

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.317 of 2016

In
SECOND APPEAL No.317 of 2013

=====

Durga Das @ Durga Das Mandhyani and Ors

... .. Petitioner/s

Versus

Abdul Suhan and Ors

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Kamal Kishore Jha
For the Opposite Party/s : Mr. Mosowir

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

13 22-04-2019 Heard Mr. Pankaj Kumar Sinha, learned counsel for the petitioners and Mr. Bishwanath Chaudhary, learned counsel for the opposite parties.

This review petition is filed for review of the judgment and order dated 25.01.2016 passed by a Bench of this Court in Second Appeal No.317 of 2013 by which the judgment and decree of reversal dated 20.06.2013 passed in Title Appeal No.7 of 1995 has been confirmed.

Mr. Pankaj Kumar Sinha, learned counsel for the petitioners submits that a finding has been recorded by the first appellate court in title appeal and this court in Second Appeal that there was no material on record to show that the defendants had encroached any portions of land in excess of 1.56 acres of land in Plot No.1982 but the first appellate court has not



considered the Survey Knowing Pleader Commissioner's report as available on record. The non-consideration of Survey Knowing Pleader Commissioner's report has materially and substantially affected the result and recording the finding that there is no material on record to show that the defendants had encroached upon the land of Plot No.1982 in excess of 1.56 acres of land. It is submitted that District Judge, Katihar had appointed Survey Knowing Pleader Commissioner for measurement of the suit land and by order dated 05.04.1996 the writ was ordered to be issued. The Pleader Commissioner submitted his report on 30.07.1996 and thereafter by order dated 01.08.1996 objection, if any, was invited against the said report. No objection was given till 08.08.1996. The report of the Survey Knowing Pleader Commissioner shows the encroachment of petitioner's land by the respondents and, therefore, the judgment dated 25.01.2016 is required to be reviewed.

Having considered the submission of the learned counsel for the petitioners and on perusal of record, I find that undisputed facts are that Kaniz Fatima is the owner of Plot No.1982 area 1.93 acres. Kaniz Fatma is said to have executed a sale deed with regard to 58 decimals of land in favour of Shravan Kumar on 04.12.1969, towards the land situated from



northern side of Plot No.1982. The petitioners also claimed to have purchased 20 decimals of land out of the aforesaid area of Plot No.1982 towards the north of the land purchased by Shravan Kumar. The petitioners-plaintiffs further claimed to have purchased 58 decimals of land from Shravan Kumar by registered sale deed dated 26.10.1970 and thus the plaintiffs altogether claimed title and possession over 78 decimals of land purchased from Kaniz Fatima but the defendants had earlier filed Title Suit No.28 of 1970 and claimed title over 1.56 acres of land in Plot No.1982 on the basis of the sale deed executed in their favour by Bibi Kaniz Fatima by registered sale deed dated 02.07.1956. It is relevant to mention here that after executing the sale deed by Bibi Kaniz Fatima only 37 decimals of land left in Plot No.1982 but the plaintiffs of the present suit claimed to have purchased 78 decimals of land from Bibi Kaniz Fatima on different dates but Bibi Kaniz Fatima had only 37 decimals of land after executing sale deed of 1.56 acres of land on 02.07.1956 in favour of the defendants. When the defendants filed Title Suit No.28 of 1970 for declaration of title and recovery of possession on 1.56 acres of land, the suit was decreed and the judgment and decree was affirmed upto High Court Patna. The defendants filed Execution Case No.189 of



1973 and the delivery of possession to the decree holders (the defendants) of the present suit was effected on 22.04.1983 after demolishing pucca boundary wall fencing etc. of the judgment debtors(the plaintiffs in the present suit). The petitioners-plaintiffs also filed Misc. Case No.74 of 1989 alleging therein that in execution case, the possession of more land was handed over to the defendants but Misc. case was also dismissed. It further appears that plaintiffs filed the suit on the ground that the land was measured in Demarcation Case No.6 of 1983 and the land of Plot No.1982 was measured by the Amin wherein the defendants were found in possession of 33 decimals of land in excess of their 1.56 acres of land in Plot No.1982 and accordingly, the relief was sought against the defendants. The defendants denied the fact of measurement of the land of Plot No.1982 and also denied the fact that they are in possession of any portion of land in excess of 1.56 acres of land of Plot No.1982. The defendants further claimed that they have amalgamated 12 decimals of land of R.S. Plot No.1975. Of course, the trial court has decreed the suit but without any material on record or the report of demarcation that the defendants are in possession of the land in excess of 1.56 acres of land of Plot No.1982. The findings of the trial court was



reversed by the first appellate court on the ground that there is no material on record to show that the defendants of the suit had encroached upon any portion of the land beyond 1.56 acres of land of Plot No.1982. The order of learned District Judge of course show that Survey Knowing Pleader Commissioner was appointed and writ was issued on 05.04.1996. Survey knowing Pleader Commissioner also submitted its report but learned counsel for the petitioner could not be able to show that Survey Knowing Pleader Commissioner's report was admitted on record by way of additional evidence. Unless the report is allowed to be brought on record by way of additional evidence, the Survey Knowing Pleader Commissioner's report cannot be looked into and, therefore, there is no material on record to show that the defendants of the suit is in excess possession of land of Plot No.1982 beyond 1.56 acres of land which they are entitled to have their possession.

Thus, I find no ground to review the judgment and order dated 25.01.2016 passed in Second Appeal No.317 of 2013. Accordingly, this review petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

