

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.164 of 2004

=====

Abdul Aziz, son of Ainul Haque Duraishi, resident of Village Hariharganj, P.S. Nasriganj, District Rohtas

..... Plaintiff Appellant

.... Appellant

Versus

1. Rahmat Ali, son of Hamid Quraishi
 2. Wakil Quraishi, son of Juman Ali
 3. Iliyash Quraishi, son of Late Saukar, all residents of Village Hariharganj, P.S. Nasriganj, District Rohtas Defendants Respondent 1st set
 4. Reyaj Ahmad Khan, son of Jahoor Hasan Khan, resident of Village Hariharganj, P.S. Nasriganj, District Rohtas Defendant Respondent 2nd set
.... Respondents
- =====

Appearance :

For the Appellant/s : Mr. RAJANI KANT SINGH
Mr. Sudama Singh
Mr. Surendra Kumar Mishra

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-06-2017

Heard learned Counsel for the appellant and the learned Counsel for the respondents.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit of the plaintiff.

3. The plaintiff and the defendants are governed by the Mohammedan Law. The suit was filed by the plaintiff claiming preemption on the basis of being the adjacent raiyat with regard to the property mentioned in Sche dule 'A' of the plaint, which has been transferred in favour of the defendants by sale deed executed on 2.1.1992. The plaintiff claimed to have made **Talab-A-Mosabit** and **Talab-A-Issat** in accordance with the Mohammedan Law and thereafter he filed the suit.



4. Both the courts below have returned the finding on the issues against the plaintiff and dismissed the suit and the appeal.

5. Learned Counsel for the appellant has submitted that both the courts below have not properly considered the evidence led on behalf of the parties and therefore the judgment and decree passed by the courts below are vitiated. It has been further also contended that the sale in question would be deemed to have been complete when the first and second demands were made on 2.1.1992 and 5.1.1992 respectively. It has been also asserted that the courts below have not appropriately applied the judicial mind and therefore the judgment and decree against the plaintiff is vitiated. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below it is apparent that the finding of fact has been recorded by both the courts below that the sale transaction with regard to which the preemption has been claimed by the plaintiff became complete only on 13.1.1993 when the sale deed was copied in accordance with Section 59 of the Registration Act. The learned courts below have rightly relied upon the principle in this regard as laid down by the apex court in the case of ***Ram Saran Lall Vrs Domini Kuer 1961 SC 1747***. On the basis of evidence on record both the courts below have further come to the conclusion that the plaintiff has not owned adjacent land on the basis of which the right of preemption could be claimed. The findings of fact have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon. During the course of submission it could not be shown



or established that the findings by both the courts below are perverse or unreasonable in the sense that the same have stemmed out of non consideration of material evidence or dehors settled principle of law. This Court does not find any perversity or unreasonableness in the conclusion by both the courts below.

7. In the ultimate eventuate, this Court comes to the conclusion that there is no scope for reconsideration of evidence which is focal point of the entire submission on behalf of the appellant. As there is no substantial question of law arising for consideration this appeal is dismissed accordingly

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	01.07.2017
Transmission Date	N/A

