

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.609 of 2011

=====

Surendra Mishra S/O Indrashan Mishra R/O Village - Rampur Bujurg, P.S. And District - Deoria (U.P.) At Present Resident Of Village - Dherani Chhapar, Pargana - Chaubar, P.S. Mairwa, P.O. Bargao Via Mairwa, District - Siwan

..... Plaintiff Respondent 1st set

.... Appellant

Versus

1. Birnda Devi W/O Beni Madhav Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.S. Mairwa, P.O. Bargaon (Mairwa) District – Siwan
2. Beni Madhav Tiwary S/O Late Kapildeo Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.S. Mairwa, P.O. Bargaon (Mairwa) District - Siwan
3. Anand Kumar Tiwary S/O Beni Madhav Tiwary, Under The Guardianship Of His Father Beni Madhav Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.S. Mairwa, P.O. Bargaon (Mairwa) District – Siwan (deleted)
4. Sabitri Devi D/O Late Kapildeo Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.S. Mairwa, P.O. Bargaon (Mairwa) District - Siwan
5. Sumitra Devi D/O Late Kapildeo Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.S. Mairwa, P.O. Bargaon (Mairwa) District - Siwan
6. Sri Kant Tiwary S/O Late Ram Baran Tiwary R/O Village - Dherni Chhpar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan
7. Prahalad Tiwari S/O Raj Mangal Tiwary R/O Village - Dherni Chhapar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan
8. Bharat Tiwary S/O Raj Mangal Tiwary R/O Village - Dherni Chhapar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan
9. Chhote Lal Tiwary S/O Raj Mangal Tiwary R/O Village - Dherni Chhapar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan
10. Anil Tiwary S/O Raj Mangal Tiwary R/O Village - Dherni Chhapar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan
11. Akhilesh Tiwary S/O Sri Kant Tiwary R/O Village - Dherni Chhapar, Pargana - Choubar, P.O. Bargaon (Mairwa), P.S. Mairwa, District - Siwan

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. DHANANJAY KUMAR TIWARY

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-06-2017

1. 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 reversal. The plaintiff filed a suit for declaration



of his title over the suit property with further declaration that the compromise decree passed in T.S. No. 73 of 1997 is not binding upon the plaintiff. Manifestly there is no prayer or relief on behalf of the plaintiff for setting aside the said compromise decree.

3. The matrix of fact discloses that earlier defendant No. 2 had filed T.S. No. 73 of 1997 wherein the defendant No. 1 (vendor of the plaintiff) was a party. The said suit was disposed of in terms of the compromise and a compromise decree was accordingly prepared. The vendor of the plaintiff thereafter never challenged the said compromise decree wherein the suit property was given to defendant No. 2. However the defendant No. 1 subsequently sold the suit property to the plaintiff, who has filed the present suit for the reliefs as mentioned above. The contesting defendant No. 2 came out with the specific plea that the suit property was given to defendant No. 2 in the compromise decree and, therefore, the defendant No. 1 was left with no right, title and interest in the suit property to transfer the same in favour of the plaintiff.

4. The trial court came to the finding that the compromise decree passed in T.S. No. 73 of 1997 was not legally valid and accordingly granted the decree to the plaintiff as prayed. In appeal, however, the appellate court below has reversed the finding of the trial court, set aside the judgment and decree passed by the trial court and has allowed the appeal dismissing the suit filed by the plaintiff.

5. Learned Counsel appearing for the appellant has submitted that the sale deed executed by defendant No. 1 in favour of the plaintiff would be voidable document and as the same has not been challenged or sought to be avoided, the plaintiff has got all the legal right



to get his title declared. It has been further canvassed referring to the provisions of Hindu Minority and Guardianship Act, that the suit filed by defendant No. 2 i.e. T.S. No. 73 of 1997 and the compromise decree therein passed against the interest of the minor would not be valid. It has also been emphatically contended that the appellate court below has not considered the aforesaid aspect and, therefore, substantial question of law arises for consideration in this appeal in view of the sale deed made in favour of the plaintiff being only voidable. The learned Counsel has also relied upon a decision in the case of ***Amirtham Kudumbah vs Sarnam Kumdumban AIR 1991 SC 1256*** in support of his submission.

6. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that there has been earlier a suit i.e. T.S. No. 73 of 1997 between defendant No. 1 (vendor of the plaintiff) and the defendant No. 2. It is also not in dispute that the defendant No. 1 participated in the proceeding of the suit, which culminated in compromise and a compromise decree was passed. In the said compromise decree the suit property was agreed to be given to defendant No. 2. The plaintiff who is the subsequent purchaser of the suit property from defendant No. 1 has filed the suit for declaration of his title over the suit property and for declaration that the compromise decree passed in the said T.S. No. 73 of 1997 is not binding upon the plaintiff. No prayer, however, has been made for setting the said compromise decree. Fact is not in dispute that after passing of the said compromise decree the defendant No. 1 was left with no right, title and interest in the suit property to transfer it to the plaintiff. Even if it is accepted, for the time being, that the said compromise decree was vitiated for any reason,



still the law requires the same to be questioned and set aside at the instance of the parties to the compromise decree or their successor. The plaintiff is admittedly the successor in interest of the defendant No. 1 by purchasing the suit property, but the plaintiff has omitted to seek the relief for cancellation or setting aside the said compromise decree. It is not the case of the plaintiff that he was not aware of the said compromise decree but still he has omitted to seek appropriate relief against the said compromise decree. The appellate court below has come to the conclusion that the said compromise decree still subsists and on that basis has declined to grant the relief for declaration of title of the plaintiff on the basis of his subsequent purchase from defendant No 1. The submission on behalf of the appellant, that the sale deed executed by defendant No. 1 in favour of plaintiff-appellant would be voidable and unless and until the same is challenged in accordance with law the title is bound to be declared in favour of the plaintiff, is outrightly misconceived. It is for the plaintiff to establish his title as claimed and has to stand on his own legs. The learned Counsel for the appellant has repeatedly submitted that the defendant No. 2 had no right to institute the earlier suit or for that matter the compromise decree passed therein was against the interest of minors. However, there is no plea or evidence aliunde that the minors whose interest was said to be involved in the aforesaid T.S. No. 73 of 1997 had ever decided to question the compromise decree passed by the court. As such this Court does not find that the findings by the appellate court below are vitiated. Those findings have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon. This Court has not been



persuaded to find perversity or unreasonableness in the same. The decision in the case of **Amirtham Kudumbah** (supra) has been rendered in different setting of facts and not at all attracted to the facts of the present case.

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

8. The Interlocutory Application (I.A. No. 3990 of 2017) accordingly stands disposed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.08.2017
Transmission Date	N/A

