

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.399 of 1976

**Against the Judgment and Decree dated 07.05.1976 passed by
Second Addl. Sub Judge, Ara in Title Suit No.189 of 1972 / 170
of 1974.**

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Chandrawati Devi & Ors.

.....Plaintiffs-appellants

Versus

Bansidhar Rai & Ors.

.....Defendants - Respondents

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Appearance :

For the Appellants :-

Mr. Kumar Udai Singh, Advocate

Mr. Dharmendra Kumar Sinha, Advocate

For the Respondent :-

None.

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Dated : 3rd day of February, 2017

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV JUDGMENT

1. The plaintiffs have filed this First Appeal against the Judgment and Decree dated 07.05.1976 passed by the learned Second Addl. Subordinate Judge, Ara in Title Suit No.189 of 1972 / 170 of 1974 whereby the plaintiffs appellant's suit has been dismissed.
2. The plaintiffs appellants filed the aforesaid suit for



declaration of title and confirmation of possession over the suit land and in the alternative for recovery of possession. They also prayed for injunction. The first set plaintiffs claimed title over Schedule I land whereas the plaintiffs second set claimed title over Schedule II land.

3. Their case in short is that the ex.-landlords obtained a rent decree in Rent Suit No.6265 of 1935 in relation to rent of land comprised within khata No.22 and they filed Execution Case No.1649 of 1936. In the execution case, the lands of khata No.22 and the suit land were auctioned sold and the landlords purchased the land on 15.03.1937. The auction sale was confirmed on 15.04.1937. Delivery of possession was affected on 26.05.1938. In the year 1944, Ram Prasad Gupta and Rameshwar Prasad Agrawal heirs of Amirchand Prasad, one of the landlord executed sale deed on 2.2.1944 with respect to lands of Schedule I in favour of Jagarnath Singh and possession was given to him. They also executed another sale deed with respect to Schedule II land in favour of Babu Ram Dewan Singh and possession was handed over. The purchasers acquired title and were in cultivating possession. Jaggannath Singh settled the land of Schedule I to the plaintiffs first set who came in possession thereof and ultimately he sold by registered sale deed dated 5.1.1959 the land of Schedule I to the plaintiff first set. Likewise, Ram Dewan Singh sold the schedule II land and other lands in favour of the plaintiffs



second set by registered sale deed dated 8.5.1971. The defendants have got no title over the same but they started interfering possession of the plaintiff.

4. According to the plaintiffs, the defendants are claiming title on the basis of auction purchase in Execution Case No.648 of 1939 wherein the ex.-landlord Amirchand Prasad and Ram Prasad Gupta were not parties. Amirchand Prasad and Ram Prasad Gupta had already auction purchased much earlier but the defendants did not make them party. Therefore, entire proceeding of the execution case was null and void. The mother of the plaintiffs second set was also not made party as the plaintiff second set were minor. No legal guardian was appointed for representing the minor plaintiff second set.

5. The defendants filed contesting written statement. Their main defence is that there was no rent suit and no rent decree was obtained and no decree was put in auction and there was no auction purchase as alleged by the plaintiffs. The defendants also denied the confirmation of sale and delivery of possession in favour of the ex.-landlord Amirchand Prasad and Ram Prasad Gupta. The defendants also denied execution of sale deed by Amirchand Prasad and Ram Prasad Gupta in favour of Jagarnath and Ram Dewan Singh and all the sale deeds alleged by the plaintiffs are fabricated and they did not



acquire any right title and interest on the suit lands.

6. The defendants further alleged that there was a simple mortgage in favour of father of the defendant No.1 and when mortgage money was not paid by the mortgager, Mortgage Suit No.60 of 1936 was filed against Jagat Narain Singh and Shaligram Singh along with plaintiffs and other concerned person. Mukfula decree was passed against the defendant. Execution Case No.648 of 1939 was filed to execute the decree. Entire suit land measuring 3.70 acres were put in auction sale and the defendants purchased the same on 6.10.1939. Certificate was granted in favour of defendant and on 2.1.1940, delivery of possession was affected. They were paying rents to the ex.-landlord against the grant of rent receipt and after vesting, the State of Bihar is granting rent receipt. After vesting, the suit lands have been recorded in the name of the defendant.

