

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.311 of 2005

1. Gita Devi, wife of Late Ram Chandra Poddar, resident of Village-Singhia Bujurg @ Singhia Ghat, P.O. Singhia Ghat, P.S. Bibhutipur, District-Samastipur.
2. Ranjit Poddar, Son of Late Ram Chandra Poddar, resident of Village-Singhia Bujurg @ Singhia Ghat, P.O. Singhia Ghat, P.S. Bibhutipur, District-Samastipur.
3. Tuntun Poddar, Son of Late Ram Chandra Poddar, resident of Village-Singhia Bujurg @ Singhia Ghat, P.O. Singhia Ghat, P.S. Bibhutipur, District-Samastipur.

... ... Plaintiffs-Appellants-Appellants
Versus

1. Anwar Ali.
2. Haidar Ali.
3. Sikandar Ali.
4. Manohar Ali.
5. Manjar Ali.

All are sons of Fajalu Rahman and all are residents of Village- Kodariya, P.S. Bibhutipur, P.O. Alampur, District-Samastipur.

... ... Defendants Ist Set-Respondents Ist Set-Respondents Ist Set.

6. Brij Mohan Poddar.
7. Vijoy Poddar.
8. Pawan Kumar Poddar. Sons of Late Shiv Narain Poddar.
9. Sirlai Devi.
10. Chanda Devi. Both daughters of Late Shiv Narayan Poddar.
11. Most. Jogeshwari Devi @ Bhagiya Devi, wife of Late Raghunath Poddar.
12. Umesh Poddar.
13. Mahesh Poddar.
14. Dilip Poddar.
15. Ganit Poddar. All sons of Late Raghunath Poddar.
16. Pinki Kumari, minor daughter of late Raghunath Poddar under natural guardianship of her mother respondent no. 11, Jageshwari Devi @ Bhagia Devi.
17. Rajeshwar Poddar.
18. Ramesh Poddar. Both sons of Late Dwarika Poddar.
19. Roshan Poddar.
20. Bimal Poddar.
21. Dewanand Poddar. All sons of Late Satya Narain Poddar. All are residents of Village-Singhia Bujurg @ Singhiaghat, P.O. Singhia Ghat, P.S. Bibhutipur, District-Samastipur.
22. Radhey Shaym Poddar, Son of Late Maheshwar Poddar, resident of Village-Dumra, P.O. Shibaji Nagar, P.S. Rosera, District-Samastipur.

...Defendants 2nd Set-Respondents 2nd Set-Respondents 2nd Set.



23. Shankar Poddar, Son of Late Lakshmi Poddar.
24. Vipin Poddar, minor Son of Late Laxmi Poddar under guardianship of his mother.
25. Name not known, wife of Late Laxmi Poddar.
26. Deo Naraian Poddar.
27. Gaya Poddar.
28. Rama Nand Poddar. Sons of Late Bisheshwar Poddar. All are residents of Village- Singhia Bujurg @ Singhiaghat, P.O. Singhiaghat, P.S. Bibhutipur, District-Samastipur.
...Defendants 3rd Set-Respondents 3rd Set-Respondents 3rd Set.

Appearance :

For the Appellants : Mr.Bhubneshwar Prasad, Advocate.
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

21 04-03-2020 Heard Mr. Bhubneshwar Prasad learned counsel for the plaintiffs/appellants/appellants under Order-XLI, Rule-11 of the Code of Civil Procedure.

2. The appellant who was plaintiff in the court below has filed a suit for declaration that the Sale Deed executed by Dorik Poddar in favour of defendant no. 1 is illegal, void and be set aside, further relief for eviction of the defendant- 1st set on the ground of defaulter in payment.

3. The case of the plaintiff/appellant in short is that the suit premises measuring an area of 7 Katha 7 Dhur according to Khatian and 7 Katha 7 Dhur according to Map under Plot No. 2299 Khata No. 149 (old) recorded in the name of Jhaman Mahto, Jhumak Mahto, Darshan Mahto and Govind Mahto.



4. It was further case of the plaintiff that one Shanti Poddar died leaving behind three sons namely Sonelal Poddar, Ruplal Poddar and Visheshwar Poddar and after death of Shanti Poddar his/her all three sons separated. Sonelal Poddar and Ruplal Poddar purchased the land mentioned in Schedule-II of the plaint from Premchandra Mahto and Domi Mahto through oral sale on 23rd Jeth 1330 Fasli and 30th Jeth 1331 Fasli and came in possession thereof. Sonelal Poddar died leaving behind four sons Dorik Poddar, Saryug Poddar, Satya Narayan Poddar and Ramchandra Poddar. Dorik Poddar died leaving behind three sons namely Raghunath Poddar, Rajeshwar Poddar and Ramesh Poddar whereas Raghunath Poddar died leaving behind his widow Bhajiya Devi, who has been made as defendant no. 8. Satya Narayan Poddar died leaving behind three sons, who are defendant nos. 11, 12 and 13 whereas namely, Raushan Poddar, Vimal Poddar and Devanand Poddar whereas Saryug Poddar died leaving behind defendant no. 14 and heirs of Ruplal Poddar has been made defendant nos. 6 and 7 and Visheshwar Poddar died leaving behind four sons namely Laxmi Poddar, Deo Narayan Poddar, Gaya Poddar and Ramanand Poddar.

5. It was further case of the plaintiff that the land mentioned in Schedule-II was subsequently partitioned between sons of



Sonelal Poddar and Ruplal Poddar, accordingly, Sonelal Poddar and Ruplal Poddar has given land to Visheshwar Poddar measuring an area of 17 dhur from south west for construction of house and rest two brothers namely Sonelal Poddar and Ruplal Poddar got partitioned half and half and each brother got 1 Katha 14½ Dhur.

