

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.117 of 2006

- =====
1. Smt.Mira Singh, wife of Shyam Bahadur Singh
2(a). Santosh Kumar Singh
2(b). Abhishek Kumar Singh
2(c). Amit Kumar Singh, sons of Shyam Bahadur Singh
2(d). Deepa Kumari
2(e).Nidhi Kumari
2(f). Sunidhi Singh
2(g). Dikhcha Kumari, daughters of Shyam Bahadur Singh

All residents of Village Auwan, Sasaram, PS Sheosagar, District Rohtas, at
present residents of Bandhan Tola, PS Arrah Nawada, District Bhojpur

..... Defendants 1st set Appellants

.... Appellants

Versus

1. Smt.Kamala Devi, wife of Late Indradeep Singh
2(a). Nagendra Singh
2(b). Yogendra Singh, both sons of Late Indradeep Singh
2(c). Sheela Devi
2(d). Parmila Devi, both daughters of Late Indradeep Singh, all residents of Village Bahiro, PS Arrah Nawada, District Bhojpur Plaintiffs Respondent 1st Set
3.Most. Mula Kunwar, wife of Late Sheo Prasad Ram
4. Ashok Kumar, son of Sheo Prasad Ram, both residents of Village Lakh No. 11, Arrah Town, P.S. Arrah Nawada, District Bhojpur Defendants 2nd set
..... Respondents 2nd set

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha, Advocate
For the Respondent/s : Mr. Syed Wazir Ali, Advocate
Mr. Raghunath Singh-1, Advocate
Mr. Raghunath Singh, Advocate
Mr. Ashok Kumar, Advocate
Mr. Md.Waliur Rahman, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-08-2016

Heard Mr. Anish Chandra Sinha, learned Counsel appearing
on behalf of the appellants, and Mr. W. Rahman, learned Counsel
appearing for the respondents.

2. The defendants are the appellants in this appeal against the
judgment and decree of affirmance.



3. The matrix of facts, unfurled from the pleadings of the parties, are that the suit property described in the schedule of the plaint was the part of Plot No. 3292 having an area of 2 ½ Katha. The title of this land belonged to Sheo Prasad Ram. By a registered sale deed dated 1.7.1980 the defendant No. 1 Smt. Meera Singh purchased 1 ¼ Katha of land from the southern side from Sheo Prasad Ram. Subsequently, the plaintiff has claimed to have purchased the northern 1 ¼ Katha of land by two registered sale deeds dated 28.10.1994 (Ext. 2 and 2/A) from Mula Kunwar, who was the widow of Sheo Prasad Ram, who admittedly died in the year 1980. The suit was filed by the plaintiffs praying for removal of encroachment by the defendants on the purchased portion of the land of the plaintiffs and for permanent injunction restraining the defendants from interfering with their possession.

4. The defendants in the written statement came out with a case that after purchasing the southern 1 ¼ Katha of land in the name of defendant No. 1 Smt. Meera Singh, the remaining 1 ¼ Katha of land in the northern portion of Plot No. 3292 was purchased by defendant No. 2, who is the husband of defendant No. 1 on 6.11.1981 by an unregistered sale deed for a sum of Rs. 8000/- from Sheo Prasad Ram. On the basis of this purchase, the defendants claimed to have acquired legal title and possession over the suit land. However, it was also pleaded by the defendants that they had acquired the title by adverse possession over the suit land.

5. In view of the pleadings of the parties the trial court framed altogether 12 issues, out of which the Issue No. 7 and Issue No. 11 were the material issues in the context of the present Second Appeal. Those



issues related to determination of acquisition of title by the plaintiffs over the suit land on the basis of sale deed dated 28.10.1994 and further the acquisition of title by adverse possession by the defendants over the suit property. After considering the pleadings and evidence the trial court came to the finding that the defendant No. 2 did not acquire title over the suit land on the basis of unregistered sale deed dated 6.11.1981. It has further also been held that the defendants also did not acquire title on the basis of adverse possession over the suit property. The suit was, accordingly, decreed. In appeal by the defendants, the appellate court below affirmed the finding of the trial court on the issue of title as claimed by the defendants over the suit land either on the basis of unregistered sale deed or on the basis of adverse possession and dismissed the appeal by the impugned judgment and decree.