7. On the basis of the aforesaid pleadings of the parties, the learned Court below framed the following issues :-

- (i) Have the plaintiffs got a valid cause of action for the suit?
- (ii) Is the suit, as framed maintainable?
- (iii) Is the suit barred by limitation and is it barred by the principle of res-judicata?
- (iv) Has the suit been properly valued and is the court fee paid



sufficient?

- (v) Is the suit bad for defect of parties?
- (vi) Have the plaintiffs first set subsisting title over the lands detailed in Schedule 1 of the plaint and have the plaintiffs of the second set their subsisting title over the lands detailed in Schedule 2 of the plaint?
- (vii) Are the plaintiffs entitled to a decree for declaration of their title to and for confirmation of their possession or in the alternative for recovery of possession over the disputed lands?
- (viii) Are the plaintiffs entitled to permanent injunction against the defendant from interfering in their possession over the suit lands?
- (ix) To what relief if any are the plaintiffs entitled?

8. The learned Trial Court recorded finding that the plaintiff failed to prove subsisting title and dismissed the suit.

9. The learned counsel, Mr. Uday Kumar Singh, submitted that the ex.-landlord purchased the suit lands on 15.03.1937 in Execution Case No.1649 of 1936. The sale was confirmed on 15.4.1937 and certificate was issued on 15.04.1937. The delivery of possession was



affected on 26.5.1938. The defendant's claim that Mukfula Suit No.16 of 1936 was decreed for recovery of mortgage money and thereafter, execution case was filed in 1939. The rent decree was never set aside nor the auction sale in rent decree was set aside. Therefore, the title and possession of the ex.-landlord which was affected on 26.05.1938 remained with the ex.-landlord. / their heirs. This auction purchase made by son of late Amirchand and Ram Prasad Gupta was never held to be illegal nor was their auction sale ever set aside. In such circumstances, their property could not have been auction sold subsequently in Execution Case No.648 of 1939. The learned counsel further submitted that the Court below wrongly dismissed the plaintiff's appellant's suit holding that the plaintiffs failed to prove their subsisting title. According to the learned counsel, the plaintiffs-appellants are not required to prove subsisting title. They are required to prove their title only. The Court below has misappreciated the documentary evidences.

10. As stated above, nobody appeared on behalf of the defendants-respondents.

11. In view of the above submissions of the learned counsel for the appellant, the only point arises for consideration is whether the plaintiff-appellants have been able to prove their title over the suit



property and thus are entitled to recovery of possession or not.

12. Since the plaintiffs are praying for declaration of title and confirmation / recovery of possession, it is for the plaintiff to prove their title. Since the suit has been filed after the amendment of the Limitation Act in the year 1963, the plaintiff's suit will be governed under Article 65 of the Limitation Act. From perusal of the issues formulated by the Court below, it appears that the Court below formulated issue No.(vi) regarding subsisting title. In my opinion, after amendment of the Limitation Act, the plaintiffs are required to prove title only.

13. Now, let us consider the evidences produced by the parties for deciding as to whether the plaintiffs have been able to prove their title. The sale deed ext.'1' is dated 5.1.1959 which is in favour of the plaintiff's first set. This sale deed was executed by Jagarnath Singh whereas ext.'1/A' is the sale deed dated 8.5.1971 executed by Ram Dewan Singh in favour of the plaintiff's second set. The sale deed ext. '1/E' is dated 2.2.1944 which is the sale deed in favour of Jagarnath Singh whereby 23.29 acres of land of Khata No.22 was sold in favour of Jagarnath Singh and the another sale deed of the same date which is exhibit '1/F' is in favour of Ram Dewan Singh wherein 23.35 acres land was sold to Ram Dewan Singh by the ex.-landlord.



14. From perusal of these sale deeds, it appears that everything regarding rent decree, Execution Case No.1649 of 1936, auction purchase, sale certificate and delivery of possession dated 26.05.1938 have been mentioned. The vendors also claimed to have come in possession after auction sale and they handed over possession to the purchaser.

