

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.387 of 2016

1. Krishnandan Singh S/o-Late Raj kumar singh, resident of village- Nadiauna Kharjamma P.o Dahpar, P.s Noorsarai, Dist-Nalanda

... .. Appellant

Versus

1. Vijay Singh , s/o late Madan Singh
2. Fhugali Devi @ Pugali devi, W/o- vijay singh
Both resident of village -Nadiauna, Kharjamma P.o-Dahpur, P.S- Noorsarai, Dist-Nalanda

... .. Respondents

Appearance :

For the Appellant/s : Mr. Surendra Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 31-10-2017 Heard learned Counsel for the appellant.

The defendant, in Title Suit No. 252 of 2009, which came to be decreed in favour of the plaintiffs, by the judgment and decree, dated 28.01.2015/12.02.2015, passed by learned Sub Judge VII, Nalanda, at Biharsharif, is the appellant in the present second appeal, and is aggrieved by the judgment and decree, dated 25.06.2016, passed by learned Additional District Judge I, Nalanda, at Biharsharif, in Title Appeal No. 03 of 2015, whereby he has affirmed the Trial Court's judgment and decree.

It was the plaintiffs' case before the Trial Court that Plot No. 517, under Khata No. 275, admeasuring 09 decimals, including house and sahan, was recorded in the name of Banshi



Rai, in the survey khatiyan. Banshi Rai was, admittedly, the ancestor of the plaintiffs. There is another plot, Plot No. 516, adjacent on the eastern side of Plot No. 517, belonging to the defendant. Towards western side of the suit plot, there is Plot No. 518, belonging to the plaintiffs, recorded in the survey in the name of Mosmat Mahtabo, his grand aunt, who died issueless. It was the case of the plaintiffs that the father of plaintiff no. 1 had sold 05 decimals out of Plot No. 517 and 01 decimal from Plot No. 518, through a registered sale deed, dated 30.07.1970, to a co-villager. Subsequently, the plaintiffs purchased the said 06 decimals of land through registered sale deed, dated 26.09.2001, from the person to whom the said land were sold on 30.07.1970. With the case that the defendant was attempting to construct house on the eastern side of Plot No. 517, by making encroachment, and subsequently constructed wall on 28.10.2009, the cause of action arose, leading to filing of the suit.

The defendant, who is the appellant herein, contested the suit with a plea that the Plot No. 518, situated adjacent to Plot No. 517 was recorded in the survey khatiyan in the name of Mosmat Mahtabo and the house was constructed by the defendant on Plot No. 516. It was the specific case of the



defendant that the land measuring 60 feet north to south and 18 feet east to west, in Plot No. 517 was orally purchased by the defendant's father from the grand father of the plaintiff no. 1 nearly 50 years ago on payment of consideration amount of Rs. 75/- and thereafter the wall was constructed. The defendant/appellant took the plea of adverse possession on the ground that he had been in possession over the suit property for more than 50 years.

Apparently, thus, the case of the defendant before the Trial Court was based on oral purchase made by the father of the defendant and alternative plea of adverse possession.

From the impugned judgment, I find that the Trial Court, upon consideration of the pleadings on record, framed altogether 8 (eight) issues, out of which issue nos. VI and VII are relevant, which are as follows:

“VI. Whether the defendant has encroached the suit property and constructed a wall thereon dated 28.10.09?

VII. Whether the story of oral purchase with respect to suit property by the defendant's father from the grand father of plaintiff no. 1 is correct or not?”



The parties adduced their respective evidence at the trial. The Trial Court, on consideration and analysis of evidence on record, came to specific finding that the appellant/defendant could not establish his case of oral purchase made from the grand father of the plaintiff no. 1. The Trial Court also held that the appellant-defendant had encroached upon the suit property by raising wall in the absence of the plaintiffs on 28.10.2009 and, thus, rejected the claim of the defendant that the wall was raised long back.

The lower appellate court has concurred with the finding recorded by the Trial Court on the said issues. The plea of adverse possession taken on behalf of the appellant-defendant has also been rejected by the lower appellate court on the ground of inconsistent stand taken on behalf of the appellant-defendant.

Learned Counsel appearing on behalf of the appellant-defendant, assailing the impugned judgment and decree, has submitted that the Courts below have misconstrued the sale deed, dated 26.09.2001, whereby the plaintiffs had purchased back the land earlier sold to one Awadh Singh. He has submitted that the suit property could not be treated to be part of the said registered sale deed, dated 26.09.2001. He has accordingly



submitted that the present second appeal involves substantial question of law, i.e. as to whether the impugned judgment and decree passed by the Courts below is vitiated due to incorrect reliance on Exhibit-1, which is not, at all, connected with the suit property.

He has also submitted that the concurrent findings recorded by the Courts below, holding the plaintiffs to have acquired title and possession through sale deed, dated 26.09.2001, are perverse.

I am not convinced with the submissions advanced on behalf of the appellant that the concurrent findings recorded by the Courts below are perverse. The Trial Court, as also the lower appellate court, have considered the evidence adduced at the trial and have reached concurrent findings as regards plaintiffs' title over the suit property. The fact that the appellant took the plea of adverse possession subsequently is indicative of the fact that he accepted the title of the plaintiffs over the suit property. What is being urged on behalf of the appellant/defendant can be said to be the questions of fact. In my view, the second appeal does not involve any substantial question of law to be determined by this Court.

This appeal does not deserve admission and is,



accordingly, dismissed.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J)

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