

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.201 of 2020

Bachcha Singh, Son of Late Jot Narayan Singh @ Jat Narayan Singh,
Resident of Village- Mahuaria, P.S. and District- Sheohar.

... .. Appellant/s

Versus

1. Most. Sabuj Devi, Wife of Late Krit Narayan Singh, Resident of Village Mahuaria, P.S. and District- Sheohar.
2. Sanjay Kumar Singh, Son of Late Krit Narayan Singh, Resident of Village Mahuaria, P.S. and District- Sheohar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vaidehi Raman Prasad Singh
For the Respondent/s : Mr. Devendra Kumar

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 23-09-2022

This Second Appeal has been preferred against the judgment and decree dated 02.03.2020 passed by the learned District Judge, Sheohar in Title Appeal No. 28/2010/5/2019 affirming the judgment and decree dated 12.03.2010 and 29.03.2010, respectively passed by the learned Subordinate Judge-3, Sitamarhi in Title Suit No. 165 of 2007 whereby the suit has been decreed.

2. The defendant is the appellant herein. The plaintiffs (respondents herein) filed Title Suit No. 165 of 2007 in the court of learned Subordinate Judge -1st , Sitamarhi, inter-alia, for declaration of their title and for recovery of possession over the suit land (stated in Schedule 1 of the plaint) as also for declaration that sale deed dated 25.07.2006 registered on 26.07.2006 by



Mithlesh Kumar Singh in favour of defendant Bachcha Singh is illegal, void, without consideration and not binding on the plaintiffs.

3. The plaintiff case in brief is that Thakur Jai Singh and Thakur Sanjay Singh, the grand-sons of Khatiyani raiyat Babu Ram Narayan Singh on 30.05.2005 transferred their share in the land measuring 12 ½ decimal to the plaintiff no. 1, Most. Sabuj Devi through a sale deed. Subsequently, the plaintiff no. 2, Sanjay Kumar Singh purchased 14 decimal of land from Thakur Anil Kumar Singh, the grand-son of Thakur Ram Bahadur Singh in such a manner that 7 decimal of land was adjacent west to the 12 ½ decimal of land purchased earlier and the rest 7 decimal was in same plot in the middle of the western part of the plot. The plaintiffs amalgamated 12 ½ decimal of land purchased on 30.05.2005 and 7 decimal of land purchased on 14.07.2006 adjacent to 12 ½ decimal and came in possession of the same and got rent receipt for the same and constructed a thatched house thereon. Further case of the plaintiff is that despite the knowledge of two sale deed dated 30.05.2005 and 14.07.2006 the defendant Bachcha Singh, on 25.07.2006, got executed a sale deed in his favour with respect to R.S. Plot No. 623 measuring 18 decimal from Mithlesh Kumar Singh of one of the branch of Ram Deo



Singh with wrong boundaries and wrong recitals in the sale deed and without consideration. The defendants on 31.07.2017, dispossessed the plaintiffs from 18 decimals of land by constructing a hut and by ploughing the land.

4. On summon, the defendant not appeared due to which the case was fixed for ex parte hearing vide order dated 20.01.2009. On 16.04.2009, an application was filed for recall of ex-parte order dated 20.01.2009 and for allowing the defendant to file written statement in the suit but the same was rejected vide the order dated 29.04.2009. By the order dated 17.02.2010, the defendant was debarred from filing written statement in the suit and by the order dated 20.02.2010 the evidence of the defendant was closed. The defendant, however, without any written statement, had cross-examined some of the witnesses of the plaintiffs. By the judgment and decree dated 12.03.2010 and 29.03.2010 respectively the suit was decreed ex-parte in favour of the plaintiff.

5. The defendant case is that summon of the suit was allegedly received by the son of the defendant and the service of summon on defendant was confirmed by the order dated 15.09.2008, which was against the provision of Order V, Rule 12



and 15 CPC and vide order dated 20.01.2009 order was passed for ex-parte hearing against the defendant.

6. The defendant/appellant filed Title Appeal No. 28 of 2010 before the District Judge, Sitamarhi challenging the said judgment and decree, which was allowed by the judgment and decree dated 05.04.2016 and 25.04.2016 respectively by the District Judge, Sheohar subject to payment of cost of Rs. 20,000/- to the plaintiffs and thereafter was directed to file written statement along with documents and proposed issues and the Trial Court was directed to dispose of the suit at the earliest.

7. The plaintiff had filed M.A. No. 689 of 2016 challenging the judgment and decree dated 05.04.2016 and 25.04.2016 of the learned District Judge in Title Appeal No. 28 of 2010. This Court vide its judgment and order dated 26.08.2019 set aside the said judgment and decree dated 05.04.2016 and 25.04.2016 and remitted the matter to the Lower Appellate Court to decide the appeal on the basis of the principle laid down by the Apex Court reported in (2005)1 SCC 787 (Bhanu Kumar Jain vs. Archana Kumar and Others) within three months from the date of receipt/production of copy of the order. The Lower Appellate Court by the impugned judgment and decree dated 02.03.2020 dismissed the appeal of the appellant.



8. The defendants claimed that he has purchased the land from its rightful owner and came in possession of the same and living thereon by making residential house on it and the suit filed by the plaintiffs is based on false claim and has concealed the true facts.

9. Learned counsel for the appellant submits that summons of the suit was not served on the defendant in accordance with law and the ex-parte judgment and decree against the defendant/appellant was passed by the Trial Court without valid service of summon on defendant. The defendant was illegally debarred from filing his wrong statement and the ex-parte hearing of the suit was conducted illegally. It is further submitted that the vendor of the plaintiffs and defendant were necessary parties in the suit but the suit was heard without impleading them as parties in the suit. It is next submitted that impugned judgments and decrees were passed without ascertaining the title of the vendors of the plaintiffs and the defendant.

10. Learned counsel for the appellant further submits that the learned First Appellate Court has not decided the issue of valid service of summon on the defendant and has illegally held that there was no illegality in service of summon on the



defendant. He has further submitted that the finding of the Appellate Court that the land transfer through Exhibit-2 was of the share and in his possession of the vendors of the plaintiffs on the ground that Kameshwari Nandan Singh, who is from the branch of another *Khatiyani* raiyat is a witness and an identifier in the sale deed is erroneous and illegal in the eye of law.

11. It appears from the perusal of the Judgment of the courts below that the courts below have given specific finding that the defendant appeared before the court below on 16.04.2009 and vide order dated 24.04.2009 the defendant was permitted to participate in the further proceeding and there is no solid reason to raise the question of any irregularity in the valid service of notice. It appears that some witnesses were also cross-examined on behalf of defendant but later on left the pairvi in the case and not given any evidence.

12. The coordinate Bench of this Court in judgment dated 19.04.2017 in Second Appeal No. 522 of 2011 (Devi Dayal Sah and Ors. Vs. Om Prakash Sah and Ors.) had observed that “As the suit is for declaration of title and recovery of possession against the contesting defendants along with specific allegation against them, this Court does not find substance in the submission



on behalf of the appellants that suit was not maintainable in absence of other co-sharers as parties.

13. In the present case also the findings by both the courts below have been recorded on the basis of evidence which were acceptable and could have been relied upon as the suit is for declaration of title with recovery of possession against the contesting defendant along with specific allegations against them accordingly this court does not find substance in the submission on behalf of the appellants that the suit was not maintainable in absence of other co-sharers as parties.

14. There is no perversity or unreasonableness in the concurrent findings by both the courts below which have been recorded on the basis of evidence and in accordance with the principles of law.

15. In result, it is held that there is no substantial question of law arising for consideration in this appeal, which is accordingly, dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
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