

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.7 of 2017

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Sipahi Singh son of late Sadhu Singh resident of village - Manpur Milki, Post Office - Nonhar, Police Station - Bikramganj, District - Rohtas at Sasaram.

... .. Appellant/s

Versus

1. Mundrika Chaudhary son of late Sakhi Chaudhary resident of village - Dhangai, Post Office - Dhangai, Police Station - Bikramganj, District - Rohtas at Sasaram.
2. Ram Balak Singh son of late Dharmdeo Singh
3. Sudama Singh son of late Dharmdeo Singh Respondents No. 2 and 3 are residents of Village - Dhangai, Post Office - Dhangai, Police Station - Bikramganj, District - Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramchandra Singh
		With
		Mr. Jitendra Kumar Singh
		Mr. Ram Kumar Roy
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 11-12-2017

The present Second Appeal has been filed against the judgment and decree, dated 30.09.2016/19.10.2016, passed by the learned Additional District Judge-VIII, Rohtas at Sasaram in Title Appeal No. 28 of 2009, whereby he has reversed the judgment and decree of the learned Sub Judge-1, Sasaram in Title Suit No. 317 of 2004 and has decreed the suit in favour of the plaintiff.

2. The appellant was the contesting defendant before the trial Court.

3. Before I approach the question as to whether this Second Appeal involves any substantial question of law, I must



briefly take note of the facts of the case with reference to the rival pleadings.

4. The plaintiff (Respondent no.1) asserted in his plaint that R. S. Khata no. 254 of Mauza Dhangai, P. S. Bikramganj had been prepared under plot No. 2446 area 57 decimals in the name of Dharamdev Yadav (since deceased) and plot No. 2447 area 43 decimals in the name of Brahamadev Yadav and Jamuna Yadav as recorded in the possessory column. Dharamdev and Brahamdev Yadav were indisputably full brothers. Out of the said Plot No. 2446 belonging to Dharamdev and his son Ram Balak Singh, three decimals of land was transferred to Ram Chandra Chaudhary and Dewanti Devi through registered sale deed datd 04.10.1994. However, in the said sale deed, dated 04.10.1994, plot No. 2447 was mentioned in place of 2446. The plaintiff claimed that no portion of Plot No. 2447 belonged to DharamdevYadav, rather plot No. 2447 was in the name of Brahamdev and Jamuna Yadav, which was apparent from the survey map. Subsequently, the plaintiff through sale deed dated 08.04.2003 purchased one and half decimal of land through registered sale deed from Dewanti Kuer wife of late Ram Chandra Chaudhary. The plaintiff, however, realized in course of time that plot No. 2447 was wrongly mentioned in place of 2446. It was also the case of the plaintiff that sons of Dharamdev Yadav, namely, Ram Balak Singh and Sudama Singh sold a piece of land mentioned in plot No. 2446 by sale deed no. 951, dated 20.02.2003



in favour of the appellant (defendant NO.1). After execution of the sale deed, the appellant is said to have threatened the respondent to dispossess him from the scheduled land of the plaintiff. This gave rise to cause of action and institution of the suit.

5. The parties to the suit filed their pleadings. The vendor of the appellant in his written statement supported the plaintiff's case to the effect that no portion of plot No. 2447 belonged to Dharamdev Yadav/ Ram Balak Singh and the land which was sold through registered sale deed dated 04.10.1994 was in fact part of plot No. 2446, which is evident from the description of the boundary. In the boundary the vendor has been shown at the three sides of the land sold through the said sale deed dated 04.10.1994, whereas on the western boundary, Yamuna Singh, brother of Brahamdeo Singh had been shown. This was common plea of the plaintiff and defendant No.4, Dewanti Kuer that as per description of the boundaries given the sale deed, the land which was sold by the Dharamdeo Singh and Ram Balak Singh through registered sale deed, dated 04.10.1994 was of plot No. 2446.

