

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.432 of 2008

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1. Md. Jainul @ Md. Ainul.
 2. Md. Nizam @ Md. Seraj Ali.
 3. Sk. Reyaz.
 4. Md. Zakir.
 5. Md. Anwar Khan.
 6. Md. Asghar, all sons of appellant namely Seikh Quddus Miya @ Kudrus Kian, resident -Dhanbah, P.O. Mananpur, P.S. Chanan, District-Lakhisarai.

.... Appellant/s

Versus

1. Dwarika Sao son of late Dhaneshwar Sao.
2. Kulbanti Devi wife of late Banarsi Sao.
3. Parmanand Sao.
4. Shankar Sao.
5. Nawal Kishore Sao @ Sundar Sao.
6. Saheb Sao.
7. Wakil Sao no. 3 to 7 sons of late Banarsi Sao.
8. Mahesh Sao.
9. Sardar Sao no. 8 and 9 sons of Dwarika Sao, all resident of village-Dhanbah, P.O. Mananpur, P.S. Chanan, District-Lakhisarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. MD. Najmul Hoda Adv.
For the Respondent/s : Mr. Mahesh Pd. Singh, Adv.
Mr. Mukesh Kumar, Adv.
Mr. Rewti Kant Raman, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-02-2017

Heard Mr. Najmul Hoda, learned counsel appearing on behalf of the appellants.

The plaintiffs are the appellants in this appeal against the



judgment and decree of reversal dismissing the suit filed by the plaintiff.

The plaintiff filed the suit for declaration of title and confirmation of possession after the declaration that the sale deed dated 21.02.1944 executed by Bibi Batulan in favour of the defendants was not legally valid and not binding upon the plaintiff. The defendants contested the claim of the plaintiff and had further come out with the assertion that in the year 1984 i.e. on 10.07.1984 the property purchased by the sale deed dated 21.02.1944 was transferred to Bhola Tanti etc. by the defendants.

It has not been disputed by the learned counsel for the appellants that the plaintiff has not sought any relief against the sale deed dated 10.07.1984 and the purchasers of the said property through the sale deed have also not been impleaded as defendants in the suit.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree as prayed. However, in appeal by the defendants, the appellate court below, on reappraisal of evidence, has come to the finding that the suit filed by the plaintiff was barred by limitation and also suffered from non-joinder of necessary party. Accordingly, the appeal has been allowed dismissing the suit of the plaintiff by the impugned judgment and decree.

Mr. Hoda, learned counsel for the appellants has submitted



that the appellate court below has not considered the evidence adduced on behalf of the plaintiff and, therefore, the dismissal of the suit by the appellate court below cannot be sustained. Learned counsel has also placed the findings of the trial court as well as the appellate court in order to elaborate and substantiate his submissions. During the course of submission, however, learned counsel for the appellants could not advance cogent and convincing reasons for grant of the relief as prayed by the plaintiff in absence of any relief against the sale deed dated 10.07.1984 executed by the defendants in favour of Bhola Tanti and others (Ext. A/1) and also regarding the fact of knowledge of the sale deed to the plaintiff in the mutation proceeding of the year 1992-93 filed by the wife of the plaintiff wherein the defendants resisted the prayer for mutation by the wife of the plaintiff over the suit land. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the suit has been filed for declaration of title and possession over the suit land after the declaration that the sale deed dated 21.02.1944 executed by Bibi Batulan in favour of the defendants is not a legally valid document and is not binding upon the plaintiff. It is evident, therefore, that the plaintiff has accepted the execution of the sale deed by Bibi



Batulan in the year 1944. The suit has been filed in the year 2002. It is also evident from the material evidence on record that the defendants came out with specific case of transfer of the suit property by sale deed dated 10.07.1984 (Ext. A/1) in favour of Bhola Tanti and others but the plaintiff has omitted to claim any relief against the said sale deed or to implead the purchasers in the suit as party defendants. There is also no explanation furnished on behalf of the appellants during the course of submission to the fact that when the wife of the plaintiff claimed mutation of the suit land in her name in mutation case no. 1149 of 1992-93, the defendants' claim on the basis of the sale deed dated 21.02.1944 had been noticed as apparent from the order passed in the said mutation case (Ext. C/1). It is apparent that the said mutation proceeding had been initiated in the year 1992-93 but the suit has been filed by the plaintiff in the year 2002 claiming that the findings in the mutation proceeding could not be binding upon the plaintiff as the said mutation proceeding was initiated by the wife of the plaintiffs. However, again there is no explanation on behalf of the plaintiff in the courts below and even before this Court as to how the wife of the plaintiff claimed mutation of her name for the suit land during the life time of the plaintiff and if her claim was legal and valid then how the plaintiff could have claimed his own title over the suit land in the year 2002. Learned counsel for the appellants also could



not persuade this Court to take the view that in absence of the relief against the sale deed dated 10.07.1984 and in absence of the purchaser of the suit property through said sale deed from the defendants, the plaintiff could be granted the declaration of title over the suit property. This Court, therefore, comes to the conclusion that the findings by the appellate court below are not vitiated in any manner and are based upon consideration of the relevant facts and circumstances as well as the evidence which were acceptable and could have been relied upon.

In the ultimate eventuate, this Court finds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
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