the finding of title is based on adverse possession rather

the only finding is that the plaintiff have been coming in possession over the suit land for more than 80 years continuously.

8. In this view of the matter, this Court finds no substance in the submission that the courts below have erred in law in granting the decree to the plaintiffs on the basis of adverse possession also. This submission appears to have been made more in desperation than in substance. No other submission has been made on behalf of the appellant.

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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