

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.289 of 2016

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1. Sumitra Devi @ Sunita Devi, w/o late Laxmi Sah,
2. Rajan Sah, S/o late Laxmi Sah
3. Asha Devi, w/o late Shambhu Sah,
4. Kailash Sah
5. Satish Sah, both sons of late Laxmi Sah
All r/m-Mulchand Road Lane, Ward No.-4 old, new 6, P.S. & District-Samastipur.

.... Appellant/s

Versus

Dr. Gopal Prasad Gupta & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhay Shankar Singh
Mr. Rakesh Chandra
Mr. Amit Kr. Mishra
For the Respondent/s : Mr. J.S. Arora, Sr. Adv.
Mr. Pankaj Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 23-11-2017

This second appeal has been filed under Section 100 of the Code of Civil Procedure (*hereinafter referred to as "C.P.C."*), where the appellants are aggrieved by judgment and decree, dated 22.03.2016, passed by learned Additional District Judge-IV, Samastipur in Eviction Appeal No. 3/89, whereby he has allowed the appeal and has reversed the findings of learned Munsif II, Samastipur in Title (Eviction) Suit No. 65 of 1975, whereby the said suit was dismissed.

2. The appellants were defendants before the trial court. The plaintiff after having lost before the trial court had filed appeal, which came to be allowed by impugned judgment and decree, holding existence of relationship of landlord and tenant between the plaintiff and



defendant. The trial court had held that there did not exist any relationship of landlord and tenant between the parties before the court.

3. Assailing the impugned judgment and decree of the first appellate court, learned counsel appearing on behalf of the appellants, has submitted that the appellate court has committed gross error by deciding title in favour of the plaintiff with respect to the suit property in a summary proceeding. He has also submitted that while reversing the findings of the trial court, the appellate court ought to have recorded reasons as to how the findings recorded by the trial court were wrong. It has further been submitted that the first appellate court has not considered the oral and documentary evidence, available on record, in correct perspective. On the basis of these submissions, according to him, following are the substantial questions of law, which the present second appeal involves:

- “1. Whether the judgment passed by ld. Lower Appellate Court is perverse as it is against the law?
2. Whether in a eviction suit complex question of title can be adjudicated?
3. Whether the judgment of the lower appellate court is perverse as he has not considered the evidence of the parties in right prospective?
4. Whether the judgment of the ld. Lower appellate court is bad in law as before reversing the judgment of the ld. Trial court he has to consider that except the showy sale deed no document was on record to show the claim of the plaintiff/respondent and also that there is no mutation in the name of the plaintiff/respondents either in Municipality or in State of BIHAR?



5. Whether the finding of the ld. Appellate court is against the law as without considering the oral as well as documentary evidence of the parties he has reversed the well discussed judgment of the trial court?
6. Whether the ld. Lower appellate court was not duty bound to assail the reasoning before reversing the judgment of the trial Court?"

4. I have also heard Mr. Arora, learned senior counsel appearing on behalf of the plaintiff-respondent.

5. He has submitted that there is no perversity in findings recorded by the first appellate court, inasmuch as, such findings cannot be said to be contrary to the evidence, available on record, nor they can be said to be without any evidence at all. He has submitted that this Court may not be required to re-appreciate the evidence, which has already been done by the court below, unless, substantial questions of law arises out of second appeal.

6. Before I deal with rival submissions, I may briefly take note of the case of the parties, which is evident from the decisions of the court below, which are there on record.

7. It was the plaintiff's case that defendant no. 1 Saukhi Shah, Laxmi Shah and others had sold the suit premises through a registered sale deed dated 9.07.1966, whereafter, the plaintiff was put in possession of the suit premises. Father-in-law of the plaintiff was approached by defendant no. 1 for letting out the suit



house on rent, which was let out on monthly rental of Rs. 25/- after executing *Kirayanama* in this regard on 01.02.1969.

8. It was also the case of the plaintiff that the defendant initially paid rent to the plaintiff, but subsequently stopped making payment of rent from 01.01.1973. When on demand, defendant no. 1 failed to pay the rent amount and refused even to reply to the notice sent by the plaintiff, the suit came to be filed.

9. The case of the defendant, on the other hand, as set up in the written statement and additional written statement was that the said registered sale deed dated 09.07.1966 was a showy document, which was never acted upon. According to defendant no. 1, the suit house was owned by the joint family of defendant no. 1.

10. As regard execution of *Kirayanama* and payment of rent, defendant no.1 completely denied the same. The trial court framed altogether nine issues including issue no. V, i.e. 'as to whether there was any relationship of landlord and tenant between the plaintiff and defendant' and decided the said issue in negative. On the question of execution of *kirayanama*, the trial court held that L.T.I. and signature of the said defendant no. 1 was taken on stamp paper on some pretext or the other and thus accepted the case of the defendant.

11. There cannot be any dispute over the fact that there was a sale deed executed on 09.07.1966 in favour of the plaintiff



with respect to the suit property. The plea of defendant no. 1 with respect to the said registered sale deed has been that it was a showy document. It has been stated at the bar that till date the said sale deed dated 09.07.1966 has not been challenged by the defendant in any court by instituting a suit.

12. The first appellate court, on the other hand, relied on the said registered sale deed dated 09.07.1966, for the purpose of considering the case of the plaintiff to decide the issue of relationship of landlord and tenant and has allowed the appeal.

13. It is in this background that it is the plea, on behalf of the appellants, that the finding recorded by the court below amounts to deciding the title of the plaintiff on the basis of said registered deed dated 09.07.1966 in a summary proceeding, which is erroneous and therefore needs interference. The first appellate court, while considering the materials on record, had considered and rightly so, the evidence in the form of registered sale deed dated 09.07.1966 executed in favour of the plaintiff. Further on appreciation of evidence and materials on record, in view of the finding that the *kirayanama* contained the signature of defendant no. 1, held that there existed relationship of landlord and tenant between the plaintiff and defendant no. 1.

14. On examination of the judgment of the first



appellate court, I find that it satisfies the essential requirements of the provisions under Order 41 Rule 31 of the C.P.C. Further, learned counsel for the appellants has relied on a decision of Hon'ble Supreme Court in case of *Shasidhar & Ors. Vs. Smt. Ashwini Uma Mathad & Anr.* reported in *2015(2) PLJR (SC) 77* with special reference to paragraphs 17 and 18 thereof. The said decision does not help the appellants' case since the judgment of the first appellate court cannot be said to be hit by what has been laid down by the Hon'ble Supreme Court.

15. Paragraphs 17 and 18 of the said decision, which are underlying with the provision under Order 41 Rule 31 of the C.P.C., are being reproduced hereinbelow:

“17. The above view has been followed by a three-Judge Bench decision of this Court in *Madhukar & Ors. Vs. Sangram & Ors.*, (2001)4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

18. In *H.K.N. Swami Vs. Irshad Basith*, (2005)10 SCC 243, this Court (at pg. 244) stated as under:-

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on



facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.”

16. As has already been noted above, in my view learned appellate court below has recorded its findings both on the question of facts and law involved in the case before him.

17. In my view, this second appeal does not involve any substantial question of law, requiring determination by this Court. The questions, which have been raised and have been noted above, cannot be said to be substantial questions of law for determination under Section 100 of the C.P.C.

This appeal has no merit, accordingly, is dismissed.

(Chakradhari Sharan Singh, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
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