

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.7 of 2018

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1. Chhathu Rai S/o Late Bhikhari Rai
 2. Jai Prakash Rai @ Ram Prakash Rai S/o Ram Ekbal Rai
 3. Prem Rai @ Shailesh Kumar S/o Vishram Rai All are residence of village - Pithaghath, P.O. - Garkha, P.S. - Garkha, District - Saran.

... .. Appellants

Versus

1. Awadhesh Rai S/o Bharat Rai
 2. Raj Bansi Rai S/o Bharat Rai
 3. Janki Devi W/o Bharat Rai
 4. Ram Balak Rai S/o Chaturgun Rai
 5. Jageshwari W/o Chaturgun Rai
- All are residence of village - Pithaghath Jham Tola, P.O. - Garkha, P.S. - Garkha, District - Saran.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Hemendra Prasad Singh, Sr. Advocate Mr. Shashi Bhushan Kumar
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 27-11-2018

The appellants in the present Second Appeal, who are the defendants, have put to challenge the judgment and decree dated 07.11.2017, passed by learned Additional District Judge VIII, Saran at Chapra, in Title Appeal No. 41/12, whereby he has affirmed the judgment and decree dated 10.04.2012, passed in Title Suit No. 200/1996 by the Trial Court, i.e. the Court of learned Second Munsif, Saran at Chapra.



2. I have heard Mr. Hemendra Prasad Singh, learned Senior Counsel appearing on behalf of the appellants, under Order 41 Rule 11 of the Code of Civil Procedure.

3. The suit was filed by the respondents-plaintiffs for a declaration that the *Ladawi* deed (Deed of Relinquishment) dated 02.12.1991 executed by their father(s) was illegal, void and without consideration and they accordingly prayed for issuance of a permanent injunction against the defendants-appellants, not to dispossess them from the suit land mentioned in Schedule-1 of the plaint.

4. Before I proceed to consider the submission advanced on behalf of the appellants on the point as to whether this appeal involves any substantial question of law or not, I need to take into account certain facts over which there is no dispute.

5. One Punkal Rai died leaving behind his widow, Janaki Kunwar and son, Prabhu Raut. The suit land admeasuring 10 katha was, admittedly, inherited by the widow of the deceased, Janaki Kunwar and his son, Prabhu Raut. It has been the specific case of the plaintiff that Prabhu Raut was a minor on the date of death of Punkal Rai and Janaki Kunwar had executed a sale deed dated 21.07.1981 in favour of the father(s) of the plaintiffs, namely, Bharat Rai and Chaturgun Rai. Whereas it was specific



case of the plaintiffs, who are the sons of the said Bharat Rai and Chaturgun Rai, that Prabhu Raut was a minor on the date of execution of sale deed dated 21.07.1981 and the said sale deed was executed by Janaki Kunwar on behalf of her son also, the defendants took specific plea that Prabhu Raut was major and Janaki Kunwar could not have executed sale deed dated 21.07.1981 on behalf of Prabhu Raut. In respect of this dispute, the Trial Court framed the issue, being Issue No. IX, i.e., as to whether Prabhu Raut was minor as on 21.07.1981, when the deed was executed. The said issue, based on the evidence adduced during trial, has been decided in favour of the plaintiffs and Prabhu Raut has been held by the Trial Court to be a minor as on the date of execution of the sale deed.

6. The defendants claim that Prabhu Raut had executed sale deed dated 07.07.1982 in respect of the same suit land in their favour and that Prabhu Raut was competent to execute the said sale deed in respect of the suit land inherited from his father, Punkal Rai.

7. It was the case of the defendants before the Trial Court that disputes had arisen between the vendees from Prabhu Raut and vendees from Janaki Kunwar, leading to institution of cases including criminal cases. Finally, the defendants, i.e. the



vendees of Prabhu Raut, and father(s) of the plaintiffs, i.e. vendees of Janaki Kunwar, entered into a compromise, in accordance with which, the father(s) of the plaintiffs had executed a deed of relinquishment dated 02.12.1991 (Ext. C) declaring therein that they did not have any interest in the suit property and they were never put in possession over the suit property in the light of execution of sale deed dated 21.07.1981.

8. Based on the rival pleadings of the parties, the Trial Court framed altogether nine issues including issue Nos. 3, 4, 5, and 6, which are as follows;

“(III) Is the suit time barred?

(IV) Are the plaintiffs entitled to get decree for permanent injunction against the defendants in respect of land described in Schedule-1 of the plaint?

(V) Is the Ladawi dated 2.12.1991 executed by father of plaintiff Nos. 1 to 3 in favour of defendants fraud and inoperative?

(VI) Have the plaintiffs got any right title and interest in the suit land?”

9. Be it noted that the defendants have also pleaded that Budha Kunwar was the wife of Punkal Rai and not Janaki Kunwar, in respect of which Issue No. 8 was framed, which too was decided in favour of the plaintiffs holding Janaki Kunwar to be the real widow of Punkal Rai. What is evident from the two judgments of the Courts below that the parties adduced their evidence, both



oral and documentary. There is specific finding, recorded by the Trial Court, that Janaki Kunwar, being widow of Punkal Rai, was competent to execute sale deed dated 21.07.1981, on her own behalf and on behalf of her son, Prabhu Raut, as her son was minor as on the date of execution of sale deed dated 21.07.1981.

