

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.392 of 2013

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1. Parwati Devi Wife Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 2. Naresh Sharma Son Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 3. Mahesh Sharma Son Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 4. Umesh Sharma Son Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 5. Smt. Urmila Devi Daughter Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 6. Sabita Devi Daughter Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.
 7. Kabita Devi Daughter Of Late Deo Narayan Sharma Resident Of Village- Chandra Nagar Ranko, P.S. And District - Khagaria.

..... Plaintiffs Respondents

.... Appellants

Versus

1. Dayawati Devi Wife Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
2. Mithilesh Devi Daughter Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
3. Smt. Rekha Devi Daughter Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
4. Smt. Chhathi Devi Daughter Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
5. Ram Naresh Sharma Son Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
6. Jay Prakash Sharma Son Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.
7. Lal Babu Sharma Son Of Late Ram Sunder Sharma Resident Of Village - Chandar Nagar Ranko, P.S. And District- Khagaria.

..... Defendant Ist party Appellants

.... Respondents

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 28-03-2016

Heard Mr. Dronacharya, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal dismissing the suit for permanent injunction filed by the plaintiffs.

3. The plaintiffs filed the suit for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs over the suit land. The title was claimed by the plaintiffs on the basis of purchase of the suit land stating that originally Tilakdhari Sharma by sale deed dated 26.11.1963 purchased the suit land from Budhdeo Yadav and thereafter the said Tilakdhari Sharma sold it to the predecessor of the plaintiffs by sale deed executed in the year 1964. The defendants contested the claim of the plaintiffs with the case that Budhdeo Yadav, who was said to have executed the sale deed dated 26.11.1963 in favour of Tilakdhari Sharma for the suit land was not the owner having title over the suit land. It was the case of the defendants that the suit land originally belonged to one Budhdeo Tier who abandoned the same and the possession was resumed by the ex-landlord, who later on settled the same with the defendants.

4. The crucial issue in the suit therefore was as to whether Budhdeo Yadav had the title over the suit land. The trial court returned the finding on the issue in favour of the plaintiffs holding on the basis of Ext. 2/d that Budhdeo Yadav was the owner of the suit land as name of his father Parsadi Yadav was shown in the boundary of the land sold by the defendants by sale deed (Ext. 2/d) and the said land shown in the

boundary in the name of Parsadi Yadav had been purchased by the plaintiffs. The appellate court below on reappraisal of evidence has reversed the finding of the trial court holding that the plaintiffs have failed to establish the title of Budhdeo Yadav over the suit land.

5. Mr. Dronacharya, learned Counsel appearing for the appellants has submitted that the finding by the appellate court below is not legally sustainable inasmuch as the appellate court below has not considered Ext. 2/d which has been relied upon by the trial court for giving the finding in favour of the plaintiffs. Elaborating his submissions, the learned Counsel has placed the judgment of the trial court in this regard where there is discussion of the submission on behalf of the plaintiffs pertaining to Ext. 2/d. It has been canvassed by the learned Counsel for the appellants that the land which belonged to Parsadi Yadav and whose name has been mentioned in the boundary in the sale deed (Ext. 2/d) has in fact been purchased by the plaintiffs and this fact establishes that Budhdeo Yadav who was son of Parsadi Yadav had the title over the suit land. During the course of submission on behalf of the appellants, it has been accepted that though the plaintiffs stated that Jamabandi No. 58 was created in the name of Budhdeo Yadav but no such Jamabandi was brought in evidence on behalf of the plaintiffs, nor the Khatian of the suit land has also been brought in evidence in order to corroborate the title of Budhdeo Yadav over the suit land. No other submission has been made on behalf of the appellants.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the issue regarding the



title of Budhdeo Yadav who was the vendor of the plaintiffs was the centrirorial issue in the suit. No direct evidence has been adduced on behalf of the plaintiff to establish the title of Budhdeo Yadav or his predecessor over the suit land. The trial court has relied upon the boundary mentioned in the sale deed Ext. 2/d said to have been executed by the predecessor of the defendants in favour of a stranger to the suit with regard to some other plots, but there is again no evidence that the suit land was in fact in the boundary of the aforesaid plot of the sale deed (Ext. 2/d) and therefore Parsadi Yadav, father of Budhdeo Yadav, can be legally accepted to be the owner of the suit land. The finding of the trial court on this issue holding that the land shown in the western boundary of the sale deed Ext. 2/d has in fact been purchased by the plaintiffs is based upon no evidence adduced by the plaintiffs to establish that it was the suit land which was in the western boundary of the land, the subject matter of the said sale deed. Moreover the appellate court below has elaborately discussed the oral and documentary evidence adduced on behalf of the parties and thereafter has recorded the conclusion that the plaintiffs have failed to establish the title of Budhdeo Yadav over the suit land. This Court has not been persuaded to find unreasonableness or perversity in any manner in the findings recorded by the appellate court below. The prayer for reappriciation of evidence at the second appellate stage in order to interfere with the finding of the appellate court below which is based upon acceptable evidence cannot raise a substantial question of law.

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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