6. The defendant No. 1, Ram Balak Singh in his written statement took a plea that in Khata No. 254, Plot No. 2446 area 57 decimals and western side of plot No. 2447 area 13 decimals out of 43 decimals had been allotted to his father Dharmdeo Singh by oral partition and they were in possession over the said 13 decimals of plot No. 2447 on the strength of the said oral partition. They took a



plea that name of Brahamdeo Singh and Yamuna Singh has wrongly been shown with remaining land of plot No. 2447.

7. It was accordingly the plea of defendant no.1 that he, along with his father had sold three decimals of land out of 13 decimals of land of survey plot No. 2447 by sale deed dated 04.10.1994 in favour of Ram Chandra Chaudhary and Dewanti Kuer (defendant NO.4). He also took a plea that he had taken land of plot No. 2447 by oral exchange from Brahamdeo Singh and Yamuna Singh and given him an area of land in other plot.

8. As is evident, defendant No.3, who is the vendor of defendant no.1 and the appellant herein, took the same plea as had been taken by his vendor defendant no.1.

9. The trial Court on the basis of pleadings altogether formulated ten issues including the following:-

“V. Whether the deft. no.4 and her husband purchased three decimals land out of R/s plot no. 2446 from the deft. no.1 and his father Dharamdev Singh through registered sale deed dtd. 4.10.1994 with the correct identity and boundary of the pdurchased land but with the mention of wrong plot no. 2447?

VI. Whether the plaintiff purchased 1.1/2 decimal area of land as described under Schedule-ka of the plaint from the deft. no.4 through the registdered sale deed no. 2221 dtd. 8.4.2003 and has been coming into possession of the same but the plot number has wrongly been mentioned in the sale deed as 2447 instead of 2446?

VII. Whether the plaintiff acquired right, title and interest over the schedule-Ka property of the plaint by virtue of sale deed no. 2221 dtd. 8.4.2003 executed by the deft. no.4 in his favour?

VIII. Whether the sal deed no. 951 of 2003 executed by the defts. Ist set in favour of the



deft 2nd set is mere illegal and invalid and not binding upon the plaintiff?”

10. The parties adduced their evidence, both, oral and documentary. The plaintiff, *inter alia*, exhibited Exhibits 5 to 5/B, a compromise petition, dated 21.11.2005 to buttress his plea that the land which was sold through registered sale deed dated 04.10.1994 was in fact part of plot No. 2447. The trial Court, clubbing the issue nos. 5 and 6 decided the said issues against the plaintiff and accordingly held that the sale deed executed in favour of the vendor of the plaintiff (defendant No.4) and her husband in the year 1994 was never acted upon as purchaser of the said sale deed. The actual situation of the portion which was actually sold by the vendors of the sale deed thus could not be ascertained by the plaintiff, the trial court held.. The trial Court recorded this conclusion because of mentioning of plot no. 2447 in the sale deed. Similarly, the issue Nos. 7 and 8, in that background were decided against the plaintiff.

11. Being aggrieved by the judgment and decree of the trial Court, the respondent no.1 preferred appeal, which gave rise to Title Appeal No. 28 of 2009, which has been decided by the impugned judgment and decree by the learned Additional District Judge-VIII, Rohtas at Sasaram.

12. Before referring to its own findings, the appellate Court formulated three points for determination which is as follows:-

“(VI) Whether the plaintiff purchahsed 1.1/2 decimal area of land as



described under Schedule Ka of the plaint from the deft. no.4 through the registered sale deed no. 2221 dt. 8.4.2003 and has been coming into possession of the same but the plot number has wrongly been mentioned in the sale deed as 2447 instead of 2446?

(VII) Whether the plaintiff acquired right, title and interest over the Schedule-ka propertyb of the plaint by virtue of sale deed no. 222 dt. 8.4.2003 executed by the deft. no.4 in his favour?

(VIII) Whether the sale ded no. 951 of 2003 executed by the defts. Ist set in favour of the deft 2nd set is mere illegal and invalid and not binding upon the plaintiff?"

