

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.150 of 2016

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1. Shree Lal Paswan @ Lal Das Paswan , Son of Late Suwa Lal Paswan.
2. Bambhola Paswan @ Ajay Paswan, Son of Lal Das Paswan.
Both Resident of Village-Dinwandhi, P.S.-Walua Bazar, District-Supaul.
.... Appellants

Versus

Ram Bhajan Paswan, Son of Late Jikalal Paswan, Resident of village-Parwaha,
P.S.-Walua Bazar, District-Supaul.
.... Respondent.

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Appearance :

For the Appellant/s : Mr.S.S.Dwivedi, Sr.Adv.
Mr. Ranjan Kumar Dubey, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2016

V.Nath, J.

Heard Mr.S.S.Dwivedi, learned senior counsel

appearing for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiff as prayed.

The facts are not in dispute that the suit property originally belonged to one Mahendra Narayan Mishra who by registered sale deed dated 21.08.1991 (Ext.1/A) sold altogether 18 katha 3 dhur land to the defendants alongwith some more persons. It will be relevant to mention here that the sale deed in favour of the defendants included 3 katha 12 dhur of Plot No.576 and 2 katha 6 dhur of Plot No.577. Later on the same vendor Mahendra Narayan Mishra by said sale deed dated 26.02.1992 (Ext.1) sold 3 katha 12

dhur of Plot No.576 and 2 katha 16 dhur of Plot No.577 in favour of the plaintiff. The plaintiff has alleged that the defendants have encroached upon his purchased land during his absence and on that basis the plaintiff filed the suit for declaration of title and recovery of possession over the purchased land which has been described in the schedule of the plaint with the boundaries thereof.

The defendants appeared in the suit and filed their written statement but thereafter they did not contest the suit and did not lead any evidence or even cross-examine the witnesses on behalf of the plaintiff. The trial court has returned the findings in favour of the plaintiff and granted the decree as prayed. In appeal by the defendants the appellate court on reappraisal of evidence has affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr. Dwivedi, learned senior counsel appearing on behalf of the appellants has firstly submitted that in view of the admitted position that the defendants have purchased the land from their vendor Mahendra Narayan Mishra by sale deed (Ext.1/A) alongwith other persons as well and the said sale deed also included the suit land and therefore those other persons were necessary parties to the suit. It has been propounded therefore that in their absence the suit suffered from non-joinder of necessary parties and was fit to be dismissed on that score. It has been further argued that even when the

defendants did not lead any evidence or cross-examine the witnesses of the plaintiffs still the courts below were required to give a clear finding on the basis of evidence led by the plaintiff before granting the decree to the plaintiff. It has also been submitted that in view of the admitted position that both the parties have purchased the lands from the same plots, it was all the more necessary for the courts below to get the demarcation done in order to determine the encroachment allegedly made by the defendants before grant of the decree for recovery of possession. No other submission has been made on behalf of the appellants.

After considering the submissions and the perusal of the judgments of both the courts below, it is manifest that both the plaintiff and the defendants have purchased the portions of Plot No.576 and 577 from the same vendor Mahendra Narayan Mishra. The sale deeds in favour of the plaintiffs and defendants have not been challenged by either of the parties. The learned courts below have considered the issue of non-joinder of the purchasers who have also purchased the land alongwith the defendants and have come to the conclusion that those purchasers are not necessary parties to the suit as the plaintiff has not made any allegation of encroachment or illegal possession against those purchasers. This Court finds that as the sale deed of the defendants is not under challenge and only allegation against the defendants is the forcible or illegal possession of the land

purchased by the plaintiff by his sale deed (Ext.1), the other purchasers have rightly been held to be not necessary parties to the suit. Further both the courts below have taken into notice the boundaries mentioned in the respective sale deeds (Ext.1 and Ext.1/A) of the plaintiffs and the defendants with regard to the areas purchased by them in Plot No.576 and Plot No.577 and thereafter have come to the conclusion that the defendants have purchased the land from the southern side of those two plots whereas the plaintiffs have purchased the land from the northern side of those two plots. From the analysis of the evidence made by the courts below it also transpires that the purchased land of the defendants is not contiguous to the land purchased by the plaintiff rather in between, the land of the vendor Mahendra Narayan Mishra has been shown in the boundaries mentioned in those sale deeds. The findings of fact have been recorded by the courts below on the basis of scrutiny of evidence which are acceptable and could have been relief and this Court thus does not find any perversity or unreasonableness in those findings. The submission made by the learned senior counsel for the appellants that even after the defendants have not led any evidence or chosen to cross examine the witnesses of the plaintiff still the plaintiff was required to prove his case and the courts were under duty to find out as to whether the plaintiff had succeeded in establishing his case. In this regard this Court is of the opinion that the burden of proof upon

the plaintiff in a suit which proceeds under Order 8 Rule 10 C.P.C. is not so heavy as ruled by their lordships in the case of ***State of Bihar Vs. Lal Krishna Advani , AIR 2003 SC 3357*** but even then it does not appear from the judgments of both the courts below that inadequate evidence was led on behalf of the plaintiff or the courts below have approached the matter casually. Moreover in view of the allegation of encroachment over the entire purchased land of the plaintiff, the courts were not required to get the encroachment demarcated or determined by appointing a pleader commissioner and that too when the Anchal Adhikari in a proceeding before him had got the land measured and the documents (Ext.3 to 5) related to that proceeding including the measurement report have been brought in evidence on behalf of the plaintiff.

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/-

AFR/NAFR	NAFR
CAV DATE	NA
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