

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.123 of 2015

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Kashi Nath Mahto Son of Late Munni Mahto by profession Cultivator,
resident of village Shiv Nagari, P.O. - Gurukul Mehiya, P.S. - Chapra
Muffasil, District - Chapra Saran.

... .. Appellant

Versus

Ram Kishore Singh Son of Late Hari Singh, by profession Cultivator, resident
of village Shiv Nagari, P.O. - Gurukul Mehiya, P.S. - Chapra Muffasil,
District - Chapra Saran.

... .. Respondent

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Appearance :

For the Appellant : Mr. Manoj Kumar
For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 15-02-2023 Heard learned counsel for the appellant.

This Second Appeal has been filed against the judgment and decree dated 30.03.2015, passed by the learned Additional District Judge Xth, Saran at Chapra in Title Appeal No. 68 of 2011, who affirmed the judgment and decree dated 02.06.2011 passed in Title Suit No. 79 of 1997 by the learned Munsif IInd, Chapra. The aforesaid suit was filed for permanent injunction with respect to the suit property.

The plaintiff's case is that disputed plot of 9 *kathas* 8 *dhur* bearing *Khata* No. 247, Survey Plot No. 939 situated at Mauza, Sheonagri, originally belongs to the ancestor of the plaintiff. It is contended that Munni Mahto, who was the ancestor of Ram Dhanik Mahto, had three sons namely Ram



Swaroop Mahto, Sheo Bachan Mahto and Kashinath Mahto (Plaintiff). On 14.11.1979, Late Ram Swaroop Mahto, who was full brother of the plaintiff, gifted the land measuring 1.11 ½ decimals to plaintiff's son namely Sunil Kumar and handed over the possession. It is contended that Sunil Kumar Mahto was minor at the time of gift and, therefore, he got the possession of the suit land through his father Kashinath Mahto (Plaintiff). It is submitted that Shree Kumari Devi, daughter of Late Ram Swaroop Mahto got a forged deed of gift, executed on 05.07.1984 in her own name executed by her father namely Ram Swaroop Mahto and on that basis she never got any title nor came in possession. After getting knowledge of the aforesaid gift deed the plaintiff filed Title Suit bearing Title Suit No. 98 of 1985 against Ram Swaroop Mahto and her daughter namely Shree Kumari Devi. Further it is submitted that although summons were issued to defendant in Title Suit No. 98 of 1985 but they evaded their appearance before the Court and subsequently, the Title Suit No. 98 of 1985 was decreed ex-parte against Ram Swaroop Mahto and Shree Kumari Devi and gift deed executed by Ram Swaroop Mahto in favour of his daughter namely Shree Kumari Devi on 05.07.1984 was declared null and void. The defendant has always been threatening the appellant



to forcibly occupy the disputed land and conspiring for the same. On the aforesaid threatening the instant Title Suit was filed. After getting knowledge about another sale deed, dated 09.09.1985, which was executed by daughter of Ram Swaroop Mahto namely Sheo Kumari Devi in favour of defendant namely Ram Kishore Singh, the present plaintiff-appellant filed present suit on 04.06.1997 against the defendant namely Ram Kishore Singh only for injunction with respect to the suit land.

After summons, the defendant appeared and filed his written statement and stated therein that the suit is barred under Section 34 of Specific Relief Act and Section 43 of Transfer of Property Act. It is submitted that total area of Plot No. 939 is 9 *katha* 8 *dhur* and Ram Lagan Mahto, Munni Lal Mahto and Doma Mahto got one share each as shown in the *Khatian*. The defendant further submits that Ram Swaroop Mahto executed the gift deed in favour of her daughter namely Sheo Kumari Devi on 05.05.1984 after cancellation of gift deed dated 14.11.1979 in favour of Sunil Kumar, thereafter, Sheo Kumari Devi came in possession with full right and title. It is further contended that the said Sheo Kumari Devi executed a registered sale deed in favour defendant-respondent appertaining to Plot No. 939 area 1 *katha* 11 $\frac{1}{4}$ *dhur* on 09.09.1985, before filing of



Title Suit No. 98 of 1985 and in that suit defendant was not a party and hence, the ex-parte judgment and decree is not binding upon him. It is further submitted that the defendant has been coming in peaceful possession of the disputed land much more than 12 years and his name was mutated in the revenue records and on payment of rent he got rent receipts.

After scrutinizing both the judgments of the courts below in which learned lower Court has held that the defendant was not party to the earlier suit, bearing Title Suit No. 98 of 1985 and therefore, ex-parte judgment was not binding upon the defendant. Both the Courts had held that the plaintiff claimed his title on the basis of gift deed, which has not been exhibited in this case. Moreover, the present suit is filed only for permanent injunction and has not sought for declaration of title. Learned Courts below also held that defendant has filed Sale-deed, Rent receipt, Land possession Certificate and also 3-D certificate issued by agriculture department regarding the title and possession of the disputed portion of 1 *katha* 11-1/4 *dhur* of Plot No. 939. It is also held that plaintiff has not filed any such documents, which may establish his title and possession over the disputed portion. It is also held that the defendant has been paying rent and getting the rent receipt and has installed boring



as well and held that plaintiff has failed to prove his possession with the suit land and hence, dismissed the suit, which has been affirmed by the learned Appellate Court.

Considering the aforesaid facts and circumstances as well as the material on record, it is quite apparent that the judgments and decree of Courts below are covered by the findings of facts and no question of law, much less substantial question of law arises for consideration in the instant Second Appeal, which is accordingly dismissed at this stage of hearing under order XLI Rule 11 of the Civil Procedure Code.

(Khatim Reza, J)

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