13. Deciding the first point the appellate Court upon examination and appreciation of the evidence on record recorded its conclusion that there was mis-description of plot No. 2447 in place of 2446 in the sale deed, dated 04.10.1994 and the subsequent sale deed, dated 08.04.2003. Relying on a decision of this Court in case of **Ram Jeevan Rai and ors. vs. Deokinandan Rai & ors.** reported in **2004 (2) BLJR 1062**, the appellate Court held that mistake in the plot number must be treated as a mere misdescription not affecting the identity of the property sold. After having concluded so, deciding second point for determination, the appellate Court held that the sale deed No. 951 dated 21.02.2003 executed in favour of the appellant was illegal as the vendor of the appellant did not have any right to sale the aforesaid land.

14. Learned counsel appearing on behalf of the appellant, assailing the findings recorded by the appellate Court has



submitted that the appellate Court has failed to discuss each and every issue framed by the trial Court while reversing the findings of the trial Court. He has accordingly, submitted that the impugned judgment deserves to be interfered with on this ground alone. According to him, the trial Court has elaborately taken into account the evidence and other materials on record and the pleadings of the parties. According to him, the findings recorded by the trial Court were based on correct appreciation of evidence and did not require interference by the appellate Court.

15. The duty of the High Court in Second Appeal under Section 100 of the Code of Civil Procedure, 1903 while entertaining Second Appeal is to examine first as to whether it involves any substantial question of law requiring determination by this Court. Over and above the fact, that the findings are incorrect, learned counsel for the appellant has not submitted that the present Second Appeal involves any substantial question of law. The substantial questions of which have been framed in memo of appeal in my view, cannot be said even to be questions of law, let alone substantial question of law.

16. I have carefully perused the judgment and decree of the appellate Court and the trial Court below. What is evident from the discussions made by the two Courts below that the vendors of the appellant claimed their title over the disputed land on the ground that their father had acquired title on the basis of oral



partition between their father and Brahmdeo Yadav. It transpires that though the vendor of the appellant Ram Balak Singh (D.W.9) claimed his title over 13 decimals of land of plot No. 2447 in his evidence inasmuch as he deposed that he was not having land any more in Plot No. 2447. The Court noticed the stand of D.W.9 to the effect that only three decimals of land was transferred to Ram Chandra Choudhary and Devanti Kuer and if such was the claim of defendant no.9 that plot No. 2447 belonged to D.W.9, he would have been in possession of the remaining 10 decimals of land in plot No. 2447.. In view of the contradictory stand of D.W.9, the appellate Court below disbelieved the story of oral acquisition of 13 decimals of land of plot No. 2447 by Dharmdeo Singh.

17. The appellate Court below also took note of the compromise petition, which showed that D.W. 9 himself had admitted that he and his father had executed sale deed dated 04.10.1994 in favour of Ram Chandra Choudhary and his wife Devanti Kuer actual for part of plot No. 2446 in which Mundrika Chaudhary was in possession of one and half decimal of land since the date of purchase and he also admitted that on 04.10.1994, Ram Bilas Singh and Dharamdeo Singh had also sold three decimals of land by sale deed of 1994 in plot No. 2446 which was wrongly mentioned as 2447. He also admitted in the compromise petition that Dharamdeo Singh and his sons had no concern any time with plot No. 2447 rather the same was in the name of Dharamdeo Singh, who



was brother of Brahmdeo Singh.

18. It has been argued on behalf of the appellant that D.W.9 was coerced to put his signature on the compromise petition.

19. Be that as it may, it is evident from the discussions as above that the appellate Court on due appreciation of evidence on record after framing the points for determination has adjudicated upon the respective rights of the parties. The evidence recorded by the appellate Court below cannot be interfered with unless it involves substantial question of law. The findings which have been recorded have not been argued to be perverse and being without any evidence or contrary to evidence. No substantial question of law arises in the present second appeal.

20. I do not find any merit in this appeal and this appeal is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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