

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.188 of 2013

2. Shailendra Kumar Son of Late Bhagirathi Devi, Son of Late Dr. Ram Govind Prasad, Resident of Bhabhua Town, Ward No.- 2, P.S. - Bhabhua, District - Kaimur (Bihar).
3. Amrendra Kumar Son of Late Bhagirathi Devi, Resident of Bhabhua Town, Ward No.- 2, P.S. - Bhabhua, District - Kaimur (Bihar).
4. Ramrendra Kumar, Son of Late Bhagirathi Devi, Son of Late Dr. Ram Govind Prasad, Resident of Bhabhua Town, Ward No.- 2, P.S. - Bhabhua, District - Kaimur (Bihar).
5. Ravindra Kumar, Son of Late Bhagirathi Devi, S/o Late Dr. Ram Govind Prasad, Resident of Bhabhua Town, Ward No.- 2, P.S. - Bhabhua, District - Kaimur (Bihar).
6. Kiran Devi, daughter of Late Bhagirathi Devi and Wife of Sri Mritunjay Jayswal, resident of Mohalla and Post Office - Mohra, Tatiband, District - Raipur (Chatisgarh).
7. Rekha Kumari, daughter of Late Bhagirathi Devi and Wife of Sri Shailendra Jayswal resident of Village and P.O - Siwani, District - Siwani (Madhya Pradesh).
8. Renu Priya daughter of Late Bhagirathi Devi and W/o Sri Ashish Jayswal, Resident of Mohalla - Mussakar Ganj, District - Mirzapur (U.P.).

... .. Appellant/s

Versus

1. Santosh Kumar Tekriwal Son of Mohan Lal Tekriwal, Resident Of Bhabhua Ward No. 2, P.S. Bhabhua, District Kaimur at Bhabua.
2. Rina Devi W/O Ashok Khetan Resident Of Mahamurganj, Varanasi, Uttar Pradesh.
3. Manisha Devi W/O Praveen Kumar Singhanian C/O Kanhaiya Lal Singhanian, Resident Of Bundelkhand, Alpna Cinema Hall, Mirzapur, Uttar Pradesh.
4. Radhey Shyam Tekriwal S/O Late Mohanlal Tekriwal Resident Of Nayaka Gaon, Dharmshala Mohalla Sasaram, P.O. and P.S. Sasaram, District Rohtas.
5. Munna Prasad Tekriwal S/O Radhey Shyam Tekriwal Resident Of Nayaka Gaon, Dharmshala Mohalla Sasaram, P.O. and P.S. Sasaram, District Rohtas.
6. Binod Tekriwal S/O Radhey Shyam Tekriwal Resident Of Nayaka Gaon, Dharmshala Mohalla Sasaram, P.O. and P.S. Sasaram, District Rohtas.
7. Pushpa Tekriwal D/o Late Radhe Shyam Tekriwal, Resident Of Nayaka Gaon, Dharmshala Mohalla Sasaram, P.O. and P.S. Sasaram, District Rohtas.
8. Rajendra Kumar Tekriwal S/O Late Mohan Lal Tekriwal Resident Of Bhabhua Ward No. 2, P.S. Bhabhua, District Kaimur At Bhabhua.
9. Sunil Kumar Tekriwal S/O Late Indu Prasad Tekriwal Resident Of Bhabhua Ward No. 2, P.S. Bhabhua, District Kaimur At Bhabhua.
10. Anil Kumar Tekriwal S/O Late Indu Prasad Tekriwal Resident Of Bhabhua



Ward No. 2, P.S. Bhabhua, District Kaimur At Bhabhua.

11. Md. Sarafraj Ansari, Son of Late Md. Kutubuddin Ansari, Resident of Ward No. 17, Bhabua, P.O. and P.S. Bhabua, District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr.Nalin Vilochan Tiwary, Advocate
For Respondent Nos. 1 & 11: Mr. Ashok Kumar Garg, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-08-2023

The learned senior counsel for the appellants has been heard on the point of admission on the last date of hearing and I intend to dispose of the instant second appeal at the stage of admission itself.

