

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.459 of 2012

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1. Ram Ashish Mahto, son of Late Tilakdhari Mahto
 2. Lallan Mahto @ Lallan Prasad, son of Ram Chandar Mahto, both resident of Village Mahuari, Purab Tola, Post Mahuari, P.S. Siwan, District Siwan
..... Defendants..... Respondent.. Appellant 1st set
 3. Ramdhari Pandit, son of Nayak Pandit, residents of Village Mahuari, Purab Tola, Post Mahuari, P.S. Siwan, District Siwan
..... Defendant Respondent Appellant 2nd set
..... Appellants

Versus

1. Bishwanath Pandit, son of Jagdeo Pandit, resident of Village Mahuari, Purab Tola, Post Mahuari, P.S. Siwan, District Siwan
..... Plaintiff Appellant Respondent 1st set
2. Ram Sital Mahto
3. Bhagwanlal Mahto
4. Lalbabu Mahto
5. Jai Ram Mahto (name deleted), all sons of Ramchandra Mahto , all resident of Village Mahuari, Purab Tola, Post Mahuari, P.S. Siwan, District Siwan
6. Subash Pandit,
7. Gawri Shankar Pandit, both sons of Late Ramayan Pandit
8. Smt. Sarita Devi
9. Smt. Babita Devi
10. Lalita Kumari, all daughters of Late Ramayan Pandit
11. Ramdhari Pandit (name deleted),
12. Motilal Pandit, both sons of Late Nayak Pandit, All resident of Village Mahuari, Purab Tola, Post Mahuari, P.S. Siwan, District Siwan
..... Defendants Respondents Respondents 2nd set
..... Respondents

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Appearance :

For the Appellant/s : Mr. RANJAN KUMAR DUBEY
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-11-2016

Heard Mr. Ranjan Kumar Dubey, learned Counsel appearing for the appellants. Mr. Raghav Prasad, learned Counsel respondent No. 1 is also present.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal granting the decree to the plaintiff, as



prayed.

3. The suit was filed by the plaintiff for declaration of title and recovery of possession.

4. The facts in detail need not be noticed for the purpose of this appeal and suffice it to state that admittedly the suit property belonged to Ram Khelawan Kumhar, who, according to the plaintiff, by sale deed dated 21.6.1954 sold the same to Mahanth Kumhar, who was his grandson. The said Mahanth Kumhar subsequently on 26.5.1980 sold part of his purchased property, which is the suit property, to the plaintiff. The defendants contested the claim of the plaintiff asserting their own title and possession over the suit land on the basis of their purchase by registered sale deed dated 22.1.1996. It was the case of the defendants that on 27.10.1956 there was a registered partition in between the three sons of Ram Khelawan namely Kabutar, Jagdeo and Indradeo in which the suit property was allotted to the specific share of Kabutar. The descendants of Kabutar have executed the sale deed dated 22.1.1996 in favour of defendant 1st set with regard to the suit property.

5. The trial court returned the finding against the plaintiff by relying upon the registered partition deed dated 27.10.1956 and holding that the defendant 2nd set (descendants of Kabutar) were entitled to sell the suit property to the defendant 1st set. The appellate court below, on reappraisal of evidence, however, has reversed the finding of the trial court and granted the decree to the plaintiff as prayed.

6. Mr. Dubey, learned Counsel for the appellants, has submitted that the appellate court below has not considered the evidence on record properly and the findings are therefore vulnerable. Placing the findings by



the trial court as well as the appellate court in detail, it has been emphasised that the appellate court below has recorded the finding on the basis of surmises and conjecture and without taking into notice the reasonings of the trial court. No other submission has been made on behalf of the appellants.

7. After considering the submission and perusal of the judgments of both the courts below, it is pellucid that the title of Ram Khelawan over the suit property is an admitted fact. The fact that Ram Khelawan executed the sale deed dated 21.6.1954 in favour of Mahanth Kumhar for the suit property has been pleaded by the plaintiff who has claimed his own title and possession on the basis of purchase of the suit property from Mahanth Kumhar by sale deed dated 26.5.1980. Though the contesting defendants have relied upon the registered partition deed dated 27.10.1956, which has also been relied upon by the trial court but the fact has rightly been taken into notice by the appellate court below that there was no explanation as to why Ram Khelawan did not join the said registered partition deed and that too in absence of any pleading or evidence aliunde on behalf of the contesting defendants that Ram Khalawan or his wife Bhagia Devi were no more on 27.10.1956. It also does not appear that the contesting defendants have made any counter claim against the registered sale deed dated 21.6.1954 executed by the admitted owner Ram Khawalan and there is also no explanation to the fact as to why when the suit property was transferred by Ram Khelawan by executing registered deed in the year 1954 the same came to be included in the registered partition deed dated 27.10.1956. The original sale deed dated 22.1.1996 on which the contesting defendants have



based their title has also not been produced before the court and the findings by the appellate court below in this regard in giving emphasis on this aspect also cannot be faulted with. The reasons assigned by the appellate court below for recording the finding in favour of the plaintiff could not be shown or established to be perverse or reprehensible in any manner. This Court finds that the appellate court below has recorded its conclusions on the basis of evidence which were acceptable and could have been relied upon.

8. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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