

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.260 of 2011

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Suga Devi, wife of Jag Mohan Paswan, resident of Village Bahera, P.O.
Mion, P.S. Belaon (Bhagwanpur), District Kaimur (Bhabhua).
Defendant Appellant

.... Appellant

Versus

1. Jagdish Paswan, son of Late Bagwan Ram, resident of Village Bahera,
P.O. Mion, P.S. Belaon (Bhagwanpur), District Kaimur (Bhabhua)
Plaintiff Respondent
2. Sarda Pandey, son of Late Rajendra Prasad Pandey, resident of Village
+ P.O. Kharenda, P.S. Belaon (Bhagwanpur), District Kaimur
(Bhabhua) Defendant Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Arvind Kumar

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

7 16-02-2016 Heard learned Counsel for the appellant.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance. The plaintiff filed the suit for declaration of title and confirmation of possession over the suit land and also for grant of relief for permanent injunction against the defendants.

3. The fact is not in dispute that originally the land of Plot No. 65 area 3 acres was jointly owned and possessed by the two brothers Sheo Pujan Pandey and Sarda Pandey having equal share therein. The plaintiff has purchased the share of Sheo Pujan Pandey by sale



deed dated 23.6.1988. Accordingly the plaintiff has claimed to have come in possession and got his name mutated over the said purchased land. The defendant No. 1 purchased the land from the defendant No. 2 Sarda Pandey (brother of Sheo Pujan Pandey) by a registered sale deed dated 12.1.1993. The plaintiff's case is that the land purchased by the plaintiff, as described in the schedule of the plaint as Schedule 'B', has been sold by defendant No. 2 Sarda Pandey to defendant No. 1 by the sale deed dated 12.1.1993. The said land has been described in Schedule 'A' of the plaint. The core question of dispute between the parties, therefore, was the identity of the land purchased by them respectively from the two brothers Sheo Pujan Pandey and Sarda Pandey.

4. The trial court has returned the finding in favour of the plaintiff and granted the decree, as prayed. In appeal by the defendant No. 1, the appellate court below on reappraisal of evidence has concurred with the finding of the trial court and affirmed the judgment and decree.

5. Learned Counsel appearing for the appellant, while assailing the judgments of both the courts below, has submitted that both the courts below have failed to consider the fact regarding the manner of partition between Sheo Pujan Pandey and Sharda Pandey necessarily leading to the determination of the question whether the plaintiff purchased the property of Sheo Pujan Pandey in a state of jointness or in the state of separation from his brother. It has also been submitted that the plaintiff has come out with a weak pleading, and absence of cogent evidence is also there on the part of the



plaintiff, which facts have disentitled the plaintiff from getting the decree as prayed. The learned Counsel for the appellant has been emphatic in his submission that no issue was framed by the courts below relating to the date of partition between the two brothers Sheo Pujan Pandey and Sharda Pandey, and has elaborated that this finding was crucial as Sheo Pujan Pandey could not have transferred the property to the plaintiff in the state of jointness with his brother Sarda Pandey. It has also been submitted that the findings by the courts below are perverse as they are based upon no evidence.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the fact that Plot No. 65 (disputed plot) belonged to the two brothers Sheo Pujan Pandey and Sarda Pandey is admitted. The plaintiff has claimed to have purchased the suit land from Sheo Pujan Pandey by sale deed dated 23.6.1988. There is no pleading or evidence aliunde that Sarda Pandey, the co-sharer of Sheo Pujan Pandey, ever raised any objection to the transfer made by his co-sharer Sheo Pujan Pandey in favour of the plaintiff. The evidence on record further shows that the sale deed dated 23.6.1988 of the plaintiff has been acted upon and the mutation of the name of the plaintiff, on the basis of that sale deed, has also been done. The other co-sharer Sarda Pandey has sold the land by sale deed dated 12.1.1993 (Ext. 1/c) to the defendants. Obviously, therefore, the defendant acquired the right, title and interest over the share of Sarda Pandey in Plot No. 65 in the year 1993. In that view of the matter, the claim or plea of the defendant that the issue of partition or jointness between Sheo Pujan



Pandey and Sarda Pandey was essential for finding out whether the plaintiff had purchased the property in the state of jointness of Sheo Pujan Pandey and Sarda Pandey loses its significance and more so when the co-sharer Sarda Pandey did not raise any objection to the sale deed of the plaintiff for long five years. Sarda Pandey, the vendor of the defendant has been impleaded as defendant No. 2 and has also been examined as a witness in the suit. In his written statement, the defendant No. 2 has accepted the fact of partition between himself and his co-sharer Sheo Pujan Pandey and has further accepted that Sheo Pujan Pandey was allotted 1½ Acre land in the west, whereas he was allotted 1½ Acre of land in the plot in question towards east by way of partition. It has also been stated in his deposition that the defendant No. 1 had got wrong boundary mentioned by him in the sale deed Ext. 1/c. It has also come in evidence that the remaining lands have already been sold by Sheo Pujan Pandey to Pateshra Devi. Both the courts below have taken into notice the sale deeds Ext. 1/d, 1/f, 1/g and 1/h, which have been executed by Sarda Pandey with regard to his share.

7. The courts below, particularly the appellate court below, has based its findings on scrutiny of evidence in detail and this Court has not been persuaded to find that the conclusion arrived by the appellate court below on consideration of the evidence are unreasonable or perverse in any manner.

8. It has now been well settled that even a wrong finding of fact cannot be interfered at the second appellate stage if there is some evidence on record to support the same. The submission on

behalf of the appellant that the findings by the courts below are based upon no evidence does not appear to have substance after the perusal of the judgments of the courts below.

9. This Court, therefore, does not find any substantial question of law arising in this appeal, which is accordingly dismissed.

(V. Nath, J.)

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