

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.79 of 2019

Pashupati Nath Prasad Son of Late Maheshwar Dayal Prasad R/o Village-
Pakhanahiya, P.S.-Palanawa, District-East Champaran Appellant/s
Versus

1. Ekbali Pandit Son of Late Surat Pandit R/o Village-Banjariya, P.S.-
Banjariya, District-East Champaran
2. Rita Dubey Wife of Bunilal Dubey @ Bunilal Pandey R/o Village and
Mohalla-Belbanwa, P.S.-Motihari Town, District-East Champaran
... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anant Kumar Sinha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
Date : 05-09-2022

Heard the learned counsel for the appellant.

(2) The plaintiff in the suit is the appellant in this Second appeal against the judgment and decree of affirmance by the First Appellate Court upholding the dismissal of the suit.

(3) The plaintiff filed the suit for declaration of his title and recovery of possession over the suit land. In short, the case of the plaintiff is that he has purchased the suit land vide sale deed dated 13.01.2010 executed by defendant no.2 who had purchased the same from Rafique Ahmand @ Tuntun vide sale deed dated 05.01.2009 who got the suit land from compromise decree in Partition Suit No. 103 of 1975. The plaintiff alleged that on 10.03.2011 defendant No. 1 dispossessed the plaintiff.

(4) The defendant No. 1 contested the suit and filed



written statement. It is stated that no parties of Partition Suit No. 103/75 came in possession on the basis of compromise deed dated 17.02.1999 which was set aside vide order date 22.05.1999. Defendant No. 1 purchased the suit land on 07.09.1991 from Md. Tafazul who executed the sale deed on the basis of Mukhtar-e-Aam dated 04.08.1889 executed by Reyaz Mustafa and other heirs of Mohd. Israil who was son of Asgar Ali the khatyani Raiyat and since then defendant no.1 is coming in possession of the suit land and sale deed of the plaintiff is void and inoperative document and plaintiff never came in possession of suit land. In view of the rival cases of the parties, the trial Court framed issues including the issues as to whether plaintiff has any right, title and interest in the suit land and is entitled for recovery of possession? The Trial Court decided all the issues against the plaintiff and dismissed the suit. The first Appeal filed by plaintiff dismissed by the First Appellate Court.

(5) Learned counsel on behalf of the appellant submits that both the Courts below have not properly considered the evidence led by the plaintiff and finding arrived by the Court below are perverse and not sustainable in the eye of law. It is further submitted that plaintiff's Vendor's Vendor, namely, Rafique Ahmad had even otherwise a share and right in the



property of his maternal grandfather Asgar Ali, accordingly, setting aside of the compromise decree of Partition Suit No.103/75 does not affect/alter the right of Rafiqe Ahmad in suit property under Mohamedan Law and this aspect of the matter has not been considered by both the Courts below.

(6) From the facts appearing in the impugned judgments of both the Courts below as well as from the submission of the learned counsel for the appellant, it is apparent that the Court below has found that Rafique Ahmad has no right to sell the land on the basis of compromise dated 17.02.1999 and sale deed of vendor of plaintiff is not legal and the sale deed of plaintiff is based on the sale deed of defendant no.2 which is illegal.

(7) The Trial Court observed that it is admitted by both the parties that the land in question belongs to Asgar Ali and there was a Partition Suit No.103/75 in which compromise reached between the branch of sons of Asgar Ali, however vide order dated 22.05.1999 passed by S.J. III, Motihari the compromise decree dated 17.02.1999 (on which plaintiff relied) has been set aside and the same has not been challenged. In view of the order dated 22.05.1999 in P.S. No. 103/75 no dealing can be effected on the basis of compromise decree dated 17.02.1999 in Patition Suit No.103/75, hence the dealings stated



by the plaintiff in his plaint cannot pass title on the basis of such dealing which are void-ab-initio.

(8) The Appellate Court considering the evidence on record came to the finding that the genesis and basis of sale deed is false through which the plaintiff has sought the relief of title and interest over the suit land and since right, title and interest of plaintiff is not proved by the plaintiff hence she is not entitled for recovery of possession.

(9) The sale deed (Ext.1/A) executed by Rafique Ahmad in favour of Rita Dubey (defendant no.2) regarding the suit land, the recital of the sale deed is that Rafique Ahmad sold the land on the basis of compromise decree in Partition Suit No. 103/75. Compromise petition dated 17.02.1999 accepted by the Court on 20.02.1999, however, vide order dated 22.05.1999 the Court had set aside the compromise decree in which Rafique Miyan was a party to the suit in Partition Suit No. 103/75 who had the knowledge about the same but sold the suit land saying that the suit land allotted as per compromise although compromise was set aside in the year 1999 and Rafique Ahmad sold the land much later on 05.01.2009 and defendant no.2 sold the suit land on 13.01.2010.

(10) Both the Courts below on scrutiny of the pleading



and evidence have come to hold that plaintiff has failed to establish his title over the suit land.

(11) The Court cannot entertain a Second Appeal unless a substantial question of law is involved. There is concurrent finding of fact stated above by the Courts below and no perversity in the findings of the Courts below could be established on behalf of the plaintiff/appellant. A concurrent finding of fact based on evidence cannot be disturbed in an appeal under Section 100 of the Civil Procedure Code on the ground that other view is also possible on the basis of same set of evidence. It is not the case of the appellant that findings of the Court below are contrary to the evidence available on record or without any evidence on record.

(12) As such, there is no substantial question of law arising for consideration in this Second Appeal, which is accordingly, dismissed at the admission stage itself.

kamlesh/-

(Sunil Dutta Mishra, J)

AFR/NAFR	NAFR
CAV DATE	18.07.2022
Uploading Date	08.09.2022
Transmission Date	NA

