

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.64 of 2013

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1. Awadhkishor Sinha
 2. Om Prakash Sinha
 3. Arun Kumar Sinha
 4. Krishna Chandra Sinha
 5. Mukesh Kumar Ranjan, all sons of Late Thakur Prasad Sinha
 6. Girija Sinha, wife of Dhruv Kumar Sinha
 7. Sindhu Sinha, wife of Late Prafful Mohan Sinha
 8. Amit Mohan
 9. Ankit Mohan, both sons of Late Prafful Mohan Sinha, all resident of Village Bagahwa Mishra, Pargna Kuwari, P.S. Bhore, District Gopalganj, at present resident of C/o Nanhaku Singh contractor Shashtry Nagar, Siwan, District Siwan
 10. Pushpanjali Sinha, wife of Manoj Kumar, resident of near LP Gas Godown north S.K.P:uri, P.S. Krishnapuri, District Patna
 11. Premolata Sinha, wife of Rajesh Shrivastava, resident of Neharu Nagar, Janta Quarter P.S. Neharu Nagar, District Bilashpur.

..... Defendants Appellants

.... Appellants

Versus

1. Chandrawati Devi, daughter of Late Durga Prasad
2. Kasha Prasad, son of Late Durga Prasad, both resident of Topwn Mohhalla Sonar Toli Chowk Jhagrahawa Papal, P.O. + P.S. + District Siwan
3. Rameshwar Prasad
4. Ramjee Prasad
5. Suresh Prasad
6. Naresh Prasad, all sons of Late Ganesh Prasad, resident of Baluan Sagar Pargana Kuari, P.S. Kuchaikot, District Gopalganj

..... Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellants : Mr. Chandra Kant

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2017

Heard Mr. Chandra Kant, learned Counsel appearing for the appellants.

2. The defendants in the suit are the appellants in the present appeal against the judgment and decree of affirmance granting the decree to the plaintiffs as prayed.



3. The matrix of facts is that admittedly the suit property which is a house originally belonged to Shri Kishun Sah, who died leaving behind three sons namely Indar Sah, Shivgopal Sah and Ganesh Sah. According to the case of the plaintiffs, who were decedents of Inder Sah, the suit premises was auction sold in a decree for realization of rent by the municipality in the year 1934 and was purchased by Kapildeo Pandey. The sale certificate in favour of Kapildeo Pandey was accordingly issued on 19.11.1934. The plaintiffs' further case is that the said Kapildeo Pandey transferred some of the suit property to Durga Prasad on 25.5.1935 and the remaining portion to Sheo Gopal Sah by registered sale deed dated 26.5.1935. It has been further case of the plaintiffs that Sheo Gopal Sah died unmarried and issueless and the property purchased by Sheo Gopal Sah came in possession of the plaintiffs after his death. The plaintiffs' further case is that Ganesh Sah had left the village and was residing elsewhere before the auction sale and he had no right to execute the sale deed for the suit land in favour of the defendants.

4. The defendant Nos. 1 and 2 in their written statement came out with the plea that there was no auction sale as claimed by the plaintiffs and the alleged auction sale was only a paper transaction. It has been further case of the defendants that defendant No. 2 Ganesh Sah has got half share in the suit property and has rightly sold it to defendant No. 1 and put him in possession.

5. Both the courts below have concurrently come to the finding that the plaintiffs have proved the fact of auction sale and purchase of the suit property by Kapildeo Pandey on 19.11.1934. It has been further also



found by the courts below that after purchase from Kapildeo Pandey, the purchaser Durga Prasad and Shivgopal Sah acquired valid title and possession over the suit property. It has been further found that defendant No. 2 Ganesh Sah was not residing in the suit property at the time of auction sale and was not in possession thereof. The suit was decreed and thereafter the appeal by the defendant 1st set has been dismissed by the impugned judgment and decree.

6. Mr. Chandra Kant, learned Counsel appearing for the appellants, has firstly submitted that the acquisition of title by auction purchaser on the basis of auction sale is not complete when there is no evidence that the auction purchaser Kapildeo Pandey had taken possession over the auction purchased property. It has been next contended that the defendant No. 2 Ganesh Sah at least could have his share in the property of Sheo Gopal Sah and therefore the purchase by the defendants from Ganesh Sah with regard to the suit property ought to be held to be valid to that extent. Elaborating the submission, it has been propounded that the plaintiffs were required to plead and prove ouster in order to extinguish title of Ganesh Sah (defendant No. 2) in the suit property but there is no such pleading and there is also no evidence. Reliance has been placed in support of this submission on the decision in the case of **Ameer Bibi Vs. Chinnammal & anr. 1968 Madras 1803, Binapani Paul vs. Pratima Ghosh & ors. AIR 2008 SC 543 and Hazara Singh & anr. Vs. Faqira (D) by L. R. & ors. AIR 2004 Punjab 353**. On the basis of aforesaid submissions, the learned Counsel for the appellant has contended that there are substantial questions of law arising for consideration as the judgments of both the courts below are vulnerable.



7. After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the plaintiffs have filed the suit for declaration of title over the suit property and further for declaration that the defendant No. 1 was not having right and title over the suit land. Both the courts below on the basis of scrutiny of evidence relating to auction sale and purchase have come to the concurrent finding that the said auction sale of the suit property took place in the year 1934 which was purchased by Kapildeo Pandey on 19.11.1934. It is thus evident that the title of Ganesh Sah in the suit property on the basis of being heir of Shri Kishun Sah stood extinguished after the said auction sale. There is no statement on behalf of the appellants that the auction sale did not take place as evidenced by Ext. 7 and other documents and the only submission is that the said auction sale was a paper transaction. However, after scrutiny of evidence, both oral and documentary, the courts below have come to the conclusion that the said auction sale was not invalid and not a paper transaction as claimed by the defendants. No principle of law or precedent could be shown on behalf of the appellants to sustain the submission that the possession is required to be taken by the auction purchaser in order to have legal validity of the auction sale. So far as the submission that defendant No. 2 Ganesh Sah had share in the property purchased by Sheo Gopal Sah, it appears that there is no pleading in that regard and there is no evidence on behalf of the contesting defendants. It also transpires from the pleadings of the defendants as noticed in the judgments of both the courts below that the sale deed has been executed by defendant No. 2 Ganesh Sah setting up his entitlement over the suit property as one of the heirs of Shri Kishun



Sah but there is no pleading or evidence aliunde that Ganesh Sah ever intended to execute the sale deed with regard to his share in the property of Sheo Gopal Sah only. Both the courts below have also come to the finding that Ganesh Sah was not in possession of the suit property since before 1934 when auction sale took place. Noticeably the entire pleading on behalf of the defendants regarding transfer and acquisition of valid right and title over the suit property by defendant No. 1 is based upon the case that the auction sale never took place and the auction purchaser never got title over the suit property on that basis. In this view of the matter, this Court does not find substance in the submission on behalf of the appellants that both the courts below erred in law in not considering the issue that the sale deed of defendant No. 1 executed in favour of defendant No. 2 can be held to be valid to the extent of share of Ganesh Sah in the property purchased by Sheo Gopal Sah. The propositions of law as laid down in the decisions in the case of **Ameer Bibi (supra)**, **Binapani Paul (supra)** and **Hazara Singh (supra)** have been rendered in entirely different set of facts and do not support the submissions on behalf of the appellants in the present facts and circumstances.

8. This Court therefore comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Snkumar/-

(V. Nath, J.)

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