6. Subsequently, Dorik Poddar, son of Sonelal Poddar transferred his share in favour of Visheshwar Poddar who came in possession and got the house constructed.

7. It was further case of the plaintiff that defendant no. 1 initially installed Lathe machine in one of the room taking permission from Yogendra Poddar but, subsequently as the defendant no. 1 was feeling difficulty in running business, due to shortage of space hence, took Khaprail Baramdah of the plaintiff on monthly rent of Rs. 50/-.

8. It is further case of the plaintiff that defendant no. 1 got three Sale Deed dated 05.08.1986 from Dorik Poddar fraudulently without paying consideration and as such he has got no right title, as his vendor was not right title over the same and on the strength of bogus Sale Deed firstly stopped making payment of rent to Yogendra Poddar. Subsequently, Yogendra Poddar brought an Eviction Suit which was subsequently



transferred to the Munsif, Rosra, which was decreed on terms of compromise and when Anwar Ali, failed to grab the land of Yogendra Poddar, on the basis of bogus Sale Deed stopped making payment to the plaintiff resulting a proceeding under Section 144 Cr.P.C. was initiated which was decided in favour of the plaintiff, and as such, the defendant failed to make payment, and became defaulter and hence the present suit was filed.

9. In this case there were altogether five sets of written statement. Some of the defendants filed their written statement in support of the defendants-1st set whereas, some of the defendants filed written statement in support of the case of the plaintiff, but the defendant no. 1 filed written statement contesting the claim of the plaintiff, there was no denial with regard to area of the land and plot number and has also admitted, that the Plot No. 4299 recorded in the name of all four brothers namely, Jhaman Mahto, Jhumak Mahto, Darshan Mahto and Govind Mahto and denied the case of the relationship admitting, that the land was acquired by sons of Shanti Poddar through two Khista Sale Deed as claimed by the plaintiff, the difference according to the plaintiff that the land referred above was acquired by Sonelal Poddar and Ruplal



Poddar, and Visheshwar Poddar is not party to this acquisition, whereas as per the defendant the land was acquired by three brothers namely Sonelal Poddar, Ruplal Poddar and Visheshwar Poddar, and all three brothers have got 1/3 share in the said land. But Saryug Poddar died issueless in the early age and land was divided into 1/3 share Dorik Poddar got 1/3 share, and accordingly Revisional and consolidation records were prepared, the records of rights has never been challenged. It is also denied that Dorik Poddar had given his share to the defendant 3rd party and has also denied the Genealogical Table and further denied that he was never tenant of plaintiff or of Yogendra Poddar. Plaintiff is coming in peaceful possession thereof as purchaser.

10. On the basis of the pleading the learned Trial Court altogether has framed eight issues out of which Issue Nos. iv, v, vi, vii and viii was pressed by the plaintiff these are as follows:-

(iv) Whether there exists relationship of landlord and tenant in between the plaintiff and defendant 1st set?

(v) Are the three Sale Deeds dated 5.8.1986 executed by Dorik Poddar in favour of defendant 1st party valid, operative and for consideration or fit to be set aside?

(vi) Whether the plaintiff is entitled to a decree of eviction on the ground of default against the defendant 1st party?

(vii) Whether the plaintiff is entitled to a decree for arrears of rent as claimed?



(viii) To what other relief or reliefs if any the plaintiff is entitled to?

11. After discussing all the issues considering evidence and exhibits adduced on behalf of the plaintiff the learned Trial Court has dismissed the suit holding that the Sale Deed dated 05.08.1986 executed by Dorik Poddar is valid, operative further holding that there was no relationship of landlord and tenant further holding that Saryug Poddar was died issueless.

12. Being aggrieved from the judgment and decree of the Trial Court the plaintiff filed Title Appeal No. 06/1992/49/2004 which was also dismissed by the appellate court vide judgment and decree dated 10th August 2005 and 24.8.2005 respectively hence the present appeal has been filed by the plaintiff/appellant.

13. In course of argument the learned counsel for the appellant has given much stress on the following formulated question of law:-

- (i) Whether in view of Sale Deed survey entry and entry in the consolidation record confer right title and interest over the land and suit for eviction was not fit for decreed?
- (ii) Whether a Panchnama which is not signed by all the parties concerned can be relied upon and whether the learned court below could place reliance upon it or not?

14. So far the first question of law formulated by the



learned counsel for the appellant it appears that it is true that the survey entry is not only conclusive proof of title rather it should be seen along with other document upon which the survey entry was made, and it appears that the learned Trial Court and Appellate Court while dealing with Issue No. 4, 5 and 6 has fully given attention with regard to the rights of vendor who have got the land by survivorship or not, and couple with the evidence especially Ext. –A/1, A/2, B/1, a/b has come to the conclusion that survey khatiyan and consolidation khatiyan was prepared correctly which has not been challenged, and the plaintiff has got no right title ,and there is no relationship of landlord and tenant. So far second point formulated by the learned counsel for the appellant with regard to Panchnama is concerned, marked as Ext.- A/2, the learned Trial Court while dealing with Issue No. 4, 5 and 6 has considered, that on Panchnama all three branches of Shanti Poddar had taken part, and acted upon.

15. From perusal of judgment of court below, it appears that there is concurrent finding of both courts, and the learned counsel for the appellant failed to prove any perversity in the judgments. It is settled law that in second appeal appreciation of evidence cannot be considered though the



appellant should have to establish their case on question of law/perversity in judgment. Hence, the appeal is dismissed at the admission stage itself, having no substantial question of law.

(Sudhir Singh, J)

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