

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.259 of 2015

Daya Shankar Singh, S/o Ram Prit Singh, R/o Village+P.S. Nokha , District Rohtas.

... .. Appellant

Versus

Uma Shankar Singh, S/o Sukhdeo Singh, R/o Village Karan, P.s Nokha, Distt Rohtas, A/p Village+P.S. Nokha, District Rohtas.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Kamal Nayan Choubey, Sr. Adv.
Mr. Rewti Kant Raman
For the Respondent/s : Mr. Sudama Singh
Mr. Surendra Kumar Mishra

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 03-05-2018

This second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been placed for hearing under Order XLI Rule 11 of the Code of Civil Procedure, 1908.

2. Aggrieved by the judgment and decree, dated 25.02.2015, passed by learned Additional District Judge VII, Rohtas, at Sasaram, in Title Appeal No. 73 of 1994, whereby he has modified the judgment and decree, dated 30.06.1994, passed by learned Munsif II, Rohtas, at Sasaram, in Title Suit No. 74 of 1989, the present second appeal has been filed by the appellant,



who was defendant before the Trial Court and respondent before the appellate court below.

3. The respondent (plaintiff) had filed Title Suit No. 74 of 1989, seeking following reliefs:-

(i) Be it declared that the defendant did not have any right to interfere with or cause obstruction in respect of the path, described as CDEF in Schedule-B to the plaint;

(ii) If, during the pendency of the suit, any obstruction or construction is made over the said path, the decree be issued for removal of such encroachment;

(iii) Title of the plaintiff over plot no. 5055 be declared and demarcated by installation of pillars;

(iv) The defendant be restrained from destroying the crop sowed by the plaintiff and if they did so during the pendency of the suit, the defendant be ordered to pay in lieu of such destruction;

(v) By way of permanent injunction, the defendant be restrained from interfering with the suit property.

4. Briefly narrated, the case of the plaintiff in his plaint was that the plaintiff and the defendant are cousins, who lived separately with their separate business. The plaintiff had purchased 13 decimals of land in plot no. 5055, khesra no. 1449, on



17.03.1980, through registered deed, executed by one Gaffar Mian, whereafter he came into possession over the said suit property. Adjacent to north of the land purchased by the plaintiff, defendant had purchased 04 decimals of land out of the said plot no. 5055, plot nos. 5053 and 5272, khesra nos. 1449 and 1450, respectively. The defendant had also purchased said 04 decimals of land from Gaffar Mian on the same date, i.e. on 17.03.1980. It was the specific case of the plaintiff-respondent that the vendor had set aside 14 feet wide lane for passage on the eastern side, which the plaintiff had been using for reaching his plot. The plaintiff asserted that the defendant had constructed a house on adjacent north with its opening over the said land, described as CDEF in Schedule B to the plaint. After sometime, when the plaintiff started, living at some other place, the defendant issued threats to block the passage described as CDEF in Schedule B to the plaint and he uprooted pillars installed by the plaintiff to demarcate his land, on 13.05.1989, which gave rise to cause of action, leading to filing of the suit.

5. The defendant/respondent contested the suit on various technical grounds and asserted that the disputed property, which the plaintiff claimed to have purchased was not purchased by him; rather, it was purchased by the defendant/respondent in the



name of the plaintiff. He asserted that the consideration amount was paid by the defendant and the plaintiff was merely a name lender. The defendant, accordingly, claimed his right, title and possession over the suit property. He asserted that the disputed land did not have any separate plot number; rather, it is mixed with other land of plot no. 5055. He also pleaded in his written statement that Gaffar Mian had not set aside any passage and that the plaintiff was wrongly claiming passage of width 14 feet, which has been entered as *dhanhar* in plot no. 5055. He claimed that plot no. 5053 was purchased by the defendant, which is the opening of the plaintiff's house. He also claimed that the plaintiff never resided in the house situated on the northern side of plot no. 5053 nor there was any demarcating pillar, surrounding plot no. 5055. He denied the existence of any passage.

6. Learned Trial Court, based on the pleadings of the parties, framed seven issues, including Issue Nos. (3), (4), (5) and (6), which are as under:-

(3) Did the plaintiff purchase plot no. 5055 after payment of consideration money and, accordingly, came into possession over the said land?

(4) Whether the defendant had purchased the suit property in the name of the plaintiff through banami transaction?



(5) Whether any passage was there on any portion of plot no. 5055? and,

(6) Whether there existed any crop over the suit property, which was destroyed by the plaintiff and there was any demarcation pillar between the lands of the plaintiff and the respondent, which was uprooted by the defendant?

7. Both the parties adduced their evidence, both oral and documentary, at the trial before the Trial Court. On appreciation of evidence adduced at the trial, learned Trial Court decided Issue No. (3) against the plaintiff and recorded its finding that the plaintiff had not paid any consideration money to his vendor. Dealing with Issue No. (4), the Trial Court, referring to Section 4 of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as 'the Act') and Supreme Court's decision, in the case of **Mithilesh Kumari v. Prem Bihari Khare (AIR 1989 SC 1274)**, held that the defendant was precluded from taking the defence on the ground that he had purchased the suit property in the name of the plaintiff. Dealing with Issue No. (5), learned Trial Court recorded its finding that there was no passage, as was claimed by the plaintiff, and recorded specific finding that there was no proof of uprooting of the demarcating pillars nor destruction of any crop grown over the land in question.



