

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.141 of 2010

-
-
1. PAHWARI SAH S/O LATE RAJA RAM SAH R/O VILLAGE - HUSEPUR TOLA, BHARPATIA, P.O.- RADHAGANJ BAZAR, P.S.- BHORE, DISTT.- GOPALGANJ
 2. SHRI KISHUN SAH S/O LATE RAJA RAM SAH R/O VILLAGE - HUSEPUR TOLA, BHARPATIA, P.O.- RADHAGANJ BAZAR, P.S.- BHORE, DISTT.- GOPALGANJ

... .. Appellant/s

Versus

DULARI DEVI D/O BAIJNATH SAH (DEAD), W/O HARIHAR SAH R/O VILL.- HUSEPUR TOLA, BHARPATIA, P.O.- RADHAGANJ BAZAR, P.S.- BHORE, DISTT.- GOPALGANJ

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. PRABHAKAR DWIVEDI
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 01-09-2017

1. The present second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been preferred by the appellants, being aggrieved by the judgment and decree, dated 21.01.2010, passed by learned 2nd Additional District Judge, Gopalganj, in Title Appeal No. 4 of 2002/11 of 2009, whereby the learned lower appellate court has dismissed the appeal and has, thus, affirmed the judgment and decree, dated 12.12.2001 and 03.01.2002, passed by the learned 2nd Additional Munsif, Gopalganj, in Title Suit No. 212 of 1994/50 of 1998.



2. This is to be noted that the present second appeal was filed by the defendant-appellant No. 1, namely, Pahwari Sah, who died during the pendency of the present appeal and, accordingly, he has been substituted by his legal representatives.

3. Heard learned Counsel for the appellants.

4. Before I refer to the substantial questions of law, which, according to the learned counsel for the appellants, the present second appeal involves, I may briefly take note of the case of the plaintiff first.

5. The suit land, according to the plaintiff, was recorded in the R.S. Khatyan in the name of Dasai Bhar, son of Rewati Bhar, resident of Village-Hussaipur, P.S.-Mirganj, District-Gopalganj. The said Rewati Bhar had two sons, namely, Dasai Bhar and one Bhrigun Bhar. Bhrigun Bhar was residing, at the relevant point of time, outside the Bihar and the R.S. Khatyan was accordingly prepared in the name of Dasai Bhar. The said Dasai had a daughter, namely, Sahati, who was married to one Mahangu Bhar. After the death of Dasai Bhar, the suit land devolved on his daughter Sahati. The said Sahati had two sons, namely, Balchand and Chunnu. After the death of said Sahati, Balchand came in possession of the said suit land, which originally belonged to Dasai Bhar. Chunnu died unmarried, issueless, in jointness with



Balchand. The said Balchand had four sons, namely, Gobar, Shanker, Briksha and Langar. Gobar and Shanker died unmarried. Briksha and Langar had shifted to Maripur (their *Nanihal*), Muzaffarpur. Before his death, the said Gobar is said to have executed a sale deed in favour of Baran Bhar, son of Bhrigun Bhar, who was the full brother of Dasai Bhar. The said Baran Bhar had two sons, namely, Dukhanti and Yamuna. Dukhanti had two sons, namely, Mahendra and Parmanand Bhar. Yamuna is said to have got the suit land through family arrangement. The plaintiff purchased the suit land for the benefit of his daughter from said Yamuna. The plaintiff had executed deed of gift in favour of his daughter and the daughter's son. It was the further case of the plaintiff that his name was, accordingly, mutated over the suit land and he had been paying rent regularly to the State of Bihar. It was also his case that son of Dukhanti Bhar had transferred his share of lands, which he had inherited from Baran Bhar, to different persons and they were also in possession of those transferred lands.

6. The plaintiff filed the suit before the court below for confirmation of possession over the suit land and also for declaration of his title.



7. The defendants contested the suit on the various grounds and developed their case that Balchand and Chunnu were not the sons of Sahati; rather, Sahati had only one son, namely, Chokat. The title over the suit land after the death of said Sahati devolved on Chokat. The said Chokat had transferred the land in favour of one Kishori Raut, through registered sale deed. Singaria Devi was the wife of said Kishori Raut. After the death of said Kishori Raut, Singaria executed sale deed in favour of the original appellant No. 1, namely, Pahwari Sah (since deceased), and appellant No. 2, namely, Kishun Sah.

8. The learned Trial Court, upon appreciation of evidence adduced by the parties, came to a conclusive finding that the case of the defendants that Chokat Bhar was son of Sahati, wife of Mahangu Bhar, was doubtful and could not be proved by the defendants. The learned Trial Court held that the sale deed executed by him only for the lands bearing plot no. 5928 of Kishori Raut, being part of the disputed land, was also doubtful and therefore, sale deeds of the defendants executed by Singariya Devi, wife of Kishori Raut, was also of no use. The learned Trial Court concluded that the sale deed executed in favour of the plaintiff by legal heirs of the family of original tenant Dasai Bhar was valid and operative.



9. The appellants preferred appeal before the Appellate Court below, which has affirmed the findings recorded by the learned Trial Court that Chokat was not son of Sahati, rather Balchand was the son of Sahati, by the impugned judgment and decree, dated 21.01.2010.

10. It is the submission made on behalf of the appellants that the learned Courts below erred in coming to a finding that the defendants could not establish before the learned Courts below that Chokat was son of Sahati. He has submitted that the learned Courts below wrongly disbelieved the sale deeds, dated 13.08.1946 and 14.07.1949.

11. On perusal of the impugned judgments and decrees passed by the learned Courts below, in my view, it appears that the core dispute, which the learned Courts below were required to adjudicate upon, was whether Chokat was son of Sahati or Balchand was her son.

12. A pure question of fact to this effect was required to be adjudicated upon by the Court. There is concurrent finding on this question of fact that Chokat was not the son of Sahati; rather Balchand was the son of Sahati. This disputed question of fact has been adjudicated upon by the courts on



appreciation of evidence. The findings do not appear to be palpably erroneous, based on wrong legal principles.

13. The questions of law, as formulated in the memo of present appeal and reiterated at the stage of submissions made on behalf of the appellants, in my view, cannot be termed to be substantial questions of law, which require adjudication in the present case.

14. I find no merit in this appeal. This appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-09-2017
Transmission Date	05-09-2017

