

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.224 of 2015

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Bibi Sabirah Nisha W/o Yashmin Mian, D/o Ramjan Mian Vill - Ghusupur,
Kalibagh, P.S. - Bettiah (T), Distt - West Champaran.

..... Defendant Respondent

.... Appellant

Versus

1. Ahmad Mian
2. Asgar Mian
3. Ajhar Hussain
4. Hadisha Khatoon
5. Rukfana Khatoon @ Rufsana Khatoon All 1 to 5 residents of Mohalla -
Ghusukpur, P.S. - Bettiah (T), Distt - West Champaran.
Plaintiffs Appellants
6. Airun Nisha W/o Abdul Lais, D/o - Late Ramjan Mian Mohalla - Gali No - 2,
Ghariyarpatti, P.S. - Bettiah (T), Distt - West Champaran..... defendant
..... Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Md. Waliur Rahman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-06-2017

Heard learned Counsel for the appellant.

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

3. The plaintiffs filed the suit for declaration of title and further for eviction of the defendant from the suit land after determination of relationship of landlord and tenant with the plaintiff, along with relief for the amount of arrears of rent and mesne profits. The fact is admitted that the suit property measuring 3 Katha 15 Dhurs of land was purchased by Elahi Mian, the predecessor of the plaintiffs, by oral sale followed by sada sale deed dated 1.7.2010 from Mundri Devi. It was the case of the



plaintiff that predecessor of the defendant namely Ramzan Mian was related with the plaintiffs and the plaintiffs had given the suit land for horticulture purposes to him on rent. It had been further case of the plaintiff that the defendant who was the widow of Ramjan Mian had been wrongly claiming title over the suit land. The defendant (since deceased through L.R.) on the other hand came out with the case that the suit land was purchased by Noor Mian in the name of his son Elahi Mian and subsequently there was partition between the two brothers namely Elahi Mian and Mosadi Mian in which the suit land was allotted in the share of the branch of Mosadi Mian. It was also the case of the defendant that Ramjan Mian, son of Mosadi Mian had subsequently given the suit property to his wife Bibi Badamo Devi (defendant) who had thus acquired title and possession over the suit land on the basis of Bai Mokasa.

4. The trial court returned the finding on the issues against the plaintiff but further also came to the conclusion that the deed of Baimokasa was not a valid document conferring any right over the suit land upon the wife of Ramjan Mian and accordingly set aside the same. In appeal, however, the appellate court below on reappraisal of evidence has come to the conclusion that the plaintiff has got right, title and interest over the suit property and entitled to the decree for eviction of the defendant from the suit land. Accordingly, the appeal has been allowed and the judgment and decree of the trial court has been set aside.

5. Mr. Rahman, learned Counsel appearing for the appellant, has submitted that in view of Section 106 of the T.P.Act, the notice was required to be issued to the defendant by the plaintiff before instituting the suit. It has been pointed out that the appellate court below has also



recorded that the suit has been filed under Section 106 of the T.P.Act. It has been further submitted that the appellate court below has not properly considered the evidence on record and has wrongly held that the plaintiff has got title over the suit property and is entitled to the relief for recovery of possession as prayed. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below it is pellucid that the purchase of the suit land in the name of Elahi Mian (predecessor of the plaintiff) is an admitted fact. The contesting defendant who has based her claim of title through partition between Elahi Mian and Mosadi Mian has failed to adduce any evidence to substantiate the fact of partition. It is also noticeable that the case of Baimokasa by Ramjan Mian has also not been believed by the trial court which has set aside the same, but no cross objection was filed by the defendant in that regard. The appellate court below has come to the finding that the plaintiff has got title over the suit property and the defendant has failed to establish her case by cogent and convincing evidence. The fact is also apparent that the suit has been filed for declaration of title and eviction of the defendant has been prayed as a consequential relief. It is therefore manifest that the suit is not a suit for eviction simpliciter under the provisions of T.P.Act requiring notice under Section 106 of the said Act. This Court, therefore, is not persuaded to align with the submission on behalf of the appellant that the suit was premature in absence of notice under Section 106 of T.P.Act. Even otherwise also it is manifest that there was rival claim of title over the suit property by the parties. In that view of the matter the question of issuing



notice under Section 106 T.P.Act before filing the suit does not arise.

7. The findings have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon. This Court does not find any perversity or unreasonableness in the same.

8. In result, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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