

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.376 of 2012

Ram Bali Raut and Ors.

... .. Appellant/s

Versus

Mostt. Bachia and Ors.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Rakesh Chandra
For the Respondent/s	:	Mr.Pankaj Kumar

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

12 25-07-2019 Heard Mr. S.S. Dwivedi, learned counsel appearing
on behalf of the appellants.

2. The appellants are plaintiffs. The appellants filed Title Suit No.99 of 1979 for declaration of their title over the suit land fully described in Schedule I of the plaint. The case of the appellants is that the land of khata no.107 measuring 4 bigha 4 katha 6 dhoor stood in the name of Durga Raut. Out of which, plot no.688 measuring 10 dhoor is the homestead land (gharari). Durga Raut had three sons, namely, Tilak Raut, Bal Sundar Raut and Guzar Raut. Tilak Raut died issueless. The property was partitioned between Bal Sundar Raut and Guzar Raut. On partition, 2 bigha 3 katha 15 dhoor land fell in the share of Bal Sundar Raut. The plaintiffs, who are descendants of Bal Sundar Raut have been coming in peaceful possession of the land but the defendants started putting some hindrance in peaceful



possession of the land which necessitated the plaintiffs to file suit.

3. The defendants-respondents contested the suit and stated in the written statement that Bal Sundar Raut took loan from Ram Dayal Raut and Sheo Dayal Raut. Bal Sundar Raut did not pay the loan and consequently Sheo Dayal Raut and Ram Dayal Raut filed Money Suit (S.C.C.) No.457 of 1941, which was decreed. The decree holders-defendants filed Execution Case No.54 of 1942 and the suit lands were auctioned. The defendants purchased the suit land and came in possession over the suit land in accordance with law. Bal Sudar Raut also filed Miscellaneous Case No.444 of 1942 under Order 21 Rule 90 of the CPC for setting aside auction sale but the miscellaneous case was also dismissed and since then the defendants, who were put in possession in Execution Case No.54 of 1942, have been coming in peaceful possession.

4. The trial court after considering the evidence of the parties dismissed the title suit holding that the plaintiffs have got no title and possession over the land as the defendants are the auction purchasers and they have been put in possession over the suit land. The first appellate court also on re-appreciation of evidence returned the finding that the defendants



in execution of money decree vide Execution Case No.54 of 1942 became the auction purchasers and they were put in possession over the land. Thus, the plaintiffs had no title and possession over the land.

5. Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the appellants, submits that admittedly the plaintiffs-appellants are the descendants of Bal Sundar Raut and the land stood in the name of their ancestor. They have been coming in peaceful possession of the suit land and their possession remained uninterrupted. It is further submitted that the defendants have not stated anywhere in the written statement that they were put in possession over the land in execution of money decree vide Execution Case No.54 of 1942 in view of the provisions as contained in Order 21 Rule 95 of the CPC and this is the substantial question of law arises for consideration in this appeal that both the courts have not considered this aspect that whether the defendants were put in possession of the suit land in satisfaction of Execution Case No.54 of 1942.

6. Having considered the submissions and on perusal of the judgments of both the courts, it is apparent that the trial court framed the issue whether the plaintiffs have got title and possession over the land? The appellants claimed the title and



possession over the suit land by way of inheritance from the recorded tenant Durga Raut. After death of Durga Raut, the properties were partitioned among the sons of Durga Raut, Bal Sundar Raut and Guzar Raut. Plaintiffs got the lands by inheritance from Bal Sundar Raut, but the plaintiffs did not plead any fact in their pleading about money suit decree against Bal Sundar Raut and auction sale of the suit property in execution of the money decree. Plaintiffs have also not pleaded that even after auction purchase of the suit land by defendants on 08.06.1942, the possession of the suit land remained with the plaintiffs and never handed over to defendants in satisfaction of the case. This fact has been raised for the first time at the time of hearing the second appeal whereas the learned Sub-Judge on the basis of the evidence on record held that the defendants-respondents came in possession of the suit land by virtue of auction purchase and in satisfaction of the Execution Case No.54 of 1942. It also transpires that one Miscellaneous Case No.444 of 1942 was filed by Bal Sundar Raut for setting aside auction sale of the suit property but the said miscellaneous case was dismissed and auction sale was confirmed. Both courts have concurrently held that the defendants got title over the suit property by way of auction purchase in execution of money



decree against Bal Sundar Raut and they came in possession of the same in satisfaction of execution case. Defendants-respondents have been coming in possession and the plaintiffs-appellants have no title on the suit land and they never remained in possession of the lands. I do not find any reason to interfere with concurrent finding of the both courts.

7. Consequently, I find that no substantial question of law arises in this appeal for consideration. Thus, this second appeal is dismissed.

(Prabhat Kumar Jha, J)

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