

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.499 of 2012**

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1. Phulpatiya Devi @ Pulpato Devi W/O Late Yogendra Yadav.
  2. Ranjan Kumar Minor S/O Late Yogendra Yadav.
  3. Mamta Kumari.
  4. Madhuri Kumari both 3 and 4 are Minor Daughter Of Late Yogendra Yadav, minor appellant nos. 2 to 4 Represented by their mother and Natural Guardian Phulpatiya Devi @ Phulpato Devi ( Appellant No. 1).
  5. Narendra Yadav@Nagendra Prasad S/O Late Ram Bhaju Yadav.
  6. Domani Devi W/O Bijendra Yadav.
  7. Pradeshi Kumar Minor Son Late Bijendra Yadav.
  8. Priyanka Kumari.
  9. Durga Kumari.
  10. Soni Kumari nos. 8 to 10 are Minor Daughters Of Late Bijendra Yadav, nos. 7 to 10 Represented By Their Mother And Natural Guardian Domani Devi.
  11. Lashmi Devi@Lakhmi Devi W/O Ram Kewal Singh all R/O Mohalla-Pakari, Ward No.12, P.S.-Ara Nawada, Distt-Bhojpur.

.... .... Appellant/s

Versus

1. Saryu Ram S/O Late Nathuni Ram R/O Mohalla-Pakari, Ward No.12, P.S.-Ara Nawada, Distt-Bhojpur.
2. Usha Devi W/O Arjun Paswan R/O Vill-Rani Sagar, P.S.-Shahpur, Distt-Bhojpur.
3. Pushpa Devi W/O Lalan Bhagat R/O Vill-Birampur, P.S.-Raghopur, Distt-Vaishali.
4. Shanti Devi W/O Satendra Paswan R/O Mohalla-Tulsi Mandi, P.O.-Gulgarbagh, P.S.-Alamganj, Distt-Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. P. N. Shahi, Sr. Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

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11-12-2015

Heard Mr. P.N. Shahi, the learned senior counsel appearing on behalf of the appellants.

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

The plaintiffs filed the suit for declaration of title and confirmation of possession or in the alternative for recovery of possession over the suit land described in the plaint.

The factual expose' are that plot no. 376 area 27 decimal and plot no. 372 area 28 decimal originally belonged to Fajalu Rahman. By registered sale deed dated 05.12.1956 (Ext. 2/A) Fajalu Rahman sold C.S. plot no. 376 area 27 decimal to Rabiya Begam. It is the case of the plaintiffs that this plot no. 376 was purchased by his wife Reshmi Devi by registered sale deed dated 29.11.1966 (Ext. 2) and after the death of the purchaser Rashmi Devi, the plaintiffs inherited the said property being her heir. Fajalu Rahman sold C.S. plot no. 372 also to Rabiya Begam by sale deed dated 01.02.1957 (Ext. B/3). Rabiya Begam thereafter sold the said plot no. 372 to Somaro Devi and Lakshmi Devi (original defendant nos. 1 and 2) through sale deed dated 27.12.1968 (Ext. B and B/1). The name of Reshmi Devi, the



predecessor of the plaintiffs was mutated with regard to her purchased 27 decimal plot of C.S. plot no. 376 and similarly the name of original defendants Somaro Devi and Lakshmi Devi were mutated with regard to their purchased plot no. 372. The note of discord between the parties arose when during survey operation the defendants claimed that they in fact had purchased plot no. 376 and the boundary of the said plot no. 376 had been mentioned in their sale deed though the plot number had been wrongly mentioned as 372. The defendants accordingly claimed to be in possession over the suit land as owner thereof. It was also the case of the defendants in the suit that the survey authority after finding their possession had recorded their name with regard to the land of C.S. plot no. 376 corresponding to new plot no. 482 and 487. It was also pleaded by the defendants that Rashmi Devi, the predecessor of the plaintiffs, in fact, had purchased the land of plot no. 378 and the survey authorities upon her objection allowed her name to be recorded with regard to C.S. plot no. 378 corresponding to new plot no. 490, 491 and 500.

The trial court returned the findings against the plaintiffs and dismissed the suit. It was held by the trial court that the plaintiffs had failed to establish the title of Fajalu Rahman and



Rabiya Begam over the suit plot no. 376 and further also that in view of the survey entry in the name of the defendants for the suit land, the plaintiffs' claim of title and possession over the same could not be allowed. In appeal, the appellate court below, on reappraisal of pleadings and evidence, has overturned the findings of the trial court, allowed the appeal and granted the decree to the plaintiffs, as prayed.