10. The Trial Court further held that the vendees of Janaki Kunwar, after execution of sale deed dated 21.07.1981, were put in possession over the suit property. The Trial Court, on analysis of law and appreciation of evidence on record, considering the deed of relinquishment, held that the same could not in any way treated to be conferring any right, title or interest on the defendants. After having held so, the Trial Court held the sale deed dated 07.07.1982, executed by Prabhu Raut in favour of the defendant, to be inoperative.

11. I find from the judgment and decree of the First Appellate Court, impugned in the present Second Appeal, that the evidence on record have been re-appreciated and reasons assigned by the Trial Court for decreeing the suit in favour of the plaintiffs have been looked into and considered. The Appellate Court, upon consideration of pleadings, evidence on record and submissions made on behalf of the parties, has affirmed the findings recorded by the Trial Court.



12. Learned Senior Counsel appearing on behalf of the appellants has submitted that following are the substantial questions of law, which the present Second Appeal involves:

“I. Whether the suit filed by the plaintiff challenging the Deed of Relinquishment dated 2-12-1991 is barred by the law of limitation in view of Article 59 of the Limitation Act, which provides that any instrument or deed be set aside within three years of its execution?

II. Whether the findings of the court below that the Deed of Relinquishment is fraudulent and inoperative document is legal and sustainable in law without any evidence or proof of fraud?

III. Whether the findings of the court below that the Deed of Relinquishment did not confer title on the defendants are perverse since the defendants have not come to the court claiming title on the basis of the Deed of Relinquishment?

IV. Whether the findings of the Trial Court that the plaintiffs have acquired title and possession of the suit land by the sale-deed 21-7-1981 stands vitiated in view of the amendment brought by the plaintiffs in the plaint at the appellate stage that they have been dispossessed from the suit land on 18-8-2013?

V. Whether the court below has erred in deciding issue no. 4 regarding permanent injunction in view of the admission of the executants of the Deed of Relinquishment coupled with the amendment brought by the appellants?”

13. The said substantial questions of law have been passed on to this Court on a separate sheet and the Memo of



Appeal does not contain substantial questions of law, which, according to the appellants, the present Second Appeal involves.

14. So far as first substantial question of law, as suggested by learned Senior Counsel, indicated above is concerned, in my view, does not arise at all in view of the fact that Issue No. 3 was framed before the Trial Court on the point of limitation. The said issue was, however, not pressed by the defendants as is evident from the judgment of the Trial Court. So far as substantial question Nos. 2 and 3, as suggested by Mr. Singh, I am of the view that the same cannot be termed as substantial questions of law requiring consideration in a present Second Appeal in view of concurrent findings of fact recorded by the Courts below that the father(s) of the plaintiffs, namely, Bharat Rai and Chaturgun Rai, were put in possession over the suit land after execution of sale deed dated 21.07.1981 by Janaki Kunwar, widow of Punkal Rai, when Prabhu Raut, their only son, was a minor. It was the claim of the defendants that the title passed on to them in view of two sale deeds executed on 07.07.1982 by Prabhu Raut and to support their claim, they relied on the deed of relinquishment, which, according to them, was executed by the father of the plaintiffs after a compromise was reached. The finding of the Courts below, that the defendants did not have any



title over the suit land, is based on the reasoning that the sale deed dated 07.07.1982 was executed after 21.07.1981, when the sale deed was already executed by Janaki Kunwar in favour of the father(s) of the plaintiff and when Prabhu Raut was a minor. The Trial Court has recorded the finding that the deed of relinquishment would not confer any right on the defendants over the suit property, in order to deal with the claim of the defendants of their title over the suit property, based on the sale deed on 07.07.1982 and the said deed of relinquishment.

15. Mr. Singh has submitted that the finding in respect of possession over the suit property is perverse and he has referred to an amendment sought by the plaintiffs before the Appellate Court, wherein they had asserted that they had been dispossessed from the suit property during the pendency of the appeal and, therefore, their possession should be restored. He contends that in fact the plaintiffs were not in possession over the suit property on the date of filing of the suit and, therefore, there was no question of grant of permanent injunction by the Trial Court. This submission is not convincing to this Court. There is specific finding that the father(s) of the plaintiffs were put in possession. The submission that the Court ought to have accepted everything, which was mentioned in the deed of relinquishment, including the



fact that the vendees of the sale deed dated 21.07.1981 were not put in possession over the suit property, cannot be accepted by this Court.

16. The findings recorded by the Trial Court as also the first Appellate Court is based on appreciation of evidence. The findings cannot be said to be contrary to evidence or without evidence.

17. I do not find the findings recorded by the Courts below to be perverse.

18. Though feebly, Mr. Singh has argued that the Trial Court ought not to have commented upon the sale deed dated 07.07.1982, executed in favour of the defendants by Prabhu Raut, in the absence of any challenge put by the plaintiffs to the said sale deed and, therefore, judgments the Courts below need interference.

19. I am unable to agree with the said contention. The issues were framed before the Trial Court, as has already been noted above. The Trial Court was considering rival claims of the parties based on materials and evidence including the sale deed dated 21.07.1981, which was executed prior to sale deeds dated 07.07.1982. In that background, the Courts below have recorded the said finding that subsequent sale deeds dated 07.07.1982 could not be said to be operative.



20. In the light of the discussions as above, in my opinion, this Second Appeal does not involve any substantial question of law requiring determination by this Court. I do not find any merit in this appeal. This appeal stands dismissed.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/Ragini

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	28.11.2018
Transmission Date	N/A

