

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.55 of 2021

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1. Sheo Nandan Rai Son of Late Ram Pratap Rai Resident of Village, P.O., P.S. Matihani District-Begusarai
 2. Krishna Nandan Rai W/o Raj Nandan Rai Resident of Village, P.O., P.S. Matihani District-Begusarai
 3. Braj Nandan Rai Son of Sri Sheo Nandan Rai Resident of Village, P.O., P.S. Matihani District-Begusarai
 4. Sri Shavitari Devi W/o Raj Nandan Rai Resident of Village, P.O., P.S. Matihani District-Begusarai

... .. Appellant/s

Versus

1. Smt. Pramila Devi W/o late Ram Chandra Kuwar Resident of Vilalge-Bakhadda P.S. Matihani, District Begusarai
2. Mahanth Ram Jeewan Das College Asthal Bishanpur Begusarai through the Principal

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ram Sumiran Singh, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vipin Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

12 20-12-2022 Heard Mr. Ram Sumiran Singh learned counsel for the appellant and Mr. P.K. Shahi, learned Senior counsel for the respondent.

The appellants have filed I.A. No. 02 of 2022 under order XLI Rule 27 of the Civil Procedure Code for granting the permission for production of document as well as the witnesses if it will be required to produce as an additional evidence. However, after some arguments, the learned counsel for the appellants requested for not pressing I.A. No. 02 of 2022 with regard to additional evidence.



The permission is granted and the said I.A. No. 02 of 2022 stands dismissed as withdrawn.

This Second Appeal has been filed against the judgment and decree dated 09.12.2014, passed in Title Appeal No. 40 of 2015, whereby the judgment and decree dated 28.10.2015 passed by the learned Sub-Judge-V, Begusarai in Title Suit No. 159 of 1994 has been reversed.

The plaintiff is the college, namely, Mahant Ram Jeewan Das, college Asthal Bishanpur, Begusarai through its principal.

The plaintiff filed a suit for declaring that the deed of exchange dated 25.07.1986, is void, which did not confer title to Ram Chandra Kumar and the defendant first Party has no title to S.P. No. 1227 and the defendant second and third party did not acquire title to the land mentioned in Schedule II on the basis of the two sale deeds dated 28.04.1988, executed by defendant first party in favour of defendant second and third party and further the dispossession of the plaintiff from Schedule II land is illegal act of the defendant second and third party and also sought relief for recovery of possession over the Schedule II property and further for permanent injunction for restraining the defendant from interfering with the possession of plaintiff over



the suit land, mentioned in Schedule II, total area being 5 (five) *Kathas*, bearing *Khata* No. 251 and Survey Plot No. 1227.

Further, the case of plaintiff is that Mahant Ram Jeewan Das gifted the land measuring 1 acre 41 decimals (One acre forty one decimals) of S.P. No. 1227 and 59 decimals (fifty nine decimals) of S.P. No. 1229 to the college and Mahant Ram Jeewan Das college, who came in possession of gifted land by the deed dated 12.02.1982, in the name of Government of Bihar, which is described in Schedule III. At that point of time, Amar Singh was the Secretary of the college. Later on, he was removed from the post of Secretary by the Managing Committee of the college. Then, Dr. Akhleshwar Kumar, Principal of G.D. College, Begusarai was selected as the Secretary of the college. Now, Suresh Prasad Rai is the Secretary of the Managing Committee of the college. The college constructed six-room hostel on the land of S.P. No. 1227 and Shyam Sundar Singh, Physical Instructor of the college was made as Superintendent of the hostel. In the year 1987, during the Holi festival, the students of the said hostel and Superintendent after locking the rooms of the hostel had gone to their native village. After Holi festival they returned to the hostel and found that the rooms of the hostel were forcefully



occupied on 24.03.1989 by defendant second party, detail of the land over which the hostel is built, is in Schedule II of the plaint. Therefore, the said Physical Instructor filed an application before the Collector, Begusarai and informed the Begusarai Police Station. The proceedings under Section 144 Cr.P.C. was started and the said proceeding was converted into the proceeding under Section 145 Cr.P.C., in which Shyam Sundar Singh was the first party and Sheo Nandan Rai was second party. It is further case of the plaintiff that defendant second party falsely alleged in the written statement of proceedings under Section 144 or Section 145 of the Cr.P.C. that Amar Singh, Secretary of the College gave 1 *Bigha 2 Kattha* land of S.P. No. 1227 of the college to Ram Chandra Kunwar, father of the husband of the defendant first party and in lieu of that Ram Chandra Kunwar gave the land measuring 10 *Kattha* of S.P. No. 1225 and 5 *Kattha* of S.P. No. 1226, total 15 *Kattha*. Ram Chandra Kunwar and Amar Singh jointly executed deed of exchange on 25.07.1986, between each other and came in possession of the exchanged land respectively and the defendant first party, Mosamat Pramila Devi, wife of Ram Chandra Kunwar as self and guardian of her minor son Deepak Kumar sold 2 *katha 10 dhur* land of S.P. No. 1227 by sale deed dated



28.04.1988, to Srimati Savitri Devi, wife of Raj Nandan Rai. Further case of plaintiff is that Amar Singh had no authority to execute a deed of exchange with regard to the land of college. The deed of exchange dated 25.07.1986, is forged, fabricated and manufactured. Ram Chandra Kunwar had no right, title and interest over the land of S.P. No. 1225 and 1226 and Ram Chandra Kunwar had no right to exchange the land of two plots. Sale deeds standing in the name of defendant second and third party are sham, manufactured documents and without consideration which did not confer title to them. The defendant first party had no right to execute the sale deed with regard to the land of S.P. No. 1227, and also challenged the order of Executive Magistrate, Begusarai, dated 31.08.19974. The plaintiff had no knowledge about the deed of exchange dated 25.07.1986, who came to know about the exchange from the written statement in the proceedings under Section 144 and Section 145 of the Cr.P.C.

