

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.513 of 2016

1. Ramashish Dusadh and Anr S/o Late Dwarika Dusadh
2. Gupta Paswan S/o Late Dwarika Dusadh Both are residents of Village - Khan, P.O. - Kapasia, P.S. - Aurangabad M, District - Aurangabad Bihar.

... .. Appellant/s

Versus

1. Rajendra Mahto and Ors S/o Kuldeep Mahto
2. Deobasia Devi W/o Kuldeep Mahto
3. Kuldeep Mahto S/o Late Suraj Mahto All are residents of Village - Khap, P.O. - Kapasia, P.S. - Aurangabad M, District - Aurangabad Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bhanu Pratap Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 18-03-2023 Heard Mr. Bhanu Pratap Singh, learned counsel for the appellants.

This Second Appeal has been filed against the judgment and decree dated 26.08.2016 passed by Additional District Judge-IV, Aurangabad in Title Appeal No. 55 of 1999/20 of 2010 by which the judgment and decree dated 30.09.1999 passed by the IVth Additional Munsif, Aurangabad in Title Suit no. 177 of 1993/17 of 1994 has been affirmed.

The suit was filed for declaration of title and possession over the suit land and also for confirmation of their title and in alternative if the plaintiffs are found out of



possession, during pendency of the suit, the possession be delivered to the plaintiffs.

The plaintiff's case in short is that the suit land wherein, Plot No. 676 *Khata* No. 52 area 3 decimals situated at village-khan, P.S.- Aurangabad, District-Aurangabad, was recorded in cadestral survey in the name of Jagdeo Dusadh son of Kujur Dusadh. Further case of the plaintiff is that Kujur Dusadh was full brother of Sheolochan Dusadh and they were joint in family. Jagdeo Dusadh was survived by his two sons namely, Ramdeo Dusadh and Munarik Dusadh. Ramdeo Dusadh and Munarik Dusadh died issueless in jointness with heirs of Sheolochan Dusadh, further case of the plaintiffs is that Sheolochan Dusadh was survived by his son Sukhu Dusadh who was survived by his sons Dwarika Dusadh. Dwarika Dusadh had two sons Ramashish Dusadh and Gupta Dusadh who are plaintiffs in this present case. The case of the plaintiffs is that the suit land came in possession of the plaintiffs by way of sole heir and survivor of Jagdeo Dusadh. It is also case of the plaintiffs that just before the revisional survey operation the