

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.123 of 2014

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Gopal Choudhary Nand Prasad Choudhary Resident of Village- Tilmapur, P.O. Shahpur, P.S. Nautan, Distt. Siwan

.... Appellant/s

Versus

Kalawati Devi W/o Lal Babu Yadav Resident of Village- Tilmapur, P.O. Shahpur, P.S. Nautan, Distt. Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Anshuman, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-06-2016

Heard Mr. Pandey, learned counsel for the appellant.

The defendant is the appellant in this appeal against the judgment and decree of affirmance granting the decree to the plaintiff as prayed.

The plaintiff filed the suit for declaration of title and recovery of possession over the suit land. The plaintiff claimed her title over the suit land on the basis of the sale deed dated 01.07.2004 executed by Gauri Shankar Pandey. The title of Gauri Shankar Pandey over the suit land was not disputed by the defendant who however came out with the case that Gauri Shankar Pandey had already sold the suit land to the defendant by the sale deed dated 16.12.2003 and therefore he was left with no transferable title to execute the sale deed

in question in favour of the plaintiff over the suit land. The defendant also denied the possession of the plaintiff over the suit land and claimed their own title and possession over the same.

Both the courts below after scrutiny of the evidence on record have concurrently held that the suit land purchased by the plaintiff by the sale deed from Gauri Shankar Pandey is not the same land which has been earlier purchased by the defendant from Gauri Shankar Pandey. The suit was decreed and thereafter the appeal has been dismissed by the impugned judgment and decree.

Mr. Pandey, learned counsel for the defendant- appellant has firstly submitted that both the courts below have erred in law in not dismissing the suit for non-joinder of the vendor Gauri Shankar Pandey as party. It has been further contended that both the courts below have acted with material irregularity in proceeding to identify the land purchased by the plaintiff and the defendant through their respective sale deeds on the basis of the boundaries mentioned in the sale deeds alone. It has also been submitted that judgment of the appellate court below is vitiated as all the issues arising in the suit have not been considered and the principles in this regard as laid down by the Apex Court in the case of **Chandradhoja Sahoo Vs. State of Orissa, A.I.R. 2013 S.C. 367** has been ignored. Learned counsel for the appellant has also submitted that the learned appellate court below

has relied upon non-existent decisions as referred in the judgment. Lastly, it has been also submitted that the defendant's possession over his purchased land at the least be protected by appropriate order by exercising jurisdiction under Order 41 Rule 33 C.P.C.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the suit has been filed by the plaintiff for declaration of title and recovery of possession over the suit land on the basis of the sale deed 01.07.2004 executed by Gauri Shankar Pandey for 5 katha of land in plot no. 393 of khata no. 73. The contention of the defendant is that he has purchased the said land from the same vendor Gauri Shankar Pandey by earlier sale deed 16.12.2003. It is demonstrably clear therefore that spinal issue between the parties was the identity of the land purchased by them through their respective sale deed from the same vendor in the same plot. From the perusal of the judgments of both the courts below, it is manifest that the elaborate scrutiny of the material evidence has been done before coming to the conclusion that the land purchased by the plaintiff is not the same land which has been earlier sold by the vendor Gauri Shankar Pandey to the defendant. It is not the case of the appellant that any material evidence adduced on behalf of the appellant has not been considered by both the courts below and the findings have stemmed out of non-consideration of evidence. The

submission on behalf of the appellant that the judgment by the appellate court below is vitiated for not recording the finding on each and every issue in the suit is also misconceived. Firstly, because it is judgment of affirmance and the appellate court is not required to restate effect of evidence or reiterate reasons as ruled by the Apex Court in the case of **Girijanandini Devi Vs. Bijendra Narain Choudhary, A.I.R. 1967 SC 1124** and secondly because a perusal of the judgment itself shows that the appellate court below was alive to the material issue arising between the parties in the suit and after formulating the points for determination has decided the same in accordance with law. The decision in the case of **Chandradhoja Sahoo** (supra) relied upon by the appellant has been given in different settings of fact. This Court also finds that the principles of law has been rightly noticed by the appellate court below even though according to the learned counsel for the appellant the judgments in support of the same has been wrongly mentioned.

In this backdrop, this Court comes to the conclusion that no substantial questions of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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