

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.319 of 2014

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1. Most. Aasha Kuer W/o Late Sheo Kumari Barai
 2. Shankar Barai
 3. Bishun Barai both sons of Late Sheo Kumar Barai
 4. Suman Kumari
 5. Rinku Kumari both daughter of Late Sheo Kumari Barai
 6. Soni Devi W/o Babloo Babloo Barai and D/o Late Sheo Kumar Barai All resident of village- Sheopur, P.O. Saitha, P.S. Sonhan, District- Kaimur.
 7. Geeta Devi W/o Sanjay Barai and D/o Late Sheo Kumar Barai resident of village- Chainpur, P.S. Chainpur, District - Kaimur (Bhabua)
 8. Munni Devi W/o Phunpun Barai, and D/o Late Sheo Kumari Barai resident of village - Bahuan, P.S. Sonhan, District- Kaimur.
 9. Binod Prasad Barai
 10. Anjani Kumar Barai both sons of Dasarath Barai
 11. Prem Chand @ Murahua Barai
 12. Jai Prakash Barai both sons of Bhagwan Barai All 9 to 12 resident of village - Sheopur, P.O. Saitha, P.S. Sonhan, District- Kaimur

..... Plaintiffs Appellants

.... Appellants

Versus

1. Most. Veen Kuer W/o Late Suresh Chanra Agrawal @ Suresh Prasad Agrawal
2. Sanjeev Kumar Agrawal @ Munna Agrawal
3. Ranjeev Kumar Agrawal @ Soni Agrawal
4. Shilpi Agrawal All 2 to 3 sons and 4 daughter of Late Suresh Chandra Agrawal
5. Dinesh Chandra Agrawal @ Dinesh Prasad Agrawal S/o Late Sheo Govind Agrawal
6. Sushila Devi
7. Raj Rani Devi both daughter of Late Sheo Govind Agrawal All resident of Bhabua Ward No. 6 old and New Ward no. P.S. Bhabhua District - Kaimur.
..... Defendants Respondent 1st set
8. Kanhaiya Lal S/o Bachana Lal @ Bishwanath Lal resident of village - Semaria, P.O. Saitha, P.S. Sonhan, District - Kaimur.
9. Lakshmi Singh S/o Lakha Singh resident of village - Kosdihara, P.S. Bhagwanpur, District- Kaimur. Defendants Respondnt 2nd set
10. Shree Phoolan Pandey S/o Bindeshwari Pandey resident of village- Dhekahari, P.S. Bhagwanpur, District- Kaimur.

..... Defendants respondent 3rd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Satyendra Pandey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-05-2017



Heard Mr. Pandey, learned Counsel for the appellants in this appeal.

2. The present appeal has been filed by the plaintiffs against the judgment and decree of affirmance dismissing the suit.

3. The plaintiffs filed the suit praying for declaration that the decree passed in earlier T.S. No. 380 of 1976 and the award by the Arbitrator in the said case were null and void and not binding upon the plaintiffs. Significantly the plaintiffs have also sought for a relief for declaration of their title over the suit property described in Schedule 'A' of the plaint. The main plank of the case of the plaintiffs was that they were minor defendants in T.S. No. 380 of 1976 and their interest in the suit property was not properly represented by their guardians. The defendants contested the assertions made by the plaintiffs resisting the relief prayed by the plaintiffs. Both the courts below have come to the concurrent findings of facts on the issues against the plaintiffs. The suit was dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

4. Mr. Pandey, learned Counsel for the appellants, has submitted that the impugned award by the Arbitrator Puran Pandey was clearly illegal and not binding upon the plaintiffs. It has been contended that there has been ample evidence on record to establish that the interest of the plaintiffs in the previous suit was not properly represented and therefore the plaintiffs are entitled to avoid the decree passed in the earlier suit and appeal as well as the award of the Arbitrator. During the course of submission, however, the fact that the suit property has been



transferred by the plaintiff No. 1 Sheo Kumar Barai along with his father and other co-sharers by registered sale deed dated 7.6.1994 (Ext. 'G') has not been denied and in that back drop it could not be shown as to how after transferring the suit property the plaintiffs can still maintain the suit for declaration of title. No other submission has been made on behalf of the appellants.

5. After considering the submissions and perusal of the judgments of both the courts below, it transpires that the courts below after elaborate consideration of the facts and circumstances as well as the evidence on record have come to the conclusion that the decree passed in the earlier suit and the appeal as well as the award by the Arbitrator Puran Pandey would be binding upon the interest of the plaintiffs in the suit property. It has further also been noticed by the courts below that after transfer of the property by sale deed Ext. 'G', which has not been assailed by the plaintiffs in the present suit, title as claimed by the plaintiffs over the suit property no more survives and they are not entitled to get the declaration of title against the decree passed in the earlier suit and award. As already noticed above the fact that the suit property has been transferred by plaintiff No. 1 prior to filing of the suit, which fact has been accepted during the course of submission, the courts below have committed no illegality in coming to the conclusion that the plaintiffs cannot get the relief as prayed. On other issues as well, the findings have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon.

6. This Court has not been persuaded to come to the conclusion that those findings are perverse or unreasonable in any



manner.

7. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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