

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.248 of 2013

=====

1. Ram Gati Singh S/o Late Aliyar Singh, resident of village and PO - Nawada,
P.S. Sahar, district- Bhojpur.
..... Defendant 1st set Respondent

.... Appellant

Versus

1. Vijay Prasad Singh, Son of Late Suraj Nath Singh, resident of village and PO-
Nawada, PS- Sahar, District- Bhojpur. Plaintiff Appellant

2. Girija Singh Son of Late Ram Belash Singh

3. Virendra Singh Son of Late Chandrika Singh

4. Satendra Kumar Son of Late Chandrika Singh

5. Ram Kali Devi wife of Late Chandrika Singh

6. Bidya Sagar Singh Son of Late Sakil Chandra Singh all are resident of village
and PO- Nawada, PS- Sahar, District- Bhojpur.
..... Defendant 3rd set Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. INDESHWARI PRASAD MANDAL

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-08-2015

Heard learned Counsel for the appellant.

2. The defendant No. 1 in the suit is the appellant in this appeal against the judgment and decree of reversal granting the decree to the plaintiff.

3. The plaintiff filed the suit for declaration that R.S. Plot No. 1149 area 9 decimals, is part of the C.S. Plot No. 944, over which the plaintiff has got title. The further relief was for declaration that the survey entry with regard to the said R.S. Plot No. 1149 has been wrongly made in the name of Nabiuddin Mian who was predecessor of defendant No. 2.

4. The plaintiff's case in brief is that Plot No. 944 along with other plots belonged to his family. The plaintiff has averred that after the death of the predecessors, the family property was partitioned by the



family members and later on the plaintiff got the suit plot measuring an area of 9 decimals by way of a gift deed from the co-sharer Sukhdeo Mahto. In the suit, defendant No. 2 (descendent of Nabiuddin Mian) did not appear and no written statement was filed. The defendant No. 1 who is the appellant at present has filed his written statement in the suit contesting the reliefs sought for by the plaintiff on the ground that Ash Mohammad, son of Nabiuddin Mian, in the year 1983, had entered into exchange transaction with defendant No. 1 whereby the suit plot was given to defendant No. 1. He has also asserted that Nabiuddin Mian had acquired title over the suit land by oral purchase from Ram Dhyani Mahto who was the co-sharer of the predecessor of the plaintiff.

5. The trial court returned the finding on the issues against the plaintiff and dismissed the suit. The appellate court in appeal by the plaintiff, on reappraisal of evidence, has overturned the findings of the trial court and granted the relief to the plaintiff as prayed. At this juncture, it would be apt to take into notice that no appeal has been filed by the defendant No. 2 who was descendent of Nabiuddin Mian. In this regard it has been stated by the appellant that Nabiuddin Mian died and after him his heirs also died and his branch had become extinct. However there is no material to substantiate this assertion as it appears that in the decree under appeal the name of Nisha Khatoon (descendent of Nabiuddin Mian) is present. The fact remains that in the present appeal there is no representation of the interest of Nabiuddin Mian.

6. Learned Counsel for the appellant has firstly submitted that the learned court below has wrongly shifted the burden of proof on the defendant No. 1- appellant to establish his case, whereas in view of the



claim of the plaintiff on the basis of gift deed it was for the plaintiff to establish his case. Elaborating his submission, learned Counsel has argued that the plaintiff has come out with the specific case that he has obtained the suit property on the basis of gift from his co-sharer. But the contesting defendant has denied the validity of the said gift deed and therefore the burden of proof was on the plaintiff to establish his case. Learned Counsel, therefore, has submitted that the judgment passed by the appellate court below is vulnerable. It has been further submitted that the learned court below has passed the impugned judgment on the basis of presumptions alone and has not applied its mind for correct interpretation of the evidence on record. It has also been canvassed by the learned Counsel for the appellant that as the present Second Appeal has been filed against the judgment and decree of reversal, this Second Appeal is like a first appeal and should be admitted. No other submission has been made on behalf of the appellant.

7. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the suit property originally belonged to the family of the plaintiff. The plaintiff has come out with the case that one of his predecessor co-sharer Ram Dhyan Mahto died issueless and thereafter the property devolved upon the survivors and thereafter one of the co-sharer has gifted the present property by a gift deed to the plaintiff. The contesting defendant has come out with the case that Ram Dhyan Mahto as far back as in the year 1933 had made oral sale of the suit property to Nabiuddin Mian and thereby transferred his title and possession to him. The appellate court below has taken into notice that neither Nabiuddin Mian nor his heirs or any other person from



his family has come to support the case of oral sale as propounded by the defendant No. 1. There is also no explanation on behalf of the defendant No. 1 as to why none of the family members of the Nabiuddin Mian has come forward to support his case of oral sale and exchange. In view of the fact that the defendant No. 1 has claimed that Nabiuddin Mian had derived title from one of the co-sharer of the plaintiff on the basis of oral sale, the burden of proof would definitely be on the defendant No. 1 to establish the factum of oral sale by cogent evidence which was the basis of his title by exchange from Ash Mohammad, son of Nabiuddin Mian. Therefore the appellate court below has rightly taken the view that the burden of proof was on the contesting defendant to establish the case of oral sale and acquisition of title by Nabiuddin Mian over the suit land. The appellate court below has further taken care to elaborately scrutinize the evidence of the parties before coming to the conclusion that the contesting defendant has failed to prove the case of oral sale. The reliance on behalf of the appellant on deed of Bajidawa (Ext. C) dated 4.3.1943 said to have been executed by Ram Dhyani Mahto in favour of Nabiuddin also does not support the case of valid oral sale in the year 1933 as claimed which required delivery of possession of the property at the time of oral sale but the deed of Bajidawa (Ext. C) shows that the possession was given in the year 1943. The appellate court below has taken into consideration the circumstances reflecting upon the genuineness of this deed of Bajidawa and has refused to place reliance upon the same. This Court has not been persuaded to find perversity in any manner in this finding.

8. Moreover the entry of the name of Nabiuddin Mian in survey



khatian or for that matter the mutation of the suit land in the name of the contesting defendant would not be sufficient to establish the title over the suit land as those documents are only revenue records and would not be the documents of title. The appellate court below has also taken into notice that the trial court has simply categorized evidence of the parties and no evaluation of the evidence has been made. From the perusal of the judgment of the trial court this fact appears to be correct. In any view of the matter, even in the case of reversal of the judgment of the trial court by the appellate court, the Second Appeal thereafter cannot be akin to a first appeal, as submitted on behalf of the appellant, as Section 100 CPC requires substantial questions of law arising for consideration for maintaining a second appeal.

9. Further, it is also transparent from the judgments of the courts below that the plaintiff has produced the gift deed (Ext. 9) and its execution has been accepted by the defendant No. 1 in his written statement. It was for the contesting defendant therefore to establish that the same is illegal or invalid. The appellate court below has found that no evidence has been adduced by the contesting defendant to establish the illegality or invalidity of the gift deed as pleaded on behalf of the appellant. During course of submission no material on record has been pointed out to establish the illegality of the gift deed (Ext 9) of the plaintiff.

10. The issues arising between the parties now stand concluded by findings of fact by the appellate court below and this Court has not been persuaded during the course of submission on behalf of the appellant that the findings by the appellate court are perverse or unreasonable in any manner.

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

(V. Nath, J.)

Snkumar/-

U			
---	--	--	--