

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.350 of 2018

Smt. Kiran Sinha @ Meena Devi	...	...	Appellant/s
Versus			
Rupesh Kumar Shahi and Ors	...	...	Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anand Kumar
For the Respondent/s	:	Mr. Anish Chandra Sinha

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

12 18-07-2019 Heard both sides.

2. The appellant filed this appeal against the judgement and decree dated 22.02.2018 passed in Title Appeal No.96 of 2011 by learned Additional District Judge-X, Patna by which the judgement and decree dated 30.07.2011 passed in Title Suit No.115 of 1995 by learned Munsif II, Patna was confirmed and the appeal was dismissed.

3. Learned counsel for the appellant submits that the appellant filed Civil Miscellaneous Case No.264 of 2018 against the order passed in Title Appeal No.96 of 2011 rejecting the prayer of the appellant for adducing additional evidence. The notice was issued and further proceeding in Title Appeal No.96 of 2011 was stayed by order dated 02.04.2018 but before order dated 02.04.2018, Title Appeal No.96 of 2011 was dismissed and the judgement was delivered. It is submitted that the first appellate court has committed illegibility in dismissing the title appeal during pendency of Civil Miscellaneous Case No.264 of



2018. It is further submitted that the suit property is not fully described in the plaint. The appellant had purchased land from Jai Nandan Prasad Narayan Sahi by way of oral agreement and paid consideration amount of Rs.5,000/- on different dates in the year 1954 itself. The appellant came in possession of the land and the house. The appellant got the sale deed executed with regard to the land from Jai Nandan Prasad Narayan Sahi on 25.04.1990. There was no relationship of landlord and tenant between the appellant and the respondents. The sale deed was executed by Jai Nandan Prasad Narayan Sahi in favour of plaintiffs-respondents on 03.10.1970 but the plaintiffs did not get any title as Jai Nandan Prasad Narayan Sahi had already sold the land to the appellant. It is submitted that the court has erred in holding that the appellant did not get any title by virtue of sale deed executed in his favour on 25.04.1990 and directed the appellant to vacate the suit premises, although it has not been proved that there is relationship of landlord and tenant between the appellant and the respondents.

4. Learned counsel for the respondents submits that no substantial question of law is involved in the case. The vendor of the respondents sold his land in favour of respondents by a registered sale deed dated 03.10.1970 and the respondents



came in possession of the land. The appellant was residing with his cousin, Rameshwar Prasad (munshi of plaintiffs' family) and after death of Rameshwar Prasad, defendant no.1-appellant was allowed to remain in the house on payment of rent of Rs.100/- but the appellant contested the suit on the plea that he had already purchased the same land from Jai Nandan Prasad Narayan Sahi in the year 1954 itself and paid consideration amount on different dates but the sale deed was registered only on 25.04.1990. Before that, the plaintiffs-respondents purchased the land from Jai Nandan Prasad Narayan Sahi through sale deed dated 03.10.1970 and Jai Nandan Prasad Narayan Sahi had no title over the land, therefore, the sale deed executed on 25.04.1990 in favour of appellant is void and on such sale deed no title was transferred to defendant no.1-appellant and thus the second appeal is fit to be dismissed.

5. Having considered the submissions of both sides and on perusal of the records, it is evident that both courts have held that defendant no.1-appellant did not produce any chit of paper to show that defendant no.1 paid any consideration amount in the year 1954 to Jai Nandan Prasad Narayan Sahi. Jai Nandan Prasad Narayan Sahi sold the suit land by a registered sale deed dated 03.10.1970 in favour of the plaintiffs-



respondents and once the vendor of plaintiffs-respondents transferred his entire share in suit land, he had no title over the suit land. Therefore, the sale deed executed on 25.04.1990 is void, illegal and as such the appellant did not get any title over the suit land by virtue of such sale deed. It has been held by both the courts that the appellant was living in the room as a tenant and thus both the courts held title of the plaintiffs-respondents and directed defendant no.1-appellant to vacate the suit premises within two months. The learned counsel for the appellant could not be able to show any non-appreciation of evidence or material error in the judgement. So far the vagueness of the suit property is concerned, it appears that the appellant has not stated any fact in the written statement about uncertainty and vagueness of the suit property and has taken plea for the first time in this court and the same is not acceptable.

6. In this view of the fact, I find no substantial question of law arises in this second appeal. Accordingly, this second appeal is dismissed.

(Prabhat Kumar Jha, J)

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