

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.267 of 2013

MD. ALI Son of Late Md. Khalil Resident of village and P.S. Piro, District - Bhojpur

..... Plaintiff Appellant

.... Appellant

Versus

1. Amiruddin Son of Late Basiruddin Resident of village and P.O. Piro, District - Bhojpur
2. Bhikhari Sah Son of Late Mahesh Sah
3. Sanpatia Devi Daughter of Late Mahesh Sah
4. Lalpatia Devi @ Buchani Devi D/o Late Mahesh Sah
5. Lal Mukhia Devi Daughter of Late Mahesh Sah
6. Mungwa Devi D/o Late Mahesh Sah
7. Chhedekpatia Devi D/o Late Mahesh Sah Respondent No. 2 to 7 are resident of village and P.S. Piro, District - Bhojpur

..... Defendant Respondent

.... Respondents

Appearance :

For the Appellant/s : Mr. MD. ATAUL HAQUE

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-06-2016

Heard Mr. Nazmul Hoda, learned Counsel appearing for the appellant.

2.The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The plaintiff filed the suit for declaration of title over the suit land and for recovery of possession in case the plaintiff was found to have been dispossessed. Both the courts below have concurrently found that the plaintiff has no right, title or interest in the suit land, as claimed. Accordingly, the suit was dismissed and thereafter the appeal filed by the plaintiff has also been dismissed.

4. Mr. Hoda, learned Counsel appearing for the appellant, has



made solitary submission that both the courts below have not considered the issue of ***res judicata*** in correct perspective. It has been submitted that Rauf Mian, the vendor of the contesting defendant had already lost his title over the suit property by the decree passed in T.S. No. 20 of 1952 and, therefore, any decree which was passed in later T.S. No. 64 of 1954 would not have precedence. It has also been propounded that the fact of the decree passed in the earlier suit has not been properly considered by the courts below and the plaintiff has been wrongly non-suited.

5. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the claim of the plaintiff-appellant over the suit land is on the basis of previous decree passed in T.S. No. 20 of 1952¹ and on that basis it has been asserted that Rauf Mian, vendor of the defendant, had no title over the suit property. However, it transpires from the document including the decree (Ext. 7) passed in T.S. No. 20 of 1952 that the said suit was dismissed as against Rauf Mian, and decreed on the basis of compromise between remaining parties including the plaintiff. The learned courts below on the said basis have rightly concluded that the compromise decree passed in the said suit would not be binding on the interest of Rauf Mian in the suit property. It also appears that later on the T.S. no. 64 of 1954 was filed by Rauf Mian and the final decree was also passed. In this subsequent suit, as found by both the courts below, the plaintiff was a party. Both the courts below have found on the basis of the decree passed in this T.S. No. 64 of 1954 that Rauf Mian had got right, title and interest over the suit property. Manifestly on the basis of the scrutiny of the material evidence on record,

both the courts below have come to the conclusion that it is the plaintiff who is bound by the decree passed in T.S. no. 64 of 1954.

6. This Court has not been persuaded, in this backdrop, to find that the bar of res judicata or estoppel is in any manner operating against the defendant-respondents. The findings by both the courts below are based on the basis of evidence on record and this Court does not find any perversity or unreasonableness in the same.

7. Ex consequenti, this Court does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

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CAV DATE	
Uploading Date	03.08.2016
Transmission Date	