

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.370 of 2012

1. Rameshwar Prasad @ Lalan Prasad
2. Barmeshwar Prasad, both sons of Raghunath Prasad
All residents of Simri Dudhipatti Bazar, P.S. Simiri, District Bhojpur

... .. Appellants

Versus

1. Gopal Sah
2. Madan Sah, Son of Late Bhart Sah
3. Saroj Kumar
4. Pankaj
5. Niraj Kumar, All sons of Lat Mohan Sah
6. Most. Shivadulari Devi, Widow of Bhrigunath Prasad, All residents of Simri Dudhipatti Bazar, P.S. Simri, District Bhojpur.
7. Prabhunath Prasad Saraf, Son of Muni Lal Saraf, Resident of Ratsad, District Balia (U.P.)
8. Bisnu Kumar, Son of Late Sankar Prasad (died 17.05.2006), Wife Sumetra Devi died 22.06.2008.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Ashwini Kumar Rai
For the Respondent/s : Mr.Ravindra Kr Sinha No.2

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

10 19-04-2019 The appellants preferred this second appeal being aggrieved by the judgment and decree dated 22.05.2012, passed in Title Appeal No.11 of 2000 by the learned Additional District Judge, Fast Track Court, 1st, Buxar allowing in part the appeal setting aside in part the judgment and decree dated 28.03.2000, passed by the learned Sub-ordinate Judge-II, Buxar in Title Suit No.194 of 1985.

The appellants are sons of Raghunath Prasad, the defendants 1st set. Plaintiffs are the respondents 1st set. The plaintiff filed Title Suit No.194 of 1985 for declaration of title



and recovery of possession over the lands mentioned in schedule I of the plaint stating that the defendants 1st set illegally came in possession of the suit land after dispossessing the mortgagee of the vendors of the plaintiff.

The case of the plaintiff in brief is that Bhrigunath Prasad and his two brothers Yadunath Prasad and Raghunath Prasad, defendants 1st set separated by way of mutual family partition on 16.11.1960 and the lands of schedule I fell in the exclusive share of Bhrigunath Prasad. After death of Bhrigunath Prasad on 03.02.1976, his widow came in possession of the land. Bhrigunath Prasad during his life time mortgaged the property on 01.11.1971 in favour of Sitaram Sonar. After death of Bhrigunath Prasad, legal heirs of Bhrigunath Prasad executed sale deed on 28.10.1977 in favour of the plaintiff and the plaintiff redeemed the property but the defendants 1st set illegally dispossessed the plaintiff from the possession of the land and thus the plaintiff filed the suit.

The defendants no.1 to 4 jointly filed WS. No WS was filed on behalf of defendants no.5 and 6, who are proforma defendants. The defendants 1st set-appellants contested the suit on the grounds, besides other general grounds, that defendant 2nd party, the vendor of the plaintiff never executed any sale deed



on 28.10.1977 in favour of the plaintiff. No partition took place between the three brothers, namely, Bhrigunath Prasad, Yadunath Prasad and Raghunath Prasad on 16.11.1960 nor the defendant 2nd set acquired any exclusive right and title over the lands mentioned in schedule I of the plaint. All the three brothers remained joint. It is further stated that there was a partition amongst the three brothers on 10.08.1968 and the defendant 2nd set did not execute any mortgage deed on 01.11.1977 nor Sitaram Sonar ever came in possession. The defendant 2nd set has been coming in peaceful possession of the land by virtue of the lands fell in their share. The plaintiff in collusion with the defendant 2nd set produced some forged and fabricated documents and on the basis of which the Consolidation Officer prepared the Khatiyani in the name of wife of Bhrigunath Prasad.

The trial court besides other issues framed Issue No.IV which is “has the plaintiff right and title over the suit premises and the plaintiff is entitled for recovery of possession through the process of the court?” The trial court held that there was partition amongst the three brothers, namely, Bhrigunath Prasad, Yadunath Prasad and Raghunath Prasad and the land fell in the share of the vendor of the plaintiff holding that the



partition took place in the year 1960 amongst the three brothers is genuine and the partition deed said to have been prepared in the year 1968 Ext. E is bogus and not genuine. The trial court also held that the defendants 1st set is a trespasser and is in illegal possession of the suit land holding that the vendor of the plaintiff sold the land without proper permission by the competent authority as the permission granted by the Consolidation Officer was cancelled by the Director, Consolidation. The plaintiff filed the appeal. The defendants 1st set also filed cross appeal. The learned first appellate court having considered all the materials/evidence on record set aside the findings of the trial court to the extent that the sale deed is illegal on account of lack of permission granted by the consolidation authority and held that since the suit land is a homestead land situated in the market, no permission is required under the Consolidation Act. The learned Additional Judge further held that the plaintiff got the sale deed executed from wife of Bhrigunath Prasad in whose share the land fell on partition after vendor having obtained permission from the consolidation authority. The Director is not legally competent to set aside the permission granted to the owner of the land with retrospective effect and accordingly held that the plaintiff has



got title over the land by virtue of the sale deed dated 28.10.1977 executed by widow of Bhrigunath Prasad and confirmed the findings of the trial court on other issues after partially allowing the appeal.

Learned counsel for the appellants submits that the judgment and decree of both the courts holding that the partition took place between the three brothers in the year 1960 is erroneous and against the weight of evidence available on record. The appellate court has gone beyond the pleadings of the parties in recording the findings that the suit land is of commercial use and no permission is required for selling the same under the Consolidation Act but on perusal of the judgment of both the courts, I find no substance in the submissions of the learned counsel for the appellants. Both the courts have on the basis of the oral as well as documentary evidence concluded the findings that there was partition amongst the three brothers in the year 1960 and the defendant 1st set had also put signature on the memorandum of partition but the defendant 1st set did not ever venture to dispute the genuineness of his signature on the memorandum of partition. It is further held that after the lands fell in the share of Bhrigunath Prasad, the husband of vendor of the plaintiff, Bhrigunath



Prasad executed several mortgage deeds and these facts showed the partition between the three brothers. Even in the consolidation proceeding, the Khatiyani of the lands mentioned in schedule I of the plaint was recorded in the name of widow of Bhrigunath Prasad and the defendants contested the case before the consolidation authority. The first appellate court on the facts aforesaid confirmed the findings on the point of partition and held that since the land mentioned in schedule I of the plaint is a homestead land situated in the urban area on which house is standing, no permission is required in view of the provisions of the Consolidation Act. The consolidation authority however granted permission and thereafter widow of Bhrigunath Prasad executed the sale deed in favour of the plaintiff-respondent 1st set, therefore, the sale deed cannot be held to be illegal on account of lack of permission subsequently cancelled by the Director, Consolidation. The Director, Consolidation cannot conceal the permission with retrospective effect. Thus, I find that the findings of both the courts that the plaintiff has got title by virtue of the sale deed executed by the wife of late Bhrigunath Prasad, who got the land in his share after partition and the defendants are in illegal possession of the land and thus the plaintiff is entitled to get possession through the process of



the court does not require any interference.

Having considered the facts, I find that this second appeal does not involve any substantial question of law and accordingly, the second appeal is dismissed.

(Prabhat Kumar Jha, J)

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