

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.288 of 2012

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1. VIJAY KUMAR VERMA S/O Ramjee Prasad R/O Vill and P.O.-Paroha, P.S.-Manpur, Distt-Nalanda at Present.
 2. Ganesh Prasad S/o Late Ramdeo Rai @ Deo Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna
 3. Brijnandan Prasad S/O Late Ram Bali Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
 4. Sri Nandan Prasad S/O Late Ram Bali Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.

... .. Appellant/s

Versus

1. RAMJIWAN RAI S/O Late Chhatar Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
2. Brijnadan Rai S/O Ramjiwan Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
3. Ramanand Rai S/O Ramjiwan Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
4. Ram Swarath Rai S/O Ramjiwan Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
5. Ram Sewak Rai S/O Ramjiwan Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
6. Jogindar Rai S/O Late Hajari Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
7. Baijnath Rai S/O Late Jangi Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
8. Harinath Rai S/O Late Jangi Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
9. Kedar Rai S/O Late Jangi Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
10. Jai Rai S/O Late Jangi Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.
11. Ramji Rai S/O Chhatar Rai R/O Vill-Illahibag, Akal Tola, P.O.-Bairia, P.S.-Gopalpur, Distt-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Raj Kishore Prasad Singh, Adv
For the Respondent/s	:	Mr. Jitendra Kumar Roy-1, Adv, Mrs. Usha Kumari Singh, Adv, & Mr. Dharendra Kumar Roy, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR



ORAL JUDGMENT

Date : 01.10.2019

Heard the parties.

2. This appeal has been filed against order dated 11.04.2012 passed in Title Suit No. 199 of 2011 passed by learned Subordinate Judge-VIII, Patna by which the learned court has directed both the parties to maintain status quo over the suit land in a petition filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C.

3. Plaintiff's case is that their ancestor Sukhdeo Rai had purchased the suit property through registered sale deeds dated 24.10.1940 and 21.12.1940 from recorded tenant Guru Sahay Rai who is ancestor of Defendant nos. 2 to 4 and since the date of purchase they have been coming in exclusive possession over the suit land and paying rent before vesting to the ex-landlords and after vesting to the State of Bihar.

4. Properties were subsequently partitioned between descendants in five equal shares and according to partition each Pattidar started exercising their exclusive right and possession over the properties allotted to their share. Out of five Pattidar, three Pattidars sold their entire share by registered sale deeds to different purchasers and purchasers came in possession and their names were duly mutated without any objection from any corner and are paying land rents and getting rent receipts.



5. Dispute is with respect to lands allotted to plaintiff No. 1 and plaintiff No. 2. Plaintiffs have purchased the lands from the heirs of Khatiyani Raiyats who are also ancestors of defendant Nos. 2 to 4.

6. Defendant's case is that Guru Sahay Rai was not the only son of Ramyad Mahto nor Kazi Kuer and Tej Kuer were the daughters. Ramyad Mahto had three sons namely, (i) Guru Sahay Rai (ii) Punit Rai (iii) Daljit Rai and Kazi Kuer was wife of Punit Rai and Tej Kuer was wife of Daljit Rai. They have denied that Sukhdeo Rai elder son of Surjan Rai had purchased land measuring 1.27 decimals by registered sale deed dated 21.12.1940 and 3.11 decimals in the name of Sukhdeo Rai vide registered sale deed dated 24.10.1940. Guru Sahay Rai and other members of the family did not execute any sale deed in favour of Sukhdeo Rai eldest son of Surjan Rai.

7. Defendant Nos. 3 and 4 have stated that Ramyad Mahto died leaving behind three sons, namely, Guru Sahay Rai, Punit Rai and Daljit Rai. Punit Rai and Daljit Rai died issueless. Kazi Kuer was the wife of Punit Rai and Tej Kuer was the wife of Daljit Rai and had pre-deceased their husband. After death of Punit Rai and Daljit Rai, Guru Sahay Rai became the absolute owner of all the joint family properties left by his father



Ramyad Mahto.

8. Guru Sahay Rai had five sons, namely, (i) Janak Rai (ii) Manak Rai (iii) Ramdeo Rai @ Deo Rai (iv) Jamuna Rai (v) Rambali Rai. Out of whom Manak Rai and Jamuna Rai died issueless and entire properties left by Guru Sahay Rai was inherited by Janak Rai, Ramdeo Rai and Rambali Rai. Ramdeo Rai died leaving behind his only son Ganesh Rai who is defendant No. 2 and Rambali Rai died leaving behind two sons Brijnandan Rai and Nandan Rai who are defendant Nos. 3 and 4. At the time of death of Guru Sahay Rai his sons were minor and his wife managed the properties who was illiterate and Pardanasin lady. Three branches of Guru Sahay Rai partitioned the joint family property in the year 2008 and got their names mutated.

9. The trial court has held that ancestors of plaintiff Sukhdeo Rai had purchased the suit land from ancestor of defendant Nos. 2 to 4 namely Guru Sahay Rai vide registered sale deed dated 24.10.1940 measuring 3 acres 11 decimals and vide registered sale deed dated 23.12.1940 measuring 1 acre 27 decimals.

10. After purchase of land, plaintiffs are paying the rent and getting the rent receipts and also are in possession over



the suit land. Defendants have stated with respect to these two sale deeds that same are conditional sale and one of the condition was that after paying the mortgage money to Baiju Bhagat they will take the mortgage deed from him but mortgage deed was not produced by plaintiff. The trial court has observed that both the sale deeds are absolute sale and there is nothing on record to infer that purchaser from Baiju Bhagat had raised any objection with regard to non-deposit of mortgage money.

11. The trial court has further observed that ancestor of defendants Rambali Rai and Ramdeo Rai had filed a title suit being Title Suit No. 51/84 with respect to disputed suit land against plaintiff Ramjivan Rai and Jangi Rai which was dismissed for default, as such, defendants had full knowledge about the said sale deeds and has found that plaintiffs have prima facie case and balance of convenience is also in their favour and rent of the suit land is being paid by the plaintiffs from the date of purchase and they are in possession over the suit land also.

12. The trial court has also observed that defendants are contemplating to sell the suit property and that will result in multiplicity of proceeding and after considering all the materials has passed order of injunction in favour of plaintiff and has



directed to maintain the status quo over the suit land during pendency of title suit.

13. In their written statement defendants have denied knowledge of any sale deed, however, it was placed on record that their predecessor had filed suit for setting aside the two sale deeds as such they cannot take plea that they were not aware about execution of those two sale deeds by their ancestor Guru Sahay Rai who executed the sale deed on his behalf as well as on behalf of his minor sons.

14. Registered sale deeds are voidable documents for which predecessors of defendant had filed title suit for setting aside both sale deeds but same was dismissed for default and now challenge to those sale deeds have become time barred. Sale deed being a registered document has presumption of correctness attached to it as well as its valid execution with all its legal consequences until it is set aside by a court of competent jurisdiction. It is valid, effective and binding to the successors of the executant of sale deed and registered sale is a notice to whole world and is binding upon all.

15. The Apex Court in case of Maharwal Khewaji Trust (Regd.) Faridkot Vs Baldev Das since reported in AIR 2005 SC 104 paragraph No. 10 has held as follows:-



10. Be that as it may, Mr. Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored

16. After hearing both the parties and perusing the impugned



order as well as materials available on record, this Court does not find any illegality or irregularity in the order passed by the trial court and accordingly the present appeal is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
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