15. The plaintiffs have also produced ext.'1/B' the sale deed dated 07.12.1954 in favour of Nanku and others with respect to three plots, 784, 790 and 825. These three plots are mentioned in the sale certificate which has been exhibited as exhibit '8' and this sale certificate with respect to 47.80 acres of land. In view of this ext. '8' read with ext.'1/B', it becomes clear that the ex.-landlord, Ram Prasad Gupta, was dealing with the purchased property and he also was selling the same. Ext.'1/C' is another sale deed dated 24.06.1968 executed by Ram Dewan Singh in favour of Ram Bahal Ram with respect to plot No.897 and 911. These two plots are purchased by Ram Dewan by ext. '1/F' registered sale deed dt.2.2.1944.

16. Now, therefore, in view of these sale deeds, it becomes clear that Jagarnath Singh and Ram Dewan Singh after purchase came in possession and they also sold some properties by executing registered sale deeds ext.'1/B' and '1/C'. In other words, it can very well be said that the registered sale deed of the year 1944 and



thereafter the subsequent sale deeds were taken effect and acted upon.

17. It may be mentioned here that the defendants have claimed to have purchased three plots. Ext. '2' is Rehan deed dt.10.10.1949 and ext. '2/A' is another Rehan deed dt.24.08.1947 with respect to the lands covered by the sale deed ext.1/F. The other Rehan deed ext.2/B is also dt.27.06.1949 with respect to plot No.809 and 298 which are subject matter of ext. 1/F, the registered sale deed.

18. The plaintiffs have also produced ext. '6' the ordersheet of the Execution Case No.648 of 1939. The defendants are claiming to have purchased the land in auction sale in this execution case.

19. From the above discussion, it becomes now clear that the plaintiff's vendor had already obtained rent decree and in execution case, they auction purchased and they also came in possession in the year 1938 itself over the entire suit land. The defendants have not produced any such documents to show that in fact, the rent decree was set aside or that the auction sale was set aside or that the plaintiff's vendor were dispossessed by the process of the Court. It appears that the defendants produced ext. 'F / R' which is Khatiyani. Ext. 'F' is the revisional survey khatiyani in the name of Laxman Singh. Ext. 'B' and 'B/1' is the parcha. The Court below placed reliance on these revenue records and at paragraph 44 has held that the plaintiffs have



not sought for any relief about the mortgage decree and auction sale and the same were not avoided. The Court below also placed reliance on ext 'C' series which are the rent receipt and ext. 'A' series are the destruction report. Ext. 'E' is delivery of possession in favour of Laxman.

20. It will not be out of place to mention here that the defendants claimed that mortgage suit was filed being mortgage suit (Mukfula) No.60 of 1936 against Jagat Narain Singh and Shaligram Singh. Ext. '8' is the sale certificate granted by the Court in Execution Case No.1649 of 1936. This clearly shows that the rent suit was filed by the ex.-landlords Babu Amirchand Prasad, Rameshwar Prasad Agrawal and Laxman Prasad Gupta against Jagat Narain Singh and Shaligram Singh. The rent suit is of the year 1935, i.e., rent suit No.6265 of 1935 which was decreed and then the aforesaid execution case was filed. It appears that after one year, Mukfula suit No.60 of 1936 was filed against the defendant of rent suit, namely, Jagat Narain Singh and Shaligram Singh. The defendant did not pray for setting aside the rent decree and also the auction sale. Admittedly, in the mortgage suit, i.e., Mukfula Suit, the ex.-landlord, Babu Amirchand Prasad and Rameshwar Chand Prasad Agrawal were not made party. They have purchased the lands comprised within Khata No.22. Ext. '8' proves delivery of possession in their favour.



The Mukfula suit was decreed against Jagat Narain Singh and Shaligram Singh subsequently, in the year 1939 and then Execution Case No.648 of 1939 was filed. Prior to this filing of execution case, delivery of possession had already been affected in favour of the ex.-landlord. Therefore, even if there is any Mukfula decree in the year 1939 against Jagat Narain Singh and Shaligram Singh who were judgment debtors in rent suit of the year 1935, the said decree will not affect the right, title, interest and possession of the ex.-landlords because admittedly they were not party in the Mukfula suit (Mortgage suit) and the rent decree passed in their favour remain in tact and in execution case, they auction purchased the land and came in possession.