6. This appeal has been admitted for hearing by order dated 5.9.2007 on the following substantial questions of law:-

- i) Whether the lower appellate court was justified in passing the impugned judgment without considering any evidence of the parties although their respective claims were based on specific evidence both oral and documentary?
- ii) Whether the mother can be legally assumed to have executed sale deed as Karta when only one of the sons had come to support her claim, whereas, remaining five children did not appear to support her claim?

7. Criticising the impugned judgment Mr. Anish Chandra Sinha, the learned Counsel appearing for the appellants, has submitted that the courts below have committed error in law in not considering the fact that



after the death of the admitted original title holder Sheo Prasad Ram, the title over the suit land devolved upon the heirs which consisted of his widow and children. It has been propounded that in this background the widow of Sheo Prasad Ram namely Mula Kunwar could not have alone transferred by sale the title over the suit land to the plaintiffs. The learned Counsel has elaborated his submission by asserting that Mula Kunwar was neither the Karta nor the Manager of the joint family and in that view of the matter transfer of the entire remaining land in Plot No. 3292 cannot be said to be a valid transaction conferring title over the suit land. It has been further argued that the appellate court below has failed to consider any of the oral or documentary evidence led on behalf of the defendants before disbelieving the case of the defendants. It has been contended that the law is well settled that the first appeal is a valuable right of a litigant and, therefore, the appellate court below is required to reappraise the evidence and consider the effect of the same on the rights claimed by the parties. Having not done so, it has been argued, the judgment of the appellate court below stands vitiated. It has been next contended that in any view of the matter the defendant-appellants having come in possession over the suit land on 6.11.1981, on which date the sale deed was executed, they have acquired title by adverse possession, but the said issue has also been wrongly decided by both the courts below. Relying extensively upon the recitals made in the unregistered instrument of sale (Ext. 'C'), Mr. Sinha has contended that the consideration money was paid to the vendor and possession was handed over to the defendant-appellants by the vendor Sheo Prasad Ram on the date of execution of the instrument itself and the fact of payment of consideration

money has also been supported by the witnesses examined on behalf of the defendants including DW 10 and DW 16. It has, thus, been argued that the substantial questions, as framed in this appeal, must be answered in favour of the appellants and the suit filed by the plaintiffs is fit to be dismissed after setting aside the judgment and decree of the courts below.

8. Mr. W. Rahman, learned Counsel appearing for the plaintiff – respondents, has supported the findings of both the courts below and has submitted that no substantial question of law, as framed, arises for consideration in this appeal in the facts and circumstances of the case as well as in view of the settled principles of law. The learned Counsel has canvassed that in a case of judgment of affirmance the appellate court below while agreeing with the finding of the trial court is not required to restate the effect of evidence on record, and has relied upon the three judge decision of the apex court in the case of **Santosh Hazari v. Purushottam Tiwari AIR 2001 SC 965**. It has also been contended that the judgment of the appellate court below has proceeded on the basis of examination of evidence of the parties within the ambit of settled principles of law and, therefore, also the detail consideration of oral and documentary evidence on behalf of the parties was not required. Elaborating his submission, Mr. Rahman has contended that the defendants admittedly did not make any attempt to get the instrument of sale, executed on 6.11.1981 (Ext. 'C'), registered either by the vendor or after his death by his legal representatives. It has also been argued that there was no pleading by the defendants that Mula Kuer alone could not have transferred the suit property in favour of the plaintiffs and there was



also no pleading that Sheo Prasad Ram died leaving behind other heirs as well who never agreed or consented for transfer of the suit land by Mula Kunwar in favour of the plaintiffs. The learned Counsel has also emphasised on the finding recorded by both the courts below that even the payment of consideration money was not made by the defendants to the vendor for the sale deed dated 6.11.1981 which is admittedly not a registered document. Replying the contention on behalf of the appellants regarding adverse possession on the basis of the principle as laid down by a Bench of this Court in the case of ***Shribhagwan Singh vs Ram Basi Kuer 1956 BJLR 703***, Mr. Rahman has argued that the facts are clearly distinguishable because the said decision has been rendered in the case of a suit between the vendor and the vendee whereas such is not the fact of the present case. It has been finally submitted that no substantial question of law arises for consideration in this appeal, which is fit to be dismissed.