Assailing the impugned judgment and decree, Mr. Shahi, the learned senior counsel appearing on behalf of the appellants has submitted that the appellate court below has failed to consider Ext. C/4 which was the order passed by the survey authority with regard to plot no. 378 allowing the objection by the plaintiffs in that regard. It has been argued that Rashmi Devi, the predecessor of the plaintiffs, has purchased the land of plot no. 378 and not the land of plot no. 376 and, therefore, she had claimed the said plot no. 378 before the survey authorities. It has been emphasized that the defendant-appellants had purchased the land of plot no. 376 and have been coming in possession over the same and, therefore, the survey entry for the said land has been made in their names. It has also been faintly argued, by referring to the ground no. 4 in the memo of appeal, that the learned



appellate court below has wrongly rejected the prayer of the appellants for adducing additional evidence and C.W.J.C. No. 2847 of 2012 was filed challenging the said order but the learned court below has passed the impugned judgment and decree during the pendency of the writ petition. The learned senior counsel for the appellants, however, has also accepted that there was no order passed in the said writ application for stay of the proceeding of the appeal in the court below and even no such prayer for stay was made by the appellants in the writ application when the learned appellate court below took up the appeal for hearing and fixed the same for judgment. Concluding his submissions, the learned senior counsel has also again put emphasis on the issue of non-consideration of Ext. C/4 (order passed by the survey authority for plot no. 378) by the appellate court below. No other submission has been made on behalf of the appellants.

After perusal of the impugned judgments of both the courts below and consideration of the submissions, it is manifest that the title of Fajalu Rahman over C.S. plot no. 376 and plot no. 372 has been admitted by the parties and the transfer of these two plots by sale deeds dated 05.12.1956 (Ext. 2/A) and 01.02.1957 (Ext. B/3) is also admitted fact. It has also been admitted that the



plot no. 376 was purchased by Rashmi Devi, the predecessor of the plaintiffs and plot no. 372 was purchased by the original defendant nos. 1 and 2. The learned appellate court below has scrutinized the sale deed dated 29.11.1966 (Ext. 2) and has come to the conclusion that by this sale deed Rabiya Begam had sold the land which she purchased from Fajalu Rahman by registered sale deed dated 05.12.1956 (Ext. 2/A) which is 27 decimal land of plot no. 376. The appellate court similarly has scrutinized the sale deeds in favour of the original defendants and has recorded the finding that Rabiya Begam sold the same land to the original defendant nos. 1 and 2 which she had purchased from Fajalu Rahman by sale deed dated 01.02.1957 (Ext. B/3) which is 28 decimal land of plot no. 372 described as Bag (garden). The appellate court below has also taken into notice of the boundaries mentioned in the sale deeds of the defendants as well as the sale deed (Ext. B/3) of Rabiya Begam and thereafter has found that it was in fact the land of plot no. 372 which was transferred to the defendants by Rabiya Begam which she had acquired by sale deed (Ext. B/3). The appellate court below has also taken into notice the submission on behalf of the appellants that plot no. 378 was claimed by the plaintiffs and was recorded by the survey

authorities in the name of the plaintiffs but has come to the conclusion that the same will not support the case of the defendants to have purchased the land of plot no. 376 which has been sold to Rashmi Devi, the predecessor of the plaintiffs by Rabiya Begam.

During the course of submission on behalf of the appellants also no pleading or evidence has been pointed out to show that Rabiya Begam had also title over plot no. 378 which she could have transferred to Rashmi Devi by sale deed dated 29.11.1966 (Ext. 2). Further no pleading or evidence has been pointed out on behalf of the appellants to show that before the survey authorities, the claim/objection of the plaintiffs over the land of plot no. 378 was based upon the sale deed dated 29.11.1966 (Ext. 2). In this fact situation, it is difficult to accept the case of the appellants that as the plaintiffs, names have been recorded over plot no. 378 by the survey authorities, their title over plot no. 376 on the basis of the sale deed (Ext. 2) stands extinguished. The appellate court has elaborately scanned the evidence on record and this Court does not find the findings of the appellate court below to be unreasonable or perverse in any manner. The impugned judgment by the appellate court below

would not also become vulnerable only because the same was passed during the pendency of a writ application filed by the appellants against the order rejecting the prayer for adducing additional evidence as admittedly there was no stay order passed in the said writ application nor such prayer for stay of the proceeding of the appellate court was pressed by the appellants when the hearing of the appeal was taken up and the matter was posted for judgment.

For the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Devendra/-

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