

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.25 of 2014

=====

Hasibul Khan @ Tipu Khan S/O Zamirul Khan R/O Village- Sheikhpura, P.S-
Barharia, District- Siwan.

..... Plaintiff Respondent

.... Appellant

Versus

- 1.(i) Binesari Sharma
- (ii). Binod Sharma, both sons of Late Shionath Sharma
- (iii). Ram Kiya Devi, wife of Late Kalamnath Sharma
- (iv) Vidya Devi, w/o Harilav Sharma
- (v). Geeta Devi, w/o Shiodyal Sharma
- (vi). Anita Devi, w/o Kashi Nath Sharma
- (vii) Phool Kumari, w/o Bishvakarma Sharma
2. Baban Sharma S/O Shionath Sharma
3. Ram Nath Sharma S/O Late Somari Sharma
4. Kabutri Devi W/O Shionath Sharma
5. Bindeshwar Sharm
6. Vinod Sharma, both sons of Shionath Sharma

All R/O Village- Sheikhpura, P.S- Barhari, District- Siwan.

..... Defendants Appellants

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. YOGENDRA PRASAD SINHA

For the Respondent/s : Mr. null

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-07-2016

Heard Mr. Yogendra Prasad Sinha, learned Counsel appearing
for the appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of reversal.

3. The suit was filed by the plaintiff for declaration of title and
possession over the suit land. The factual matrix of this case discloses
that the suit land admittedly belonged to one Rajbali Bhagat. According
to the plaintiff, the suit land was transferred by Rajbali Bhagat by sale
deed in favour of Ram Prasad Thakur, who died leaving behind a



daughter Janki Devi. Later on Janki Devi transferred the suit land in favour of Ram Narayan Sharma, who in turn transferred it to the father of the plaintiff. It is in this manner that the plaintiff has claimed his title and possession over the suit land with further assertion that the suit land has been mutated in the name of the plaintiff and he has been paying rent and getting rent receipt from the State of Bihar. The contesting defendants, however, came out with the case that the original owner Rajbali Bhagat entered into a transaction with the predecessor of the defendants namely Deoraj Thakur and since thereafter the suit land came in possession of the defendants as title holder. The defendants have also denied the assertion of the plaintiff that Janki Devi was the daughter of Ram Prasad Thakur.

4. In view of the rival cases of the parties the crucial question before the Court was the status of Janki Devi as the daughter and heir of Ram Prasad Thakur and the validity of the transfer of the suit land made by her in favour of vendor of the plaintiff's father.

5. The trial court returned the finding on the issues in favour of the plaintiff holding that the defendants have failed to establish their case of acquisition of title over the suit land by cogent evidence. The appellate court on reappraisal of evidence has reversed the finding of the trial court and has allowed the appeal by the defendants by the impugned judgment and decree dismissing the suit.

6. Mr. Sinha, learned Counsel appearing for the appellant, while criticizing the impugned judgment passed by the appellate court below, has submitted that the appellate court below has wrongly come to the conclusion that the status of Janki Devi as daughter of Ram Prasad



Thakur has not been supported by any witness. Drawing the court's attention to the finding by the appellate court in this regard, it has been canvassed that three witnesses of plaintiff have categorically stated that Janki Devi was daughter of Ram Prasad Thakur. It has also been further submitted that the appellate court below has not properly considered the material evidence on record before reversing the finding of the trial court. No other submission has been made on behalf of the appellant.

7. After considering the submission and perusal of the judgments of both the courts below it is manifest that the crucial issue regarding the transfer of title to the vendor(s) of the plaintiff has been decided against the plaintiff. It is well settled that it is the plaintiff who has to prove his case by cogent evidence and the weakness in the case of defendants cannot enure to the benefit of the plaintiff. From the judgments of both the courts below as well as from the submission on behalf of the appellant it does not appear that the sale deed said to have been executed by Rajbali Bhagat in favour of Ram Prasad Thakur (the predecessor in interest of the vendor of the plaintiff) has been produced in evidence. There is also no explanation on behalf of the plaintiff as to why even the certified copy of the sale deed could not be obtained by the plaintiff and adduced in evidence in order to substantiate the transfer of title of the suit land from Rajbali Bhagat to Ram Prasad. The fact of mutation of the suit land in the name of the plaintiff will not be a substantial evidence to enable the Court to give a decree of declaration of title as the entry in the revenue record cannot create or extinguish title. Further more, the witnesses examined on behalf of the plaintiff, though some of them have stated that Janki Devi was daughter of Ram Prasad

Thakur, do not qualify to have special means of knowledge with regard to the relationship of Janki Devi with Ram Prasad Thakur as required under Section 50 of the Evidence Act. During the course of submission also it could not be pointed out as to how the statement in the deposition by any of the witnesses examined on behalf of the plaintiff can be admissible in evidence for the purpose of establishing the relationship of Janki Devi with Ram Prasad Thakur. It further appears that the appellate court below has recorded the finding of fact on the basis of scrutiny of evidence which are acceptable and could have been relied. As such, this Court does not find any perversity or unreasonableness in the findings by the appellate court below.

8. In view of the aforesaid reasons and discussion, this Court does not find that there is any substantial question of law arising in this appeal. This appeal is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2016
Transmission Date	