

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.282 of 2004

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Dinesh Prasad Singh @ Dinesh Prasad, Son of Raghuni Singh, Resident of Village Unta Tola Teni Bigha, Police Station Jehanabad, District – Jehanabad.
... .. Appellant

Versus

1. Surendra Prasad, son of Kashi Yadav, Resident of Village Goani Bigha, Police Station and District – Nalanda at present Resident of Village Kanauli, Police Station and District – Jehanabad.
2. Sakal Prasad, son of Kashi Yadav, Resident of Village Goani Bigha, Police Station and District – Nalanda at present Resident of Village Kanauli, Police Station and District – Jehanabad (died during pendency of this appeal legal heirs and representatives brought on record v/o 20.11.2016)
2 (i) Rajeshwar Prasad
2 (ii) Sanjay Prasad @ Yadav
Both are sons of Late Sakal Prasad, Resident of Village Goani Bigha, Police Station and District – Nalanda at present Resident of Village Kanauli, Police Station and District – Jehanabad.
3. Ram Pravesh Sao S/o Lakshmi Sao, Resident of Village Islampur, Police Station Islampur, District – Nalanda.

... .. Respondents

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Appearance :

For the Appellant : Mr. Jitendra Prasad Singh, Advocate
Mr. Prabhat Kumar Dipak, Advocate
For the Respondent Nos.1, 2 & 3: Mr. Pankaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 19-07-2018

Heard learned counsel for the parties.

This is plaintiff's second appeal against judgment and decree dated 03.08.2004 passed by the learned 1st Additional District Judge, Jehanabad, in Title Appeal No.004 of 2001/14 of 2002, whereby he has set aside the judgment and decree dated 14.02.2001 passed by the learned Subordinate Judge-3, Jehanabad, in Title Suit No. 56 of 1988. The appeal was admitted by an order,



dated 23.06.2008, and while issuing notices to the respondents following substantial questions of law involved in the present second appeal were framed :

“(1) Whether the lower appellate Court was justified in setting aside the judgment of the trial Court without giving specific finding of reversal on each and every issue involved in the suit?

(2) Whether the learned lower appellate Court has committed serious error of record by misconstruing the deeds Exhibit-1/A and Exhibit-2?

(3) Whether the finding of the trial Court that the suit property belonged to Laxmi Sao, the vendor of the plaintiff, was rightly set aside by the court of appeal below without giving any substantive reasons for the same?

Case of the Plaintiff :

The Title Suit No. 56 of 1988 was filed by the appellant for passing a preliminary decree of declaration that the plaintiff had the absolute title over Schedule-I property and that defendants No. 1 and 2 had no right, title and interest over the said property and they are wrongfully in possession over the said suit property. It is the case of the plaintiff that the suit property was purchased by one Laxmi Sao from the rightful owner through the registered sale deed dated 29.06.1962 (Exhibit-1), in the name of his only son



Pravesh Sao @ Basudeo Sao. Laxmi Sao, subsequently, executed the deed of agreement for sale on 13.11.1982 (Exhibit-2) in favour of the plaintiff. Out of inadvertence, in the agreement for sale, instead of mentioning, Basudeo Sao with his alias name Pravesh Sao as his only son, 'Basudeo Sao and Pravesh Sao' was mentioned in the agreement for sale as vendors, as if the said Laxmi Sao had two sons in the name of Basudeo Sao and Pravesh Sao, whereas, both the names were of the same person, i.e. the only son of Laxmi Sao. When the mistake was discovered, it was decided to strike out the error at the time of execution of the sale deed and accordingly a sale deed was executed by Laxmi Sao and Basudeo Sao in favour of the plaintiff on 05.01.1983 (Exhibit-1/A) with respect to the suit land, which was registered on 13.01.1983. The plaintiff asserted that the defendant no. 1 (respondent no.1 herein) was an employee in the same office of the plaintiff and he was residing in a portion of the house constructed over Schedule-I land as tenant of Laxmi Sao, who had manufactured and forged sale deed dated 12.01.1983 executed by respondent No.3, Ram Pravesh Sao, the alleged son of Laxmi Sao, whereas respondent no.3 had no concern with Laxmi Sao. In any event, said Ram Pravesh Sao was a minor in the year 1962 and, therefore, he could not have any funds in his hands to acquire Schedule-I land. He