9. The fact is admitted that Plot No. 3292 area 2 ½ Katha originally belonged to Sheo Prasad Ram. The plaintiffs are claiming the suit land on the basis of two registered sale deeds dated 28.10.1994 (Ext. 2 and 2/A) executed by widow of Sheo Prasad Ram for 1 ¼ Katha of land in the northern side of the said plot. The suit has been filed for removal of encroachment by the defendants over the suit land as purchased by the plaintiffs through the aforesaid sale deeds. The defendants have come out with the case of purchase of the suit land by an unregistered sale deed dated 6.11.1981 from Sheo Prasad Ram for consideration amount of Rs. 8000/-. From the recitals made in the unregistered sale deed (Ext. 'C') it is evident that the consideration



money was to be paid at the time of exchange of equivalents after registration of the document. The fact is not in dispute that the said document has not been registered. However, Mr. Sinha, learned Counsel appearing for the appellants, has submitted that entire recitals of the sale deed should be read together and from which the inference can be drawn that the payment of the consideration money of Rs. 8000/- was made on the date of execution of the sale deed.

10. The appellate court below after considering the recitals of the unregistered sale deed (Ext. 'C') has come to the conclusion that the amount for consideration money of Rs. 8000/- was not paid. After considering the recitals in Ext. 'C' it is apparent that the manner in which the consideration money of Rs. 8000/- was to be paid has been clearly described by stipulating that the consideration money was to be paid at the time of exchange of equivalents after registration of the said document. There is no indication that any other manner of payment of consideration money, in clear deviation of the manner as stipulated, has been prescribed. The submission that the document was executed after receiving the consideration money of Rs. 8000/- by the vendor, is clearly not substantiated by those recitals even after reading the same in entirety. Moreover, there is also no such pleading in the written statement that the parties to the said document (Ext. 'C') had ever intended that besides the manner in which the consideration money was stipulated to be paid, the said amount would be paid in any other manner. There is also no recital to the effect that the said consideration money was paid and accepted by the vendor. In presence of such a condition in the document itself and in absence of any pleading by the



defendants regarding any other manner in which the consideration money was to be paid, this Court is not persuaded to align with the submission on behalf of the appellants that the consideration money of Rs. 8000/- had been paid to the vendor Sheo Prasad Ram by the defendants on 6.11.1981 at the time of execution of the document. This Court, therefore, does not find that the finding by the appellate court with regard to the non payment of the consideration money by the defendant is perverse in any manner.

11. The next contention on behalf of the appellant is that the sale deed dated 28.10.1994 (Ext. 2 and 2/A) could not have been executed by Mula Kunwar with regard to the entire remaining land in Plot No. 3292 as Sheo Prasad Ram died leaving behind his other heirs as well and Mula Kunwar could not be the Karta or Manager of the family. It is evident, however, that no such averment has been made in the pleading by the defendant-appellants. It has also not been pleaded that other heirs of Sheo Prasad Ram ever objected to the transfer of the suit land to the plaintiff by Mula Kunwar by execution of the two sale deeds. In absence of such a pleading, the evidence in this regard which might have been led on behalf of the defendant-appellants cannot be taken into consideration. This Court therefore, declines to accept the submission on behalf of the defendant-appellants on this basis for assailing the sale deed of the plaintiffs.

