

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.248 of 2010**

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1. BHUSHAN SINGH
2. Jitendra Singh
3. Arun Singh

All are sons of Late Sheoji Singh

4. Most. Sumitra Kuer wife of late Sheoji Singh
5. Mina Devi wife of Prabhu Singh D/O late Sheoji Singh
6. Anjali Kumari D/) Sheoji Singh
7. Paltan Singh son of Ramraj Singh
8. Shatrudhan Singh son of Mathura Singh
9. Shambhu Singh son of Ambika Singh

All are resident of village-Bakarpur, PO-Bakarpur, P.S. Kalyanpur, Dist. East Champaran, Motihari

... .. Appellant/s

Versus

1. BUDHAN RAI
2. Upendra Rai
3. Motilal Rai

4. Lalbabu Rai, all are sons of Sita Ram Rai, resident of village-Mauza Shambhu Chak, P.O.\_ Bakarpur, P.S. Kalyanpur, Dist. East Champaran, Motihari

Respondent Ist Party (Plaintiffs)

5. Amit Kumar

6. Amresh Kumar alias Ranjan Kumar both are sons of late Janki Jiwan Prasad, resident of village-Bakarpur, P.O . Bakarpur, P.S. Kalyanpur, Dist. East Champaran, Motihari

Respondents 2<sup>nd</sup> Party (Defendants 2<sup>nd</sup> Party)

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**Appearance :**

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| For the Appellant/s  | : | Mr. Ranjan Kumar Dubey<br>Mr. PRAMOD KR. PANDEY, Advocates |
| For the Respondent/s | : | Mr.                                                        |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 22-02-2018**

The appellants were the defendants before the trial Court. They are aggrieved by the judgment and decree, dated 16.03.2018, passed by the learned Additional District Judge, FTC-IV, Motihari in Title Appeal No. 11 of 2001 of 2008/08,



whereby the judgment and decree, dated 19.12.2007, passed by the learned Sub-Judge-I, Motihari in Title Suit No. 376 of 2001 has been affirmed.

2. I have heard learned counsel appearing on behalf of the appellants.

3. The matter has been placed for hearing of the present Second Appeal under Order 41 Rule 11 of the Code of Civil Procedure, 1908.

4. From the materials on record, it appears that the suit was filed for declaration of right title and possession over the suit property. It further appears that the plaintiffs had asserted before the Court below that during the pendency of the suit, the defendants had made certain construction over the suit property over approximately 89.25 square feet of land. By seeking amendment the plaintiffs also sought for removal of the illegal structure from the suit premises.

5. It was the case of the plaintiffs that the suit property was originally purchased by one Suraj Prasad through registered sale-deed, dated 17.07.1936, from Khedu Sah and Tapeswar Sah. Suraj Prasad died leaving behind his one son, namely, Janki Jiwan Prasad. After the death of Janki Jiwan Prasad, the suit property was inherited and came in possession



of their sons, namely, Amit Kumar and Amresh Kumar, who transferred the suit property in the name of the plaintiffs through registered sale deed, dated 05.09.2001. The plaintiffs further, claimed that they came in possession over the suit property thereafter. With the plea that the defendants were claiming title over the suit property and disturbing his peaceful possession over the suit property, the plaintiffs filed a title suit seeking relief as noted above, giving rise to Title Suit No. 376 of 2001, which finally came to be decided by the learned Sub-Judge-I, East Champaran, Motihari, by judgment and decree, dated 19.12.2007, in favour of the plaintiffs. The defendants first set in their written statement had taken a plea that it was though true that the suit property was purchased in the name of Suraj Prasad but the same was purchased for the purpose of construction of a temple with the contributions made by the villagers. The defendants are said to have adduced evidence in support of the plea that the villagers had contributed amount for the purpose of construction of temple over the suit property, by producing receipts in support thereof. The Courts below have not accepted the plea of the defendants in this regard and based on the undisputed fact that there was registered deed of sale in favour of Suraj Prasad in respect of the suit property, which



finally came to be inherited by his grandsons, namely, Amit and Amresh Kumar, decreed the suit in favour of the plaintiffs, who had purchased the suit property through registered sale deed dated 05.09.2001.

6. As is evident, the findings of the Courts below are concurrent. The existence of the sale deed dated 17. 07.1936 executed in favour of Suraj Prasad is not in dispute. This is also not in dispute that the vendors Amit and Amresh Kumar (Defendants second sets) are the grandsons of Suraj Prasad. There has also not been any dispute over execution of the sale deed dated 05.09.2001, in respect of the suit property in favour of the plaintiffs. The plea of the defendants of purchase of the suit property by Suraj Prasad for the purpose of construction of temple has been rejected by both the Courts below.

7. Learned counsel appearing on behalf of the appellants in the present second appeal has submitted that it was the duty of the appellate Court to have framed the points for determination, which is mandatory requirement under Order 41 Rule 31 of the Code of Civil Procedure, 1908, which he has failed to do. He contends that this is the substantial question of law, which the present second appeal involves. He has also submitted that the evidence in the nature of receipts and oral



evidence ought to have been taken into account by the Courts below, which were *germane* for the adjudication of the dispute, which has not been taken into account and for that reason the findings recorded by the courts below are perverse.

8. I have perused the judgment and decree of the appellate Court under challenge. What I find from the said judgment that the appellate Court has taken into account the entire evidence on record and has elaborately dealt with the issues, which were framed by the trial Court and findings thereon. The appellate Court has reached its finding on independent evaluation of the evidence on record. There is no heading of “points for determination”, in the judgment and order of the appellate Court cannot itself be a ground for interference with the judgment of the appellate Court.

9. I do not find any merit in this appeal inasmuch as it does not involve any substantial question of law.

10. This appeal does not deserve admission and is accordingly, dismissed.

**(Chakradhari Sharan Singh, J)**

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