21. From perusal of the impugned Judgment, it appears that the Court below has given much emphasis that the defendants came in possession on the basis of the auction purchase in Mukfula decree. The learned Court had not considered the effect of the prior decree in rent suit and auction sale pursuant to the rent suit. If the Mukfula decree was obtained subsequent to the rent decree without making the decree holder as party then the subsequent decree will not be binding on the decree holder of the rent suit. The rent suit was decreed against the same persons who are the defendant in Mukfula suit also. On the date of the decree in Mukfula suit, the defendants in the suit had no



title, interest or possession because the ex.-landlord had already got the title, interest and possession because of rent decree and delivery of possession in execution case.

22. Admittedly, the defendants never challenged the rent decree nor the auction sale nor the delivery of possession. Now, therefore, the subsequent Mukfula decree will be a nullity as till then the earlier rent decree and auction sale was legal and in tact. Therefore, it was not necessary for the plaintiff to pray for setting aside the subsequent Mukfula decree.

23. The further fact is that the ex.-landlord sold the properties by registered sale deed in the year 1944 and then in turn the purchasers sold the same in favour of the plaintiff by registered sale deeds. These sale deeds are registered sale deeds which are of the year 1944 and 1959. The sale deed of the year 1944 have been executed by the exc.-landlord on the basis of the rent decree, auction purchase and delivery of possession. This sale deed is also never challenged by the defendant. The only defence of the defendant is that in Mukfula decree, 3.17 acres lands were auction sold and the defendant's ancestor purchased the same. As I have stated above, this Mukfula decree was obtained against Jagat Narain Singh and Shaligram Singh in the year 1939 on the date on which they had no title, interest and possession. Therefore, this decree against the said



judgment debtors who have no title or possession will not affect the right, title and interest of ex.-landlord who were not party to the Mukfula suit.

24. It appears that the plaintiffs have examined witnesses in support of their possession and on the contrary the defendants have also examined witnesses in support of their possession. The witnesses P.W.3, 4, 6 to 9, 12 etc. have all stated about the possession of the plaintiffs. On the contrary, the witnesses examined by the defendant D.W.3, 8, 9, 7, 16 have stated about possession of the defendants. These are the oral evidences adduced by the parties regarding possession, i.e., the statements of witnesses on oath vs. oath. Without going to the question as to whether the defendants have been able to prove their possession or not, it may be mentioned here that the plaintiff is claiming for recovery of possession. The defendant nowhere claimed adverse possession, and therefore even if the defendants are in possession then also the plaintiffs are entitled to recovery of possession. Therefore, which party is in possession is immaterial and it is only academic question. Since I have held that the plaintiff's vendor will not be bound by the Mukfula Decree, the plaintiffs are entitled for declaration of their title and are entitled for recovery of possession also.

25. It appears that the learned Court below has not considered



in this light. Emphasis has been given by the Court below that whether notice was issued in the execution case filed by the plaintiff to the plaintiffs or not. The Court below has not recorded any finding regarding the binding nature of decree of Mukfula suit. The Court below has also not considered that in Mukfula suit admittedly the ex.-landlord were not made party. The ex.-landlord had already got decree and auction purchase and also came in possession. The court below also not considered that the Mukfula decree against the judgment debtor of the rent suit will not be binding on the decree holder of the rent suit.

26. In view of the above discussion, I find that the plaintiffs have been able to prove their title and are, therefore, entitled for recovery of possession of the suit property. The finding of the trial Court is, therefore, reversed.

27. In the result, this First Appeal is allowed. The impugned Judgment and Decree passed by the trial Court is hereby set aside. The plaintiffs appellant's suit is decreed. In the facts and circumstances of the case, there shall be no order as to cost.

Sanjeev/-

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(Mungeshwar Sahoo, J)