8. It is evident from the Trial Court's judgment that the Trial Court, out of above mentioned issues, decided Issue No. (4) only in favour of the plaintiff, holding that the plaintiff had right, title and interest and he was in possession over the disputed property.

9. The defendant did not challenge the findings of the Trial Court; whereas, the plaintiff did by filing an appeal against the judgment and decree of the Trial Court, which gave rise to Title Appeal No. 73 of 1994. The appellate court below, for the purpose of adjudication of appeal formulated following three points for consideration:-

(1) Whether the piece of land described as CDEF in Schedule B to the plaint, on the eastern side of the land described as ABCD in Schedule A to the plaint, was passage, which was the only ingress and outgress from the disputed land, described as ABCD in Schedule A to the plaint?

(2) Whether any agricultural crop was there over the disputed land of the defendant, which was destroyed by the defendant; and whether there was any demarcation pillar between plot of the plaintiff and the defendant, which was uprooted by the defendant?



(3) Whether the plaintiff was entitled for getting the disputed land demarcated by installing pillars?

10. Learned appellate court below, upon re-appreciation of evidence, has recorded its specific finding that there was a passage on the eastern side of the land described as ABCD in Schedule A to the plaint. He, accordingly, decided the Point No. (1) for determination, in favour of the plaintiff. Dealing with Point No. (2) for consideration, learned appellate court below found that there was no cogent evidence to prove the case of the defendant of removal of demarcating pillars from the disputed plot. The plaintiff could not establish existence of such demarcating pillars, the appellate court below held.

11. Dealing with Point No. (3) for consideration, as to whether the plaintiff was entitled for getting the disputed land demarcated by installing pillars, the appellate court below, in the background of the conclusive finding that the plaintiff had title and possession over the suit property and that there was a passage on the eastern side of the plot, held the necessity of separating the suit property and installation of pillars for demarcating the boundary. The said point has, thus, been decided by the appellate court below in favour of the plaintiff.



12. Mr. Kamal Nayan Choubey, learned Senior Counsel, appearing on behalf of the appellant, in the present second appeal, has submitted that it is evident from the pleadings and evidence on record that on 17.03.1980, plot no. 5055, ad-measuring 22 kathas, was purchased in the name of six persons from the common vendor, Gaffar Mian, through six registered sale deeds; one such sale deed was executed in favour of the plaintiff. All purchasers, except the plaintiff, tr-transferred the vended property in favour of the defendant. There is specific finding by the Trial Court, which has attained finality after passing of the judgment by the appellate court below, that the plaintiff had not paid any consideration amount to the vendor, Gaffar Mian. Admittedly, thus, he contends, the suit property was purchased by the defendant, but in the name of the plaintiff. The entire 22 kathas of the said land has one boundary wall from all sides and there is no separate identity of the land in respect of which the sale deed was executed in favour of the plaintiff. According to him, the identity of the said plot of land transferred in the name of the plaintiff stood merged in other plots of the said 22 kathas of land. In that background, he submits that the finding recorded by the appellate court below that there is a passage on the eastern side of the plot in question is fallacious and perverse and, therefore, this second appeal involves a



substantial question of law as to whether the finding recorded by the Trial Court is perverse, for the purpose of admission of this second appeal.

13. He has next submitted, referring to Section 5 of the Act, that if the plaintiff gets his title over the suit property through banami transaction, such property is liable to be confiscated by the Central Government.

14. The court is not required to comment on the said submission in the present second appeal.

15. Mr. Sudama Singh, learned Counsel appearing on behalf of the plaintiff has submitted that there is neither any illegality nor perversity in the findings recorded by the appellate court below. He submits that in any view of the matter, the defendant could not set up any claim of his title over the suit property in view of clear bar under Section 4 of the Act. He has contended that the finding of the appellate court below, on existence of a passage on the eastern side of the plot in question is based on appreciation of evidence available on record. The findings, according to him, has been rightly reached, which does not require any interference.

16. From the judgments and decrees passed by the Courts below and rival submissions made on behalf of the parties,



it is manifest that from one common vendor, Gaffar Mian, 22 kathas of land was purchased in the name of six persons, including the plaintiff. The finding recorded by the Trial Court that the plaintiff had not paid the consideration money has remained unchallenged. The lands, which were subject matter of transfer through five registered sale deeds, were transferred in favour of by the respective vendees of the vendor, Gaffar Mian. The whole chunk of land ad measuring 22 kathas is surrounded by a boundary wall from all the sides with an opening on the eastern side. The appellate court below has dealt with the evidence adduced at the trial, including the recitals in the sale deeds that the vendor, Gaffar Mian, had set aside 14 feet wide passage having adjacent east to the vended land, which was being used by the plaintiff for reaching his plot. It is noticeable that the appellate court below has taken note of the entries in the registered sale deeds, which showed existence of 14 feet wide passage on the eastern side.

17. The findings, in my view, cannot be termed to be perverse since they are based on appreciation of evidence by the appellate court below, available on record. The findings are not without any evidence nor contrary to the evidence.



18. In view of the discussions as above, in my considered view, this second appeal does not involve any substantial question of law to be determined by this Court.

19. This appeal has, therefore, no merit. The appeal is, accordingly, dismissed at this stage itself.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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