

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.271 of 2014

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Jethu Ray son of Late Subalal Ray, Resident of village- Dadhia Belar, P.O.-
Pitaunjhia, Pargana- Saraisa, P.S.- Samastipur Muffasil, District- Samastipur

.... Appellant

Versus

1. Hemant Kumar Ray
2. Braj Kumar Ray
3. Sumant Kumar Ray All sons of Late Jagadish Ray
- 3 (a) Mostt. Parvati Devi W/o Late Jagadish Ray, All residents of Village- Dadhia Belar, P.O.- Pitaunjhia, P.S. Samastipur Muffasil, District- Samastipur
4. Jamun Ray S/o Late Subalal Roy
5. Ramadhar Roy S/o Jamun Roy
6. Satrugan Roy S/o Jamun Roy
7. Ram Ratan @ Khonma Roy S/o Jamun Roy

.... Respondents

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Appearance :

For the Appellant/s : Mr. Bhubneshwar Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-01-2017

Heard Mr.Kesho Srivastava, learned senior counsel

appearing for the appellant.

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

The plaintiff filed the suit for declaration of title
over the suit land on the basis of the compromise decree passed in
Partition Suit No.101/1968 and besides seeking consequential reliefs,
the plaintiff also prayed for the relief of cancelling the sale deed
dated 05.02.1991 executed by the intervener defendant Ramchandra
Rai in favour of the defendant no.1 Hemant Kumar Rai.



The facts are not in dispute that earlier there was a suit for partition being Partition Suit No.101/1968 between the parties. The intervener defendant Ramchandra Rai was admittedly the brother of the plaintiff and was a cosharer of the plaintiff in the joint family property. However, the said Partition Suit No.101/1968 was disposed of on the basis of compromise between the plaintiff and his another brother Jamuna Rai who was also defendant therein. Admittedly Ramchandra Rai (intervener defendant of this suit) did not join the compromise in the said Partition Suit No.101/1968. The plaintiff later on filed the present suit for the reliefs as mentioned above. The defendants including the intervener defendant Ramchandra Rai contested the assertions made by the plaintiff and resisted the reliefs prayed by the plaintiffs.

Both the courts below after considering the pleadings and evidence on behalf of the parties have concurrently returned the findings on the material issues against the plaintiff. The suit was accordingly dismissed and thereafter the appeal filed by the plaintiff has also been dismissed by the impugned judgment and decree.

Mr. Srivastava, learned senior counsel appearing for the appellant has mainly raised two points for consideration before this Court. It has been firstly submitted that the findings by both the



courts below have been recorded upon misconstruction and misreading of the material evidence adduced on behalf of the plaintiff. It has been next contended that the suit was barred by limitation and the finding as recorded by the appellate court below in this regard is not sustainable in law in the facts and circumstances of the case. Elaborating his submissions it has been contended that the courts below have committed error of record in taking into notice the deposition made by the witnesses on behalf of the plaintiff including the plaintiff himself and as such the findings on that basis as recorded by both the courts below are vulnerable. In the context of the bar of limitation, it has been contended that after the execution of the sale deed by the intervener defendant Ramchandra Rai in favour of the defendant no.1 Hemant Kumar Rai , the plaintiff filed a criminal case in the year 1991 itself and after the decision of that criminal case when the plaintiff was threatened with dispossession, the present suit was filed. On the base of these facts, it has been propounded that the cause of action for the suit had in fact had arisen in the year 1998 after the threat of dispossession to the plaintiff by the defendants. It has also been propounded that there is distinction between the starting point of limitation as envisaged under Article 58,59 and 113 of the Limitation Act and as such the courts below have wrongly decided the issue of limitation against the plaintiff. No other submission has been



made on behalf of the appellant.

After considering the submissions and the perusal of the judgments of both the courts below, it is manifest that the intervener defendant in the suit namely Ramchandra Rai is admittedly the own brother of the plaintiff and was entitled to a share in the family property. It is, however, not in dispute that in the compromise filed in the earlier Partition Suit No.101/1968 the intervener defendant Ramchandra Rai had not joined. The plea in this regard as raised on behalf of the plaintiff that he had met a civil death as he was unheard for the requisite statutory period, has not been accepted by both the courts below on the basis of the materials and evidence on record. The courts below have taken into notice the deposition of the plaintiff where he had accepted that Ramchandra Rai was alive when the earlier suit was filed. The courts below have also taken into notice the fact that the identity of the intervener defendant Ramchandra Rai in the present suit was also not challenged by the plaintiff. The findings recorded by the courts below on this issue is upon the basis of scrutiny of evidence and this Court has not been persuaded to find the same as perverse or unreasonable in any manner. It is not the case or submission on behalf of the appellant that the findings have stemmed out of non-consideration of evidence or are dehors the settled principles of law. It is well settled that a second appeal is not “a third



appeal on facts”. This Court, therefore , is not inclined to interfere with the concurrent findings of fact as recorded by both the courts below that the decree passed in the previous suit i.e. P.S.No.101/1968 was not legal and valid and on the said basis the plaintiff could not be granted a declaration of title over the suit land.

The next limb of submission on behalf of the appellant is also misconceived in view of the admitted fact that the plaintiff had the knowledge of the sale deed in question in the year 1991 itself as a criminal case was instituted by the plaintiff in that regard. According to the case of the plaintiff himself the suit land is his exclusive property and the said sale deed had cast a cloud over his title compelling him to file the criminal case. As such the distinction which has been tried to be developed on behalf of the appellant with regard to Article 58,59 and Article 113 of the Limitation Act is clearly misconceived. In any view of the matter, the residuary Article 58 would at least be applicable in the facts of the present case even after excluding Article 59 but in both the provisions the starting point of limitation is when the facts entitling the plaintiff to seek the relief become ‘first’ known to the plaintiff. The submission that the cause of action for filing the suit arose only when there was a threat of dispossession to the plaintiff is not sustainable in the present case either on principle or by any precedent. The courts below have rightly



come to the conclusion that the suit filed by the plaintiff against the sale deed of the year 1991 was barred by limitation.

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)

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