2. This second appeal has been filed against the judgment and decree dated 21.05.2013 passed by learned IInd Ad hoc Additional District Judge, Kaimur at Bhabhua in Title Appeal No. 44 of 2010/67 of 2010 confirming the judgment and decree dated 07.08.2010 passed by learned Sub Judge-IV, Bhabhua in Title Suit No. 195 of 1996, whereby the whereunder the learned Appellate Court dismissed the appeal of the appellants.

3. The appellants are legal representatives of the original plaintiff who brought a suit for declaration of title and confirmation of possession over the suit land and also for restraining the defendants/respondents from interfering in



peaceful possession over the suit property. At the same time, defendants also claimed declaration that the door opened by the plaintiff in common wall appurtenant to Plot No. 490A and Plot No. 490B was illegal and for the closure of the same at the expenses of the plaintiff.

4. The admitted case of the parties before the learned trial court was that the suit land originally belonged to one Gajju Sah. A sale deed No. 3188 dated 11.11.1944 (Ext. 11/Ext.A) was executed by Gajju Sah in favour of Prem Chand Pandey and Sarad Chand Pandey, both sons of Deo Nath Pandey for land of holding no. 86. Further case of the plaintiff was that his ancestral house was situated on holding no. 87 of ward no. 2 and holding no. 86 was adjacent west to it. Further case of the plaintiff was that the construction of houses on holding no. 87 and 86 was in such a way that two rooms of the house of the plaintiff having area 9' (north to south) x 11' (east to west) and 8' (west to east) x 11' (east to west) were embedded in the construction of holding no. 86 from the western side. On the other hand, two rooms situated on holding no. 86 having area 14' (north to south) x 11' (east to west) was situated at the northern side of the room of the plaintiff measuring 9'/11' and adjacent to it the second room



on holding no. 86 measuring 14'x11' was situated. This room of holding no. 86 was adjacent to second room measuring 8'x11' of holding no. 87. Further case of the plaintiff was that Deo Nath Pandey executed a sale deed dated 16.01.1956 (Ext.13) on behalf of his above named two minor sons in favour of father of the plaintiff. The aforesaid property came into possession of the plaintiff. After passage of some time, both the rooms of the ancestral house of the plaintiff and his purchased two rooms which were temporary structure fell down and whole land became 'Sahan' (open). The plaintiff used to gain access to this open land from eastern side of his northern room. Thereafter, all the houses situated on holding no. 86 fell down in 1958 and said land got amalgamated with the land of the plaintiff measuring 45'(north to south) x 11' (east to west) making a contiguous block on the north of holding no. 86 and the plaintiff and his ancestors came into possession to the knowledge of all for more than 12 years after 1958. Further case of the plaintiff was that the defendants got executed a sale deed on 05.09.1972 (Ext.A/1) by Prem Chand Pandey and Sarad Chand Pandey with respect to suit land of holding no. 86 and it included the purchased land of the plaintiff. Plaintiff has further claimed that Ext.A/1



is illegal and against the real position of the land. In the sale deed (Ext.A/1), northern arm of the purchased land is said to be 40 feet whereas it is only 31 feet which includes the land of the plaintiff. Southern arm is 16'6", eastern arm is 85'6" and the western arm is 82'6" but the defendants wrongly got the length of the land mentioned in their sale deed as 89 feet and also showed a wrong boundary. The defendants have been claiming that the purchased land of the plaintiff measuring 45'x11' is situated to the east from the western wall of the plaintiff. A wrong report was submitted by the Magistrate who inspected the site in absence of the plaintiff and reported that a new door was opened in the western side. Settlement Officer opened the entry in the name of defendants during the pendency of the proceeding under Section 145 Cr.P.C.

