

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.464 of 2017

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Lal Bihari Sah, Son of Late Jagarnath Sah, Resident of Barharwa Mahanand,
P.O. Bakarpur Jagat, P.S. Kalyanpur, District East Champaran.

... .. Plaintiff/Respondent/Appellant
Versus

1. Ayodhya Thakur, Son of Late Bhajan Thakur.
2. Sitaram Thakur, Son of Shivdhari Thakur.
3. Prabhu Sah, Son of Satnarayan Sah.
4. Sitaram Sah, Son of Jagarnath Sah, All of Resident of Village Barharwa Mahanand, P.O. Bakarpur Jagat, P.S. Kalyanpur, District East Champaran.

... .. Defendants/Appellants/Respondent

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Appearance :

For the Appellant/s : Mr.Sanjeev Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 14-11-2019 The appellant filed this second appeal to set aside the judgment and decree dated 10.07.2017 and 22.07.2017, passed by learned 13th Additional District Judge, East Champaran, Motihari in Title Appeal No.5 of 2012 by which the learned Additional District Judge allowed the appeal and set aside the judgment and decree passed by learned 5th Sub-Judge, Motihari in Title Suit No.472 of 2003/153 of 2009 decreeing the suit by judgment and decree dated 30.07.2011.

2. The plaintiff is the appellant. Plaintiff filed the suit for declaration of title, recovery of possession and for declaration that the sale deed dated 31.03.2003 and 29.11.2003 executed by Sitaram Thakur in favour of Sitaram Prasad be declared as void



and not binding upon the plaintiff and for recovery of possession. In brief, the plaintiff put forth the case that he purchased the suit land mentioned in Schedule I of the plaint through an unregistered sale deed in August, 1945 and since then he is coming in peaceful possession over the suit land bearing Plot No.1262, Khata No.416, measuring 10 Katha, 10 Dhurs from ex-landlord, Kuber Tiwary. Sundar Noniya was shown as Bataidaar in the record of rights and he was cultivating the lands but after revisional survey, Sunar Noniya surrendered the suit land to the Zamindar, Kuber Tiwary and Kuber Tiwary came in possession of Khesra No.1262. Sundar Noniya died leaving behind his widow, Most. Jinsi. Kuber Tiwary, ex-landlord died leaving behind his son, Vishwanath Tiwary who came in possession over the suit land and Vishwanath Tiwary executed Khesta sale deed (Ext.5) in favour of the plaintiff, Lal Bihari Sah in August, 1945 with regard to 1 Bigha 4 Katha and 19 Dhurs land including Khesra No.1262, area 10 Katha 10 Dhurs and plaintiff paid rent and got rent receipts. The Khesta sale deed is Ext.5. The defendants purchased the land from one Dhanu Sah. Dhanu Sah had purchased the land from Most. Jinsi, widow of Sundar Noniya on 18.06.1954 through a sale deed. Sheodhari Thakur purchased the land on 06.04.1964 in the name of his wife, Rampyari Devi. They forged and fabricated the sale deed.

3. The defendants denied the title of the plaintiff and the



genuineness of the Khesta Sale deed (Ext.5) and rent receipts issued by the ex-landlord. The land in dispute was exclusively recorded in the name of Sundar Noniya and after Sundar Noniya, Most. Jinsi sold the land to Dhanu Sah on 18.06.1954. Dhanu Sah executed the sale deed to Rampyari Devi on 06.04.1964 and Rampyari Kumari and her two sons, Bhagwan Thakur and Sitaram Thakur came in possession of the land and after death of Rampyari, both the sons of Rampyari partitioned the property in equal proportion. Defendant No.1 got his share from the northern portion and defendant no.2 got 5 Katha 5 Dhurs land from the southern side. Defendant No.2 sold his share to his brothers through a sale deed on 31.03.2003 and 29.11.2003.

4. The trial court besides many issues framed Issue Nos.3 and 4, whether the plaintiff has got right, title and possession over the suit land on the basis of the unregistered sale deed with regard to the land mentioned in Schedule I of the plaint and whether the sale deed executed by Sitaram Thakur in favour of Prabhu Sah on 31.03.2003 and in favour of Sitaram Sah on 29.11.2003 are illegal, void, without consideration and not binding upon the plaintiff?