also asserted that the plaintiff resided in one of the rooms and in rest of the five rooms, defendant no.1 continued as tenant recognizing the plaintiff as tenant and paid rent for two months in token of which he was granted receipt on a plain paper. When the plaintiff learnt about manufactured sale deed (Exhibit-B), then he filed the suit for declaration of title and recovery of possession with other incidental reliefs.

Case of the Defendants :

The defendants contested the suit by filing their written statement disputing the claim of the plaintiff. Defendant No.1 asserted that he himself had purchased the property in 1962 upon payment of entire consideration money and that Laxmi Sao was neither a purchaser nor had paid the consideration money and, therefore, he was absolute and exclusive owner of the property. He asserted that Pravesh Sao had executed the said sale deed (Exhibit-B) in favour of the defendants No.1 and 2 and that Pravesh Sao did not have any alias or other name as Basudeo Sao. Defendant No. 3 supported the case of defendants no. 1 and 2 asserting that the property was purchased by him and his father had never acquired any right, title and interest over the same. He further pleaded that he received the consideration money from defendants no. 1 and 2 in 1971 itself and had delivered the possession to the defendants.



He also pleaded that he had utilised the consideration money for the capital of his business, which he had started at some place and acknowledging the said fact he had executed the sale deed on 12.01.1983 (Exhibit-B) in favour of defendant nos. 1 and 2.

Upon consideration of the rival pleadings the trial Court framed altogether 18 issues. Issues No. 7, 8, 9 and 10, being relevant for the present adjudication, are being reproduced hereinbelow :

“7. Was the suit property acquisition of Laxmi Sao out of his personal fund from Ram Nandan Prasad and others or personal acquisition of defendant no. 3 out of his personal fund?

8. Was defendant No.3 a minor on 29.06.62 the date of acquisition of suit property through registered sale deed dated 29.6.62 from Ram Nandan Sharma and others?

9. Is defendant no.3 s/o Laxmi Sao?

10. Has Basudeo Sao @ name of Pravesh Sao or defendant No.3 @ name Pravesh Sao?”

The parties led evidence, both oral and documentary, at the trial. The trial Court, upon consideration of the evidence adduced at the trial and rival submissions made on behalf of the parties, dealing specifically with issues No. 9 and 10, specifically came to conclusion that the plaintiff could not prove that Pravesh



Sao and Basudeo Sao are the names of the same person. The Court held that the defendants were able to prove that Ram Pravesh Sao (defendant No.3) was 'Pravesh Sao' son of Laxmi Sao. Issues no. 9 and 10 were, thus, decided against the plaintiff.

Dealing with issues no. 7 and 8, the trial Court held that the suit property was acquired by Laxmi Sao out of his personal fund and that Ram Pravesh Sao was minor on the day of purchase in his name in the year 1962. The trial Court, thus, held that the defendants no. 1 and 2 did not acquire the right, title and interest in the suit property, which was purchased by Laxmi Sao, who was exclusive owner and who had right to transfer the property accordingly. While recording the finding, as noted above, the trial Court also reached to a conclusion that there was no evidence on record to show that the house standing over the suit land was given to defendants No. 1 and 2 on monthly rent by Laxmi Sao.

Aggrieved by the judgment and decree of the trial court, the respondents herein preferred appeal bearing Title Appeal No. 004 of 2001/14 of 2002. The appellate Court while reversing the finding of the trial Court has held that defendant No. 3 was the owner of the suit property and he was 18 years of age in the year 1962 when the sale deed was executed.