The case of the defendant is that the defendant first party had filed his written statement stating therein the deed of exchange dated 25.07.1986 is genuine. Amar Singh, the then Secretary of the college had the authority to exchange land of the college appertaining to S.P. No. 1227 in lieu of that



exchange of land bearing S.P. No. 1227 of college came in possession of the land of Ram Chandra Kunwar appertaining to land of S.P. No. 1225 and 1226. It is further case of the defendant that the sale deed of the defendant first party and their ancestor Ram Chandra Kunwar executed to defendant second and third party, by which the purchasers have their possession. It is further case of defendant that at the time of establishment of the college, Sri Amar Singh was senior member of the college and as a senior member of the college, he was nominated as a Secretary and presided over the managing committee of the college. It is further pleaded that apart from this, Amar Singh was first Secretary of this college so long he remained as a Secretary of the college he acted on behalf of the college taking the important decisions for the welfare and management of the college. He, with the approval of the members of the Managing Committee, and the said Secretary acted and performed duties efficiently and diligently and took decisions on behalf of the Managing Committee. Further case of the defendant is that he denied the existence of hostel over the land of S.P. No. 1227, at any point of time. He also denied that Shaym Sunder Singh was ever the Superintendent of the said hostel and the story of the Superintendent of the hostel of the college is falsely stated by



the plaintiff.

After perusing the evidence of the parties, oral as well as documentary evidences, learned Trial Court had dismissed the Title Suit of the plaintiff-respondent on the ground that deed of exchange executed on 25.07.1986 by the then Secretary of the said college, namely, Amar Singh. However, during all these years the plaintiff took no action and, therefore, the same is barred by the law of limitation and further the learned Trial Court held that the plaintiff is not entitled for recovery of possession alongwith mense profit as there is no question of illegal dispossession of the plaintiff for the reason the defendants came in possession on the basis of sale deed dated 28.04.1988, which is legally valid document.

Now coming to the finding of the learned lower Appellate Court, it is found that learned lower Appellant Court has framed issues for the determination of the appeal, which are as follows:-

(A). Whether the deed of exchange dated 25.07.1986 is void, legal and effective?

(B). Whether the deed of exchange dated 25.007.1986 is illegal, void and ineffective, not acted upon, on the basis of the deed of exchange?



(C). Whether the sale deeds executed by defendant first party in favour of defendant second and third party with regard to suit land fully detailed in Schedule I of the plaint are valid and legal and if not whether liable to be set aside?

The appellate Court on marshaling the evidences came to the conclusion that the Managing Committee of Mahant Ram Jeewan Das College did not authorise Amar Singh to execute deed of exchange as the defendant miserably failed in proving any document/paper of resolution of the Managing Committee. Hence, as Amar Singh, the then Secretary had no authorization to execute the deed of exchange dated 25.07.1986, the same has no legal value and therefore, on the basis of this deed of exchange no subsequent transfer etc. could have been done and any subsequent transfer would be in the teeth of law as the deed of exchange was a void document.

The appellate Court with regard to dispossession found that defendants have forcefully dispossessed the plaintiffs on 24.03.1989.

The appellate Court also held that suit has been filed for recovery of possession for which 12 years have been prescribed and therefore, contention of the defendants that limitation would apply is erroneous.



On perusal of the record this Court finds that there was no document to prove that the Managing Committee of Mahant Ram Jeewan Das College has authorized the then Secretary, namely, Amar Singh to execute deed of exchange as he did by way of deed of exchange dated 25.07.1986 and therefore, the said deed of exchange executed without any authority by the then Secretary of the Managing Committee of the said college is *ab initio* void document. Hence, subsequent transfer in favour of the defendants also stands completely violated as the same is also without any right and title of the executor of the sale deeds.

The dispossession of the plaintiff from the hostel is also found to be illegal and the plaintiff is entitled to recover the possession.

As far as question of limitation is concerned this Court finds that the relief sought for by the plaintiff included declaring the deed of exchange as void document and recovery of possession over Schedule II land. It is apparent from the matrix of the case that there was no authorization by the Managing Committee of the said college to the then Secretary, namely, Amar Singh to enter into exchange deed and do so as he did on 25.07.1986. Hence, deed of exchange stands *ab initio* void and suit is not barred by law of limitation for the reason Article 65



of the Indian Limitation Act, 1963 is applicable as the Suit is also for consequential relief of recovery of possession as well and, therefore, statutory period of limitation is 12 years and the Suit has been filed within 12 years from the date of dispossession, hence, Section 58 of the Indian Limitation Act, is not applicable as it is applicable where no consequential relief is sought for.

In the aforesaid facts and circumstances of the case, this Court does not find any illegality in the impugned judgment and decree of the Appellate Court nor does it find any substantial question of law in the instant Second Appeal, which is, accordingly, dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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