5. The trial court relied on the Khesta sale deed, said to have been executed in favour of the plaintiff, Lal Bihari Sah, and held that the moment Ext.5 came into existence, Most. Jinsi got no



right to execute any sale deed in favour of Dhanu Sah on 18.06.1954 (Ext. A/3) and simple entry in the Khatiyā as Bataidaar does not confer any title on Sundar Noniya unless and until it is shown that Sundar Noniya came in exclusive possession of the land after becoming raiyat of the land. Accordingly, decreed the suit in favour of the plaintiff-appellant.

6. The defendants preferred appeal. The appellate court considered the Khesta sale deed as well as the rent receipts (Ext.1 to 1/b) issued by the ex-landlord and categorically held that the Khesta sale deed as well as the rent receipts (Ext.1 to 1/b) were forged and fabricated and such forged and fabricated document does not create title in favour of the plaintiff. When the rent receipts issued later on were found to be fake and forged, the appellate court held that Sundar Noniya was recorded as Bataidaar and by efflux of time he became raiyat and record of right was prepared in his name, when the ex-landlord surrendered the land before vesting of States and widow of Sundar Noniya executed the sale deed (Ext. A/3) in favour of Dhanu Sah on 18.06.1954, the appellate court further held that the plaintiff failed to prove his title over the land, accordingly allowed the appeal and dismissed the suit after setting aside the judgment and decree.

7. Learned counsel for the appellant submits that the learned appellate court failed to appreciate that the land was



recorded in the name of Kuber Tiwary. The name of Sundar Noniya was mentioned in remarks column of Khewat as Bataidaar in the year 1934. Kuber Tiwary had title over the land and by virtue of Khesta sale deed executed by Kuber Tiwary (Ext.5), the plaintiff came in possession and has been coming in possession of the suit land since 1945. It is further submitted that the suit land was valued less than Rs.100/- and, therefore, the sale deed executed by Kuber Tiwary, the ex-landlord, in the year 1945 was not required to be registered. The Bataidaar had no right to alienate the property of the landlord, therefore, the substantial question arises for consideration is that the appellate court while reversing the judgment of the trial court has not considered in its true perspective the sale deed executed by the ex-landlord in favour of the plaintiff in the year 1945 and the appellate court has wrongly come to the conclusion that the Khesta sale deed and the rent receipts issued by the ex-landlord are forged, fabricated and not genuine.

8. Having considered the submissions and on perusal of the judgments of both the courts, I find that it is apparent that the plaintiff-appellant primarily based his case of his title on the basis of the Khesta sale deed (Ext.5) and the rent receipts (Ext.1 to 1/b), which are said to have been issued by the ex-landlord after purchasing the same from Vishwanath Tiwary, son of Kuber



Tiwary and the learned Additional District Judge held that Ext.6 shows the name of the landlord under Khewat No.6. The plaintiff purchased the land in the year 1945 through an unregistered sale deed but the plaintiff did not mention the date of execution of the sale deed in the plaint. The plaintiff claimed that his name was mutated in the Sarista of ex-landlord and in support thereof filed Ext. A and Ext.1 to 1/b Zamindari rent receipts but the rent receipts bore no seal of the ex-landlord and, therefore, the learned Additional District Judge held that the Khesta sale deed and the rent receipts, said to have been issued by the ex-landlord, are forged and fabricated. Learned counsel for the appellants could not be able to show that the findings of the first appellate court is anyway perverse after perusal of the sale deed, the basis of the title of the plaintiff said to have been executed by the ex-landlord in the year 1945. The plaintiff could not be able to show the date of execution of the Khesta sale deed and the plaintiff failed to prove the Khesta sale deed as genuine. In absence of proof of the sale deed said to have been executed by Vishwanath Tiwary, son of ex-landlord in favour of the plaintiff, the plaintiff got no title over the land. The name of Sundar Noniya was recorded in the record of rights even after vesting of the State in the State of Bihar and this fact itself shows that the land remained in cultivating possession of Sundar Noniya even after vesting of the State and after death of



Sundar Noniya, his widow came in possession of the land and thus, I find that the first appellate court has rightly come to the conclusion that the plaintiff-appellant failed to proof his title over the lands by virtue of the Khesta sale deed said to have been executed in his favour by the son of the ex-landlord in the year 1945.

9. Having considered the facts, I find no substantial question of law arises for consideration in this second appeal. Consequently, the second appeal is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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