

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.157 of 2014

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Md. Abbas Son of Late Md. Isha resident of Village/Mohalla - Jangaliya Ward No. - 15, P.O. AND P.S. - Gopalganj, District - Gopalganj.

..... Plaintiff Appellant

.... Appellant

Versus

1. Md. Kudus
2. Md. Yunus Both sons of Late Md. Islam Both resident of Village/Mohalla - Jangaliya Ward No - 15, P.O. AND P.S. - Gopalganj, District - Gopalganj.
3. Arsad Mohammad Son of Md. Mustakim resident of Village/Mohalla - Rajokhar Naveda, P.S. - Gopalganj, District - Gopalganj.
4. Md. Umar Son of Shaikh Maksood Ahmad resident of Village - Domahatta, P.S. - Manjhagarh, District - Gopalganj.
5. Sarfuddin Ahmad Son of Sheikh Mohammad resident of Village Brindavan, P.S. - Uchakagaon, District - Gopalganj.

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sukumar Sinha, Sr. Advocate
Md. Anis Akhtar

For the Respondent/s : Mr. S.K.Lal
Mr. Jawed Aslam

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-09-2016

Heard Mr. Sukumar Sinha, learned Senior Counsel appearing for the appellants.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The plaintiff filed the suit for declaration of title over the suit land and for grant of injunction against the defendants. The plaintiff claimed that the suit property was the acquired property by the grandfather of the plaintiff and the defendant Nos. 1 and 2 and in course of time the same was partitioned between the father of the plaintiff and the father of defendant Nos. 1 and 2. The plaintiff has claimed his title over



the suit property and other relief in this manner. The defendant Nos. 1 and 2 and defendant Nos. 3 to 5, who are purchasers of the suit property from defendant Nos. 1 and 2, contested the relief prayed for by the plaintiff.

4. Both the courts below have come to the concurrent finding of fact that the plaintiff has failed to establish the case as pleaded. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment.

5. Mr. Sinha, learned Senior Counsel appearing for the appellant has submitted that the courts below have committed error of record while taking into notice the case pleaded by the plaintiff and, therefore, the judgments of both the courts below are vulnerable. It has also been submitted that both the courts below have not correctly appreciated the evidence on record. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiff has filed the suit for declaration of title over the suit land described in the plaint having an area of 3 katha 6 dhurs. The plaintiff has also made averments in the plaint that the defendant Nos. 1 and 2 have wrongly sold the suit land to defendant Nos. 3 to 5. The appellate court below has taken into notice that the plaintiff has failed to describe the transaction of sale said to have been made by defendant Nos. 1 and 2 in favour of defendant Nos. 3 to 5 with respect to the suit property. The appellate court below has also taken into notice the pleadings of the parties and thereafter has come to the conclusion that the suit property is not



identifiable. The appellate court below has also come to the conclusion that the plaintiff has not prayed for any relief against the sale deed in favour of defendant Nos. 3 to 5 with regard to the suit property.

7. The findings recorded by both the courts below are based upon evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find any perversity or unreasonableness in the findings by the courts below.

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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