

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.195 of 2014

Paras Nath Sah Son of Bishwanath Sah Resident of Village & P.O. Pachraur, P.S. Taraiya, District - Saran

.... Appellant/s

Versus

1. Ram Ayodha Sah Son of Rama Nand Sah Resident of Village - Sangrampur, P.O. Pachraur, P.S. Taraiya, District - Saran
2. Salik Sah
3. Kedar Sah
4. Santosh Kumar Sl. No.2 to 4 all sons of Vishwanath Sah
5. Tara Devi Daughter of Vishwanath Sah
6. Jagarnath Sah Son of Satrughna Sah All residents of village and P.O. Pachraur, P.S. Tariya, District - Saran

.... Respondents

Appearance :

For the Appellant/s : Mr. Nagendra Rai

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-11-2016

Heard Mr.S.S.Dwivedi, learned senior counsel
appearing for the appellant.

The plaintiff is the appellant in this appeal against the
judgment and decree of reversal.

The plaintiff filed the suit for declaration of title over
the suit land and also confirmation of possession and further for
declaration that the sale deed dated 26.12.1956 executed by his father
in favour of defendant no.1 is invalid, illegal and inoperative
document. The defendant no.1 appeared and contested the assertions
made by the plaintiff.

The trial court after considering the evidence has returned the findings in favour of the plaintiff and granted the decree as prayed. In appeal by the defendant, the appellate court below after reappraisal of evidence has held that the suit was barred by limitation and besides recording other findings as well against the plaintiff, allowed the appeal by the impugned judgment and decree.

After perusal of the judgments of both the courts below and considering the submissions, it is evident that the plaintiff has claimed that the suit land was purchased by the plaintiff during his minority in the year 1949. In the year 1956 the suit land has been transferred by his father in favour of the defendant no.1, and the allegations have been made against the purchaser defendant no.1 regarding fraud, non-payment of consideration and undue influence in obtaining the sale deed. The suit has been filed in the year 1986 on the basis of assertion that the plaintiff acquired the knowledge of the sale deed when the defendant started threatening and interfering with the possession of the plaintiff. The appellate court below on the basis of evidence has come to the conclusion that the suit in the facts and circumstances was barred by limitation and in this regard the appellate court below has also taken into notice the deposition made by the plaintiff as P.W.6. It has been concluded by the appellate court below that the plaintiff had the knowledge of the sale deed at least before

1980. It also further transpires from the perusal of the findings by the courts below that the suit land was under mortgage and the mortgage has been redeemed by the defendant. It has also been found therefore that the plaintiff was not in physical possession of the suit land and it was admittedly the mortgagee who was in possession. In that view of the matter, this Court does not find that the conclusions by the appellate court below are perverse or unreasonable in any manner. In fact, the findings have been recorded on the basis of evidence which were acceptable and could have been relied upon.

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

(V. Nath, J)

Nitesh/-

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