It is significant to note that the entire case of the plaintiff was based on his claim of purchase of the suit property by Laxmi Sao in the name of his son, Basudeo Sao having his alias name as Pravesh Sao, through registered sale deed dated 29.06.1962. The sale deed, dated 05.01.1982, has been the sheet anchor of the plaintiff's claim to his right, title and interest over the suit property. The said sale deed is said to have been executed by Laxmi Sao and Basudeo Sao, his son. There is categorical finding by the trial Court, while deciding issues no. 9 and 10, that the plaintiff failed to prove that Pravesh Sao and Basudeo Sao were the names of the same person. The Court rather held that Ram Pravesh Sao (defendant no.3) and Pravesh Sao are names of the same person. The suit property was, thus, on the date of execution, held by Ram Pravesh Sao, whereas the sale deed, dated 05.01.1982, came to be executed by Laxmi Sao and Basudeo Sao. The finding of the trial Court that Basudeo Sao was not the alias name of Ram Pravesh Sao has been accepted by the plaintiff/appellant as there is no challenge to such finding.

Mr. Jitendra Prasad Singh, learned counsel appearing on behalf of the appellant, assailing the impugned judgment has relied on Supreme Court's decision in case of *C. Venkata Swamy v. H.N. Shivana* reported in (2018) 1 SCC 604 to submit that the



judgment and decree under challenge is vitiated since it does not deal each and every issue involved, before reversing the finding recorded by the Court below. He also contends that there is no discussion by the Court below on the question of age of defendant no.3 on the date of purchase of the suit property in his name.

At the first blush submission made by Mr. Singh, learned counsel for the appellant, that learned appellate Court below has not dealt each and every issue before reversing the findings of the trial Court and, therefore, the judgment of reversal deserves interference in the light of Supreme Court's decision in the case of *C. Venkata Swamy v. H.N. Shivana* (supra), appeared to me to be correct.

However, upon perusal of the judgment of the first appellate Court and other attending circumstances, I do not find any substance in the plea. As I have already noticed, the plaintiff claimed his title on the basis of sale deed executed by Laxmi Sao and Basudeo Sao on 05.01.1983 (Exhibit-1/A), registered on 13.01.1983. Basudeo Sao has been held by the Court below not to be alias name of Ram Pravesh Sao, in whose name the suit property was purchased. In such circumstances, Laxmi Sao and Basudeo Sao (stranger to the suit property) could not have executed the said sale deed in favour of the plaintiff. Situated thus,



the plaintiff miserably failed to establish his case of acquisition of title through sale deed dated 05.01.1983. This is also not in dispute that Pravesh Sao/ Ram Pravesh Sao (defendant no.3) has executed sale deed in favour of defendants No. 1 and 2 on 12.01.1983 (Exhibit-B). In such view of the matter, in my opinion, the question of law No.1 framed above is answered against the appellant. The appellate Court has dealt with each and every issue, and upon appreciating all material evidence, has recorded his finding, which does not require interference on that ground. Upon examining Exhibit-1/A and Exhibit-2 and the evidence adduced by the appellant-plaintiff, I find that there is no misconstruction by the appellate Court below of the sale deeds. As a matter of fact, the very foundation of the case of the plaintiff stood demolished in the light of clear finding that Basudeo Sao was not the alias name of Pravesh Sao/Ram Pravesh Sao (defendant No.3). In that background, in my view, the reversal of the finding of the trial Court that the suit property belonged to Laxmi Sao was rightly set aside by the first appellate Court and the reasons assigned by the first appellate Court are justifiable.

Substantial questions of law framed in this second appeal stands answered accordingly. The judgment and decree dated 03.08.2004 passed by the learned 1st Additional District



Judge, Jehanabad, in Title Appeal No.004 of 2001/14 of 2002,
does not require any interference.

This appeal has no merit and is accordingly dismissed.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	13.08.2018
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