12. The defendants have claimed to have come in possession over the suit land on the basis of execution of the sale deed dated 6.11.1981 after claiming to have paid Rs. 8000/- as consideration money. The said sale deed is admittedly not a registered document and,



therefore, in view of Section 54 of the T.P.Act the same cannot be the basis of legally valid title of the defendants over the suit land. However, the defendants have further claimed that they have been in adverse possession over the suit land since 6.11.1981 and on that basis they have acquired title by adverse possession. It is manifest that it is nowhere the case of the defendants that they entered upon the suit land forcibly or illegally on 6.11.1981 and since thereafter they have been in possession prescribing their hostile claim of title. To the contrary, the defendants have admitted to have entered into possession after execution of the sale deed (Ext. 'C') for which they have also claimed to have paid Rs. 8000/-. In such a circumstance, the initial entry of the defendants is admittedly a permissive entry according to their own case and, therefore, their possession thereafter over the suit land could not have transformed into adverse possession simply because they continued to be in possession for a long time. It is nowhere pleaded by the defendants as to when their permissive possession over the suit land according to their own case turned into hostile possession. There is also no pleading at all as to against whom the defendants have been claiming their right over the suit land on the basis of adverse possession. In the background of these facts the evidence of the defendants whatsoever it may be with regard to possession cannot be sufficient to sustain the claim of adverse possession. Those evidence, therefore, are not required to be considered in support of the case of adverse possession and the appellate court below has not committed any illegality in not considering those evidence.

13. During the course of submission on behalf of the



appellants, no evidence could have been pointed out which if considered would have turned the table in their favour. Evidently the appellate court below has proceeded to consider the claim of the defendants on the basis of their pleadings as well as the recitals made in the documentary evidence (Ext. 'C'). Though the learned Counsel has tried to impress this Court that some of the observations made by the appellate court below cannot be sustainable in law, but in the opinion of this Court that by itself could not be sufficient to overturn the judgment and decree of affirmance passed by the appellate court below. The necessity of consideration of some evidence on record could not be substantiated on the behalf of the appellants as it could not be shown as to how the consideration of those evidence, much of which are on facts which are not in dispute or which could have been decided on the basis of documentary evidence, would support the case of the defendants for dismissal of the suit filed by the plaintiffs. In this regard it would also be appropriate here to take into notice the observations of their Lordships in the case of **Santosh Hazari** (supra) as follows:-

“.....The task of an appellate court agreeing with the view of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the trial court, would ordinarily suffice.....”

14. The reliance by the learned Counsel for the appellants on the decision in the case of **Shribhagwan Singh vs Ram Basi Kuer 1956 BJLR 703**, in support of the case of adverse possession is clearly



misconceived as in the said case there was dispute between the vendor and the vendee and in that context the dictum has been laid down. It has also been held in the said case that if the sale deed is vitiated for some technical defect like registration etc. in that case the vendee can claim title on the basis of adverse possession. However, in the present case it could not be established by the defendant-appellants that on the basis of unregistered sale deed (Ext. 'C') a valid title over the suit land has passed to them. It has also not been shown that after 6.11.1981 the defendants ever approached the vendor or after his death his heirs for registration of the sale deed. It is thus clear that the defendant-appellants have failed to establish their bonafides as they did not get the sale deed registered after 6.11.1981 by taking appropriate steps thereafter either for payment of consideration money or for getting the said document registered. In absence of any explanation in that regard justifying the conduct of the defendant-appellants this Court is not inclined to uphold the claim of acquisition of title by the defendants either on the basis of sale deed (Ext. 'C') or on the basis of adverse possession. The law has also been settled by the Apex Court in the case of **Karnatake Board of Waqf V. Government of India 2004 (3) PLJR (SC) 245**, that the claim of valid and legal title on the basis of sale deed and the claim of title by adverse possession cannot both go together and one of them is required to be renounced. In the present case the defendant-appellants have proceeded with both claims simultaneously.

15. For the aforesaid reasons and discussion the substantial questions of law, as framed, are answered in negative. The Second Appeal is dismissed. The judgment and decree passed by the courts

below are affirmed. In the facts and circumstances of the case, however, there shall be no order as to cost.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.10.2016
Transmission Date	N/A