

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.35 of 2012

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Bhikhania Devi W/O Kodai Rai Resident Of Village Madipur Mal, P.O.
Khodadpur, P.S. Madhuban, Dist. Motihari.

.... Appellant/s

Versus

1. Ramdeo Patel S/O Late Chhatu Patel Resident Of Village Madipur Mal, P.O.
Khodadpur, P.S. Madhuban, Distt. Motihari.
2. Sukhari Patel S/O Late Chhatu Patel Resident Of Village Madipur Mal, P.O.
Khodadpur, P.S. Madhuban, Distt. Motihari.
3. Pappu Patel S/O Late Chhatu Patel Resident Of Village Madipur Mal, P.O.
Khodadpur, P.S. Madhuban, Distt. Motihari.
4. Dashrath Raut S/O Khakhan Raut Resident Of Village Madipur Mal, P.O.
Khodadpur, P.S. Madhuban, Distt. Motihari.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. PRAMOD KUMAR PANDEY, ADV
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-08-2016

Heard learned counsel for the appellant.

2. The defendant is the appellant in this appeal against
the judgment and decree of reversal granting the decree to the
plaintiffs, as prayed.



3. The matrix of fact discloses that the suit property originally belonged to one Sipahi Singh and was part of the Plot No. 1783. The plaintiffs purchased one katha of land from Sipahi Singh in the year 1961. Subsequently, the plaintiffs further purchased more land in the said plot from Defendant No. 3 Laxman Singh, who was son of Sipahi Singh. However, the Defendant No. 3 Laxman Singh also executed a sale deed in favour of the contesting defendant and the suit has been filed by the plaintiffs for declaration of title and possession over the suit land in view of the boundaries mentioned in the sale deeds of the plaintiffs as well as the contesting defendants creating complication. The defendants contested the claim of the plaintiffs by filing written statement. It was mainly the case of the defendants that in the plaintiffs' sale deed itself wrong boundaries had been mentioned and therefore, the suit plot was not the part of the land purchased by the plaintiffs rather the defendants had acquired valid title and possession over the suit land.

4. The trial court returned the findings in favour of the defendants and dismissed the suit. The appellate court on reappraisal of evidence has reversed the findings of the trial court and set aside the judgment and decree after allowing the appeal by the impugned judgment and decree.

5. Mr. Pandey, learned counsel appearing for the



appellant has submitted that the appellate court below has not properly appreciated the evidence on record. It has been propounded that the two sale deeds of the plaintiffs contain the same boundaries which is impossible as the same land could not have been twice transferred. It has been further argued that the trial court has discussed the evidence in threadbare manner but the appellate court below has cursorily looked into the evidence of the parties and recorded the findings which are based on surmises and conjectures and not based upon the evidence on record. It has also been submitted that the learned court below has not considered the entire evidence including the oral and documentary evidence adduced on behalf of the parties. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgment of both the courts below, it is manifest that the plaintiffs as well as contesting defendants are the purchasers from the admitted title holders of Plot No. 1763. The sale deeds on which the plaintiffs have based their title are admittedly prior to the sale deeds of the contesting defendant. The appellate court below has considered the boundaries mentioned in the sale deeds of the plaintiffs and defendants and has further also considered the oral evidence adduced on behalf of the defendants before coming to the



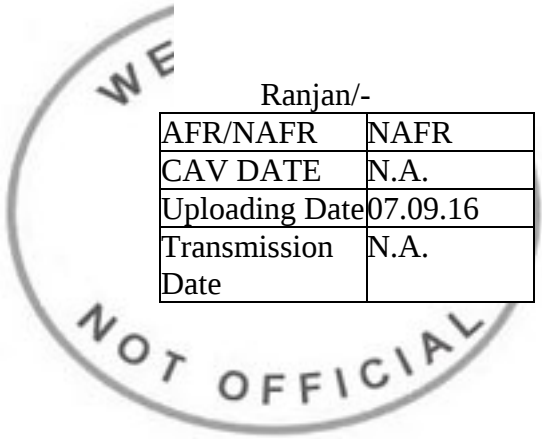
conclusion that the Vendor-Defendant No. 3 has fraudulently mentioned wrong boundary in the sale deed of the contesting respondents in order to involve the parties in the litigation. The findings by the appellate court below is based upon scrutiny of evidence which are acceptable and which could have been relied upon. The submission on behalf of the appellants that the appellate court below has not properly considered the evidence adduced on behalf of the parties and has passed the judgment on surmises and conjectures is not borne out from the reasonings assigned by the appellate court below.

7. In the second appellate jurisdiction, the re-appreciation of evidence is possible only when it is shown or established that the findings recorded by the appellate court below are unreasonable or perverse in any manner. In the present case, this Court has not been persuaded to find that the findings recorded by the appellate court below are not based upon the evidence and could not have been recorded on the basis of those evidence. This Court has further also not been persuaded to find any unreasonableness or perversity in any manner in the findings recorded by the appellate court.

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)



Ranjan/-

AFR/NAFR	NAFR
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