

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.747 of 2010

- =====
1. Most. Dharamshila Devi, wife of Late Ramadhar Choudhary.
 2. Braj Nandan Choudhary
 3. Nand Nandan Choudhary
 4. Yashoda Nandan
- All sons of Late Ramadhar Choudhary. All permanent residents of village- Bhadaiya, P.S.- Mohiuddin Nagar, District- Samastipur.

.... Appellants

Versus

1. Indu Devi, wife of Late Harish Chandra Choudhary.
 2. Amresh Kumar Thakur.
 3. Bhavesh Thakur.
- Both sons of Late Harish Chandra Thakur.
4. Ranju Devi, wife of Ajay Singh, D/O Late Late Harish Chandra Thakur.
- All residents of village – Tabhaka, P.S.- Bibhutipur, District- Samastipur. At present residing at Mohalla – Kashipur, Ward No.11 under village- Musapur Bangra, Police Station and District- Samastipur.

.... Respondents

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Appearance :

For the Appellants : Mr. Lovekush Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2016

Heard learned counsel for the appellants.

The plaintiff is the appellant in this appeal against the judgment of reversal dismissing the suit of the plaintiff.

The plaintiff filed the suit for declaration of title and recovery of possession over the suit land described at Schedule 3 of the plaint, after demolishing and removing the construction and encroachment made by the defendants. The plaintiff claimed to have entered into an agreement for sale-purchase with Sukhari Rai on 15.6.1979 for purchase of 1 katha 3 dhurs of land. Subsequently, the



sale deed was executed in pursuance to that agreement for sale by Sukhari Rai on 3.6.1982 in favour of the plaintiff transferring the suit land to the plaintiff. However, it was the case of plaintiff that by mistake of the scribe the area in the sale deed was mentioned as only 1 katha 1 dhurs in place of 1 katha 3 dhurs. It was further case of the plaintiff that the defendant had encroached upon the part of the purchased land of the plaintiff. The plaintiff had described the suit land in Schedule 3 alleging the same to be the encroached area by the defendant. The defendant, on the other hand, denied the assertions of the plaintiff and came out with the case that he had purchased 15 dhurs of land prior to the plaintiff and had been in possession over the suit land by making construction.

The trial court had returned the finding on the issues in favour of the plaintiff and granted the decree. However, the appellant court below after reappraisal of evidence though has come to the finding that the plaintiff has acquired title over total 1 katha 3 dhurs of land purchased by him by sale deed dated 3.6.1982 but has concluded that the plaintiff has failed to establish that the defendant has encroached over the purchased land of the plaintiff. The appellate court, by the impugned judgment and decree, accordingly has refused to grant the decree to the plaintiff for recovery of possession although the decree for declaration of title was granted.



The learned counsel for the appellants has submitted that the appellate court's judgment demonstrates a contradictory stand taken by it inasmuch as once after holding that the plaintiff has acquired valid title over 1 katha 3 dhurs of land by purchase then he should have been granted the decree for recovery of possession over the suit land which has been encroached by the defendant. The learned counsel has placed the judgment of the appellate court below in detail in order to elaborate the submissions regarding the contradictory stand taken by the appellant court. No other submission has been made on behalf of the appellants.

After perusal of the judgment of both the courts below and considering the submissions, it is evident that the plaintiff has come out with the case of acquisition of title over 1 katha 3 dhurs of land by purchase through the sale deed dated 3.6.1982 and has claimed a decree for recovery of possession over 4 dhurs of land described in Schedule 3 of the plaint claiming the same to be part of the purchased land. It transpires from the appellate court judgment that the Pleader Commissioner was appointed for ascertaining the status of encroachment according to the rival claims of the parties. The report (Ext.11) along with the Field Book etc. have been brought in evidence and the said Pleader Commissioner has also been examined on behalf of the plaintiff as P.W.16. It appears from the



judgment of the appellate court below that the plaintiff did not file any objection to the report of the Pleader Commissioner. The appellate court below on perusal of the report in detail, has come to the finding that the defendant is in actual possession of 14 ½ dhurs of land though he has purchased altogether 15 dhurs of land prior to the purchase of the plaintiff. The appellate court below on the basis of the evidence has also come to the conclusion that the defendant is not in possession of any excess land and he is in possession of the land only within the extent of his purchased area. As the report of the Pleader Commissioner further disclosed that there was a Rasta adjacent to the land of the plaintiff, the appellate court below has also come to the finding that the plaintiff may claim the remaining area of the land which has been sold to him from his vendor or otherwise, but he cannot claim the said remaining area from the land which is in possession of the defendant and within the area purchased by him. In this manner, the appellate court below has, after believing the case of the title of the plaintiff over 1 katha 3 dhurs, has dis-believed the case of the plaintiff that the defendant has encroached the land mentioned in Schedule 3 of the plaint.

In the above backdrop, this Court does not find substance in the submission on behalf of the appellant that the stand taken by the appellate court below is contradictory. The plaintiff, in order to

succeed in the suit for declaration of title and recovery of possession over the allegedly encroached area was required to prove by cogent evidence, besides his title over the said land, the illegal possession of the defendants. Even otherwise also the finding of fact has been recorded by the appellate court below on the basis of evidence and it is not the submission on behalf of the appellant that the said finding has stemmed out of non-consideration of evidence or is based upon only surmises and conjecture. This Court does not find any perversity or unreasonableness in the findings recorded by the appellate court below.

In the result, this Court does not find that any substantial question of law arises for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J)

N.H./-

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