

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.220 of 2014

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Janardan Singh Son of Late Barni Singh Resident of Village-Kendui, Police Station
Magadh Medical College, District-Gaya.

.... Appellant/s

Versus

Smt. Sachida Devi @ Savita Devi Wife of Shri Anil Kumar Singh Resident of
Village-Kendui, Police Station Magadh Medical College, District -Gaya, At present
Professor Colony, Bengali Tola, Laheriya Sarai, Police Station Laheriya Sarai,
District-Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. K.N. Chaubey, Sr. Adv.

For the Respondent/s : Mr. Ashok Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-04-2017

Heard Mr. K.N. Choubey, learned senior counsel for the
appellant. Mr. Ashok Kumar Singh, learned counsel for the
respondent is present.

The defendant in the suit is the appellant in this appeal
against the judgment and decree of affirmance granting the decree to
the plaintiff as prayed.

The plaintiff filed the suit for declaration of her right and
title over the suit property described in detail in schedule-A of the
plaint. The genealogical table given in the impugned judgments of the
courts below has not been disputed on behalf of the appellant. From
this genealogical table, it transpires that the plaintiff and the defendant



are the descendants of Chetan Singh. The further fact is also not in dispute between the parties that in the Partition Suit No. 17 of 1929 between the ex landlord and Mokarrirdar, Chetan Singh was impleaded as defendant no. 30. During the pendency of that partition suit, Chetan Singh died and was substituted by his heirs and legal representatives being his sons, grand sons and great sons namely his sons Kesho Singh, Janardan Singh also known as Jay Singh, and his grand sons and great grand sons namely Padum Singh, Barni Singh, Ram Prasad Singh, Shital Singh and Mahendra Singh all of whom were arrayed as defendant nos. 41 to 47 in the said suit. The plaintiff is the daughter of late Mahendra Singh who also left behind his widow Lalpati Devi. The sole defendant Janardan Singh is one of the descendants of Jay Singh.

It has also not been disputed between the parties that the above partition suit no. 17 of 1929 was disposed of by a compromise decree (brought on record of the suit as Ext. 5 along with its Hindi translation). This compromise decree is the source of rival claim of title over the suit land which is 12 katha of land out of total 1 bigha 4 katha of C.S. plot no. 668. It has been the case of the plaintiff that the total 1 bigha 4 katha land of C.S. plot no. 668 was jointly allotted to the defendant nos. 41 to 47 in the compromise decree passed in partition suit no. 17 of 1929. To the contrary, the defendant has come



out with the case that the entire 1 bigha 4 katha of C.S. plot no. 668 was exclusively allotted to Jay Singh by the said compromise decree.

After scrutiny of the evidence adduced by the parties, both the courts below have come to the conclusion that there is no ambiguity in the contents of the compromise decree (Ext. 5), and after applying 'prudent man test' and giving 'plain and literal' meaning the courts below have discarded the claim of the defendant that Jay Singh was exclusively allotted 1 bigha 4 katha of plot no. 668 and have come to the conclusion that the defendant nos. 41 to 47 were jointly allotted 1 bigha 4 katha land of plot no. 668 by the said compromise decree (Ext. 5). Both the courts below have further also come to the conclusion that later on by partition through 'Deorhbandi' the predecessor of the plaintiff was allotted 12 katha land (suit land) out of 1 bigha 4 katha of C.S. plot no. 668. The suit was accordingly, decreed and thereafter the appeal has been dismissed by the impugned judgment and decree.

Mr. Choubey, learned senior counsel appearing on behalf of the appellant has submitted that both the courts below have not properly considered the evidence on behalf of the parties and the findings are therefore vulnerable. It has been canvassed that the schedule-II of the compromise decree (Ext. 5) clearly demonstrates the allotment of the entire 1 bigha 4 katha land of plot no. 668 which



is sufficient to sustain the claim of exclusive title over the suit land by the defendant. It has been pointedly argued that schedule-II must be read independently and both the courts below have erred in law in reading schedule-II and schedule-III E of the compromise petition together. 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 compromise decree (Ext. 5) passed in the partition suit no. 17 of 1929 is the basis of claim of title over the suit land by the plaintiff and the defendant. It is not disputed between the parties that the predecessors in interest of the plaintiff and the defendant were impleaded as defendant nos. 41 to 47 in the said suit after their substitution in place of the defendant no. 30 Chetan Singh. The partition of the property between the parties to the said suit including defendant nos. 41 to 47 and the details of the partition and the shares allotted to different parties in the said suit was mentioned in different schedules of the compromise petition filed in the said suit which formed the part of the compromise decree (Ext. 5) passed in the said suit. Both the courts below have elaborately noticed the statement made in the compromise petition particularly those mentioned in schedule-II and schedule-III (E) and thereafter have come to the conclusion that the total 1 bigha 4 katha of plot no. 668



was allotted jointly to defendant nos. 41 to 47. It has also been found that by assigning literal meaning to the averments of schedule –II and schedule-III (E) (as mentioned in the judgments of both the courts below in detail) the only conclusion can be reached that the defendant nos. 41 to 47 together were allotted 1 bigha 4 katha of plot no. 668. During the course of submissions on behalf of the appellant, it could not be shown or established that there is possibility of meaningful reading of schedule-II and schedule-III(E) of the compromise decree (Ext. 5) in exclusion to each other. Moreover, no specific material or evidence on record could be pointed out on behalf of the appellant which has been ignored by both the courts below and which if considered would have turned the table in favour of the defendant-appellant. Both the courts below have also taken into consideration the joint compromise petition (Ext. 2) filed in the proceeding under Section 145 Cr. P.C. between the plaintiff and the other descendants of Jay Singh excluding the present defendant, the order passed in survey appeal between the parties to the suit (Ext. 3) and the deposition of P.W.6 Sunil Singh who is the son of brother of the defendant which have all substantiated the claim of the plaintiff over the suit land. The courts below have also taken particular notice of the recitals in the sale deed (Ext. 9) executed by the defendant accepting the fact of allotment of the land in ‘Deorhbandi’ partition. It is



demonstrably clear from the judgments of both the courts below that the findings have been recorded on the basis of evidence which were acceptable and could have been relied upon. No perversity or unreasonableness in the findings of facts by both the courts below could be shown or established on behalf of the appellant during the course of submission.

This Court, therefore, comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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CAV DATE	
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