

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.387 of 2013

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Smt. Radha Devi, Daughter of Late Parasnath Pandey and Wife of Pandit Sri Deo Prasad Pathak, resident of Mauni Baba Ki Thakurbari, Salimpur Ahra, P.S. Gandhi Maidan, Town And District – Patna Defendant

Appellant

.... Appellant

Versus

1. Sri Ram Lakshman Sita Through Dhupnath Pandey
2. Sri Dhup Nath Pandey Son Of Late Ram Autar Pandey
3. Vijay Mahton Son Of Sri Sohan Mahto All Resident Of Village - Mosinpur, Kurtha, P.S. Fatuha, District - Patna
4. Ram Bricchh Singh Son Of Ram Sewak Singh Resident Of Village - Gobindpur, Dariya Tola, Ramjanpur, P.S. Fatuha, District – Patna
- Plaintiffs Respondent Ist Set Respondent Ist set
5. Sri Gautam Pandey Son Of Late Sahdeo Pandey
6. Harendra Pandey Son Of Late Haridwar Pandey Sl. No. 5 And 6 Are Resident Of Village - Banwaripur, Bihta, P.S. Bihta, District - Patna
7. Baijnath Pandey Son Of Late Ram Autar Pandey
8. Anil Pandey Son Of Late Ram Autar Pandey
9. Sunil Pandey Son Of Late Ram Autar Pandey
10. Munna Pandey Son Of Late Ram Autar Pandey Sl. No.7 To 10 Are Resident Of Village - Mosinpur, Kurtha (Govindpur), Fatuha, P.S. Fatuha, District – Patna Defendant IInd Set Respondent IInd Set Respondent IInd Set
11. Jagdish Prasad Son Of Chhatra Gope
12. Nandu Gope Son Of Late Badri Gope
13. Naresh Thakur Son Of Lachu Thakur
14. Raghubir Sao Son Of Hazari Sao Sl. No.11 To 14 Are Resident Of Village - Mosinpur, Kurtha, Fatuha, P.S. Fatuha, District – Patna ...
- Defendant IIIrd Set Respondent IIIrd set Respondent IIIrd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Abhishek

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-03-2016

Heard learned Counsel for the appellant.

2. The defendant is the appellant in this appeal against the



judgment and decree of affirmance. The suit was filed by the plaintiff under Order 1 Rule 8 CPC for a declaration that the property of Ram Mandir described in Schedule I of the plaint is the public property and the defendant Nos. 1 and 2 have got no right, title, interest and possession therein. The defendant No. 1- appellant filed a contesting written statement and came out with the case that the property belonged to defendant Nos. 1 and 2, which they had inherited from their maternal grand father Saudagar Pandey. It was also the case of the defendant-appellant that in the Title Partition Suit No. 94 of 1969 the aforesaid property was the subject matter of partition and after passing of the decree in the said partition suit the delivery of possession was also effected to the parties.

3. The trial court returned the finding on the issue in favour of the plaintiffs and decreed the suit. The appellate court in appeal by the defendant concurred with the findings of the trial court and dismissed the appeal.

4. From the perusal of the judgments of both the courts below it is manifest that earlier Title Suit No. 95 of 1941 was filed by Saudagar Pandey and in that suit it was held that the present suit property recorded in Plot No. 103/323 was a public property. The said judgment has attained finality. The defendant No. 1 is admittedly the maternal grand daughter of Saudagar Pandey, who died leaving behind two daughters namely Parmeshwari Devi and Sudama Devi. The defendant No. 2 is Parmeshwari Devi and defendant No. 1 Radha Devi is daughter of Sudama Devi and has claimed the suit property on the basis of inheritance from her mother. It also appears from the materials on



record that defendant No. 1 Radha Devi earlier filed Title Suit No. 94 of 1969 for partition, wherein the present suit property was also made the subject matter of partition. In that suit the present defendant No. 2 Parmeshwari Devi was made defendant. This Title Suit No. 94 of 1969 was decreed and ultimately the final decree for partition was executed and the parties were put in possession through the process of the Court upon the shares allotted to them.

5. The plaintiffs have filed the present suit for declaration of their title over the suit property and have strongly relied upon the earlier judgment and decree in Title Suit No. 95 of 1941, wherein the present suit property was declared to be a public property with a temple therein.

6. The learned Counsel appearing for the appellant has submitted that since the defendant No. 1 was not a party in the earlier Title Suit No. 95 of 1941, therefore, any decree passed therein would not bind her interest. The submission is clearly fallacious in view of the admitted fact that defendant No. 1 has been claiming the suit property by way of inheritance from her maternal grand father Saudagar Pandey. It is beyond any cavil that the present suit property was declared to be a public property with a temple thereupon in the earlier Title Suit No. 95 of 1941, which was filed by Saudagar Pandey, who was the material grand father of the appellant. It is thus more than apparent that the defendant No. 1 has obtained the decree in Title Suit No. 94 of 1969 which was subsequently filed by her wherein the fact of earlier Title Suit No. 95 of 1941 was suppressed.

7. Both the courts below have rightly come to the conclusion that the defendant No. 1 had fraudulently obtained the

decree in Title Suit No. 94 of 1969. It has also been rightly held that the plaintiffs are entitled to the reliefs claimed by them on the basis of judgment and decree in earlier Title Suit No. 95 of 1941.

8. In the above backdrop of the facts this Court does not find any substantial question of law arising for consideration in this appeal which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-