IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.289 of 2014

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1. Ashok Singh
2. Kamlesh Singh
3. Bhanu Pratap Singh All sons of Bacha Prasad Singh @ Bachu Singh
4. Most. Kusum Kuwar Wife of Late Bacha Prasad Singh @ Bachu Singh
5. Musmat Resamjharo Devi @ Most. Resamjharo Kuer Wife of Late Deo Nandan Singh
6. Most. Kalawati Devi Wife of Late Rajendra Singh
7. Sudarsan Singh Son of Late Rajendra Singh
8. Kausal Singh @ Kaushal Kumar Singh Son of Late Rajendra Singh All resients of Village and P.O. - Bhatauli, P.S. - Sandesh, District - Bhojpur
9. Smt. Mani Devi Wife of Sri Sunil Kumar Singh
10. Rambha Devi Wife of Sudhir Kumar Singh Both residents of Village - Fuleri, P.S. - Sandesh, District - Bhojpur

.... Appellants

Versus

1. Tarkeshwar Singh @ Talu Singh Son of Late Sheo Nandan Singh
2. Lal Babu @ Chhedi Singh Son of Late Her Nandan Singh
3. Most. Sunmukha Devi Wife of Late Har Nandan Singh
4. Rana Pratap Singh
5. Akhilesh Singh Both sons of Late Yogendra Singh All residents of Village and P.O. - Bhatauli, P.S. - Sandesh, District - Bhojpur
6. Raju Singh Son of Late Salam Singh
7. Pawan Kumar
8. Dhanu Kumar both minor sons of Raju Singh Under the guardianship of their father and natural guardian Raju Singh
9. Arbind Singh Son of Late Indarjeet Singh
10. Pappu Kumar minor son of Arbind Singh Under the guardianship of his father and natural guardian Arbind Singh
11. Manju Kumari Daughter of Late Yogendra Singh All residents of Village and P.O. - Bhatauli, P.S. - Sandesh, District- Bhojpur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Abinash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-03-2017

Heard Mr.Sukumar Sinha, learned senior counsel appearing for the appellants.

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The plaintiff and defendant 2nd set in the suit have jointly filed this appeal against the judgment and decree of reversal dismissing the suit.

The plaintiffs filed the suit for declaration of title over the suit land and further for declaration that the entry of the names of the father of contesting defendant nos.2 and 3 alongwith the father of the plaintiff nos.2 and 3 in the survey records of rights for the suit land was wrong.

The plaintiffs and the defendant 1st set are admittedly descendants of a common ancestor. It was the case of the plaintiffs that the T.S.No.80/1948 for partition was filed by the predecessor of the plaintiffs against the predecessor of the contesting defendants and eventually the said suit came to be disposed of in terms of the award of the arbitrator. The plaintiffs based their title over the suit land asserting that the same had been allotted in the share of their predecessor in the award abovementioned. It would be relevant to mention here that the defendant 2nd set was the purchaser of the part of the suit land from the plaintiffs.

The defendants in their written statement and additional written statements specifically pleaded that there was no partition by metes and bounds of the joint family properties between the predecessor of the plaintiffs and predecessor of the defendant and

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only the share of the parties had been declared in the award as confirmed in T.S.No.80/1948. It was also pleaded that the plaintiffs had already sold the land of their share but they had wrongly transferred the land more than their share during the pendency of the suit and in spite of the order of injunction.

The trial court returned the findings on the issues in favour of the plaintiffs and granted the decree as prayed for. In appeal by the contesting defendants, however, the appellate court below, on reappraisal of the evidence, has reversed the findings of the trial court, allowed the appeal and set aside the judgment and decree of the trial court.

Mr. Sinha, learned senior counsel appearing for the appellants has emphatically submitted that as the findings of facts has been recorded by the appellate court below reversing the findings of facts of the trial court, this second appeal deserves to be admitted for hearing on that score. It has been further contended that in view of the admission by the contesting defendants regarding the title of the plaintiffs over the part of the suit land, the appellate court below has erred in law in not granting the decree to the plaintiffs to the extent of the admitted title of the plaintiff. The learned senior counsel has also submitted that the finding by the appellate court below holding the transfer by the plaintiff of the part of the suit land in face of the order

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of injunction as illegal and not valid, is also not legally sustainable in the facts and circumstances of the case.

After considering the submissions and perusal of the judgments of both the courts below, it is apparent that the basis of the claim of exclusive title over the suit land by the plaintiffs was the award(Ext.9) as confirmed in T.S.No.80/1948. It was the case of the plaintiffs that in the said award the suit property admeasuring an area of 5.03 acres as recorded in Khata No.7 Plot No.20 of village-Mahadevpur had been exclusively allotted by the said award in the share of the predecessor of the plaintiff. There is however no specific finding by the trial court in this regard that the suit land was exclusively allotted in the said award to the predecessor of the plaintiffs. The appellate court below on scrutiny of the award (Ext.9) has come to the conclusion that in the said award only the shares of the parties to the T.S.No.80/1948 was defined and no specific land much less the suit land was allotted to any of the parties. The appellate court below has further come to the finding on the basis of the mutation order (Ext.A) passed in Fatbandi (Mutation) Case No.21/1977-78 that actual partition between the plaintiffs and the contesting defendants took place in the year 1977-78. Besides, after considering other documentary evidence in this regard the appellate court below has also taken into notice the admission by the defendant

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2nd set in the deposition that the partition between the parties had taken place only in the Mutation Case No.21/1977-78. The appellate court below after analyzing the evidence has further come to the conclusion that the plaintiffs have already transferred 2.24 acres of land before the filing of the suit and were left with only 19.5 decimal of land of their share but in spite of the order of injunction they have executed sale deeds (Ext.B/7 and B/8) in favour of the defendant 2nd set which are illegal and void document. This conclusion is in accordance with the principles as laid down by the apex court in the case of ***Oriental Insurance Company Ltd.Vs. Zaharul Nisha (2012)8 SCC 384.***

Moreover, during the course of submissions, it could not be shown or established that the findings of facts as recorded by the appellate court below are perverse or unreasonable in any manner. It is not the case on behalf of the appellants that the findings of facts by the appellate court below have stemmed out of non-consideration of evidence or are dehors the settled principles of law. The contention on behalf of the appellants that the plaintiff was entitled to the grant of the decree for the part of the suit land with regard to which the contesting defendants have admitted the claim, is also not legally sustainable in the facts and circumstances of the case and particularly when no such relief has been sought by the plaintiffs in the courts

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below where the plaintiffs have pursued their claim of exclusive title over the entire suit land.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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