5. Claim of the plaintiff was denied by the defendants who submitted in their written statement that the construction on holding no. 86 was of such nature that its two rooms were in holding no. 87 and the defendants denied that the two rooms of holding no. 87 were embedded in holding no. 86 and a 45 feet long wall was constructed in terms of Ext. 13. But the plaintiff opened a door in it, but after



intervention of well wishers, in the month of January 1982 the said door was closed by the plaintiff and no further dispute arose. But when the plaintiff and other male family members were away for business in the last week of 1986, the plaintiff again opened a door and put on frames. On query being made, the plaintiff assured the defendants that he would remove the door. It has been further submitted on behalf of the defendants that no land of plaintiff is embedded in holding no. 86 and never any portion of holding no. 86 was used by the plaintiff or his father. Rather Pandit Deo Nath Pandey and his sons constructed their house and two rooms which were embedded in holding no. 87 in 1958 and also constructed a toilet in 1959 after taking permission from municipality. The defendants denied that any open block (Sahan) was ever created towards holding no.86 as contended by the plaintiff. Pandit Deo Nath Pandey and his sons continued in their possession and sold the land to the defendants vide sale deed dated 05.09.1972 (Ext.A/1). However, the defendants submitted that recital was not correct about 40 feet towards north in the sale deed as it was only 32 feet and the parties are in possession accordingly and the map of the house was passed on this basis. Actually the suit land is 32 feet towards north and 17 feet towards



south. The claim of the plaintiff about his land being 45'x11' is incorrect. The claim of the plaintiff that the northern arm of the purchased land of the defendants is only 31 feet is wrong and it is 32 feet though it has been recorded as 40 feet in the sale deed and it is also wrong and incorrect that the northern arm contains 11 feet land of the plaintiff. In the common wall, 10 inch lies in the land of Deo Nath Pandey which belongs to the defendants and its southern arm is 17 feet. The defendants have further claimed that the municipal survey of the Settlement Officer is wholly correct and after considering all facts the authorities ordered for making the entry in the name of defendants for Plot No. 490A and 490B. The defendants further submitted that in the common wall, the plaintiff opened a door in 1996 in absence of the defendants and the same must be closed. Even from the document, i.e., sale deed dated 16.01.1956 (Ext.13) it is apparent that no right was given either to the plaintiff or to the defendants for opening the door in the common wall.

6. The learned trial court formulated 12 issues and decreed the suit partly on contest with direction that both plaintiff and defendants were entitled to exclusive right, title and interest over their respective land and defendants were



directed not to interfere in peaceful possession over the said land. At the same time, the plaintiff was directed to close the door opened in the common wall. The judgment and decree was challenged before the learned Appellate Court below which held that there was no occasion to partly decree the suit by the learned trial court and the plaintiff was found not entitled to any relief. Hence, the appeal of the plaintiff-appellants was dismissed and the plaintiff was directed to close the door opened in the common wall and to that extent the judgment and decree of the learned trial court was upheld.

7. While assailing the order of the learned courts below, the learned senior counsel submitted that the learned appellate court committed an error when it did not take into consideration paragraph 14 and 15 of the written statement of the defendants where they admitted that the northern side of the disputed land was 32 feet only and not 40 feet as mentioned in their sale deed. Learned senior counsel further submitted that the defendants admitted in their written statement that in their sale deed northern side/arm which is 32 feet has been recorded as 40 feet.

8. Further, learned senior counsel assailed the orders of the learned courts below on the point that the boundary of



the disputed land has been wrongly shown and considered. The learned senior counsel thus submitted that the learned courts below misconstrued and misread the documents regarding existence of alley in the boundary of the suit land and relied upon the decisions of the Hon'ble Supreme Court in the case of *P. Chandrasekharan & Ors. Vs. S. Kanakarajan & Ors.* reported in (2007) 5 SCC 669 and in the case of *Nazir Mohamed Vs. J. Kamala & Ors.* reported in (2020) 19 SCC 57 to stress the point that even in case of concurrent finding, if the documents have been misread, the second appeal could be admitted and heard.

9. I have considered the submissions made on behalf of the appellants. In my opinion both the contentions raised by the learned senior counsel are misconceived. The learned senior counsel has stressed the fact about the length of the disputed land as mentioned in the written statement of the defendants to be less than 40 feet and to be 32 feet to be exact.

10. The claim of the plaintiff flows from two sale deeds of 1944 (Ext.11/Ext.A) and 1956 (Ext.13), respectively and sale deed of 1956 is based upon the sale deed of 1944. These are the admitted documents and are more than



30 years old and are registered as well, with them they carry presumption of correctness and when admitted, as in the present case, the entries/contents thereof of the same carry higher degree of presumption. Under the sale deed of the year 1944 as well as 1972, the total length of the northern arm running at eastern and western side is mentioned as 40 feet. The plaintiff/appellant is challenging this length based on averment of the defendants in their written statement, where it is mentioned as 32 feet. The learned appellate court in para 10 of the impugned judgment has categorically held that the plaintiff has failed to prove either through documentary or oral evidence that the actual length of the northern arm running east to west is 31 feet instead of 40 feet. Now, the plaintiff has been claiming that length as 32 feet based on the averment of the defendants in their written statement. It is the settled law that the plaintiff has to stand on his own leg and can not take benefit from any lacunae of the case of the defendants.

11. There appears no reason on record to disbelieve the contents of the abovenoted sale deeds with respect to the northern length of the arm as 40 feet. Again it is also an admitted fact that plaintiff had got only 11 feet from that



undisputed 40 feet. Hence, the land which will remain on spot at holding no. 86 would not be 11 feet minus 31 feet (31'-11') but 11 feet minus from 40 feet (40'-11') and the same has been rightly held by the courts below.

12. Thus, in the light of the recital of the Ext.11/Ext.A, the assertion and averment made in written statement by the defendants loses its significance. In the Ext.11/Ext.A, the length of both arms of eastern and western side are said to be 40 feet and in the 1956 sale deed (Ext.13) the land which was sold towards north, is of 11 feet length in east. Hence, it means the plaintiff got 11 feet land from 40 feet length.

13. Another point raised by learned senior counsel is regarding mentioning of wrong boundary in the judgment of the learned trial court but this issue has been elaborately discussed by the learned appellate court below and it has categorically recorded a finding that the northern boundary in the sale deed of 1944 (Ext.11/Ext.A) and sale deed of 1956 (Ext.13) are the same. However, the boundaries are always subject to change but in the present case there is no such apparent change. Unless the subject matter is involved with respect to its change in specification, the change in boundaries of that subject matter becomes irrelevant.



14. Further, another point which is to be noted is that in the sale deed of 1956 there was provision of common wall from north to south with length 45 feet with width 20 inch for which 10 inch was to be contributed by both the parties and thereafter, the wall was constructed in 1956 when the plaintiff came into possession of his purchased land and there was no reason for the plaintiff to construct wall beyond his ancestral and purchased land and why the plaintiff started construction of his house leaving aside the aforesaid ancestral and purchased property remained unanswered.

15. I have already discussed the flaws in the submission made on behalf of the appellants. I do not find that there is any misconstruction or misreading of the documents so far as length and width of the suit land or its map and boundary are concerned, rather I find that both the courts below have discussed at length the documentary evidence to arrive at their respective finding which, in no way, can be said to be perverse.

16. The law is well settled that a second appeal can not be entertained under Section 100 of the Civil Procedure Code unless a substantial question of law is involved. It is also well settled that concurrent findings of the courts



below should not ordinarily be disturbed by this Court under Section 100 of the Code of Civil Procedure unless same is against the law or the findings are perverse on account of being completely against the evidence on record.

17. In this case there is concurrent finding of facts and there appears no perversity in the findings of the learned courts below. In any case, this Court is not expected to re-appreciate the evidence to replace the concurrent findings of the lower courts with its own. On this aspect reliance may be placed on the decision of the Hon’ble Supreme Court in the case of *Navaneethammal Vs. Arjuna Chetty* reported in *(1996) 3 SCC 166*.

18. In the light of discussion made hereinabove, I am of the considered opinion that no substantial question arises for consideration in the instant second appeal before this Court and hence, this appeal is dismissed at the stage of admission itself.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	27.07.2023
Uploading Date	11.08.2023
Transmission Date	

