

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.178 of 2021

Maheshwar Ram S/o Late Sheo Barat Dushadh, resident of Village- Kazichak,
P.S.- Magadh Medical College, District - Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through Collector, Gaya.
2. Anchaladhikari, Chandauti, P.S. - Chandauti, Distt. - Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shantanu Kumar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (AG)
For the State	:	Mr. Uday Bhan Singh (A.C. to G.P.-19)

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date: 22-09-2022

This Second Appeal has been preferred against the judgment dated 04.01.2020 and decree dated 17.01.2020 passed by learned Additional District Judge-II, Gaya in Title Appeal No. 5/2019 (42 of 2018) affirming the judgment dated 27.07.2018 and decree dated 07.08.2018 passed by learned Munsif-Ist, Gaya in T.S. No. 54 of 2015/133 of 2013.

The appellant was plaintiff before the Trial Court who had filed the suit for declaration that he is owner and in possession over the suit land and its R.S. Khatian is void, illegal and not binding thereon by stating that the suit land (C.S. Khata No.72, C.S. Plot No. 40 area 1-Bigha at village-Kazichak) was purchased by the plaintiff's father Sheo Barat Dusadh through sale deed executed by Fanindar Nath Sinha on 16.10.1962 and after purchase father of plaintiff came in possession and continued his possession of suit land till his death



and his name was mutated in Sharista of State of Bihar and rent receipts were granted in his name. After death of plaintiff's father, the plaintiff inherited the suit land and is in continuous possession. He left village for his livelihood at the time of revisional survey and Revisional Survey Authorities without going into the document and without inspecting the suit land prepared R.S. Khatyan (C.S. Plot No.40 under C.S. Khata No.72, area 1-Bigha carved into new R.S. Plot No.82/686, Khata No.139 area-72 decimal) in the name of Bihar Sarkar and in remark column of R.S. Khatyan, it is mentioned that Sheo Barat Dusadh son of late Mahadeo Manjhi was in illegal possession over the suit land. The further case of the plaintiff is that the State of Bihar has neither any concern with the suit land nor they are in possession over the suit land.

Defendants appeared in the suit but did not file their written statement and therefore debarred from filing written statement and the suit proceeded under Order VIII Rule 10 of C.P.C.

Learned Court of Munsif, Gaya dismissed the suit after discussing the evidence on record and recorded finding that plaintiff has not produced sufficient evidence for proving his title and possession over the suit land. In title appeal the learned A.D.J.-II, Gaya vide his judgment dated 04.01.2020 dismissed the appeal and confirmed the Trial Court judgment and decree and held that there is no clear evidence on record to prove the title of the appellant/plaintiff over the suit land and the suit is also defective due to want of proper



service of notice under Section 80 of C.P.C.

Heard learned counsel for the appellant.

Learned counsel on behalf of appellant has submitted that the Courts below have not considered the evidence on record in proper prospective and failed to appreciate that sale deed dated 16.10.1962 executed by the then Land holder in favour of father of the plaintiff is unchallenged registered instrument has its evidentiary value and its recital is admissible in evidence. It is further stated that Courts below have committed perversity in the eye of law by recording finding that the suit is barred by limitation by misreading the contents of notice u/s 80 C.P.C. It is next submitted that Courts below have wrongly placed burden of proof upon the plaintiff despite initial onus discharged by him. He next submitted that it is well settled that an entry in record of right neither create nor extinguishes right.

The Trial Court given finding that the case is filed beyond period of limitation so barred by law of limitation and observed that it also appears that cause of action of this suit is illusory and not valid. On analysis of evidences, it concluded that the plaintiff has not produced sufficient evidence for proving his title and possession over the suit land.

The learned First Appellate Court given specific finding that no document of title sufficient enough to rebut the presumption of correctness attached to the survey record of right has been produced by the plaintiff/appellant. It is also given finding that the pleading of



cause of action is not supported with evidence and the notice served by the plaintiff does not amount to a proper notice within the meaning as required u/s 80 C.P.C. and also agreed with the finding of the Trial Court that there is confusion whether cause of action is illusory or real.

Both the Courts below have concurrently come to the finding of facts based on appreciation of evidence and before this Court no perversity in the findings of the Courts below could be established on behalf of the plaintiff.

Considering the fact that there is concurrent finding of fact by both the Court below that the plaintiff/appellant has failed to prove his valid right, title and possession over the suit land, there is no merit in this appeal. A concurrent finding of facts based on evidence can not be disturbed in an appeal under Section 100 of the Civil Procedure Code. There is no substantial question of law arises in this Second Appeal.

Accordingly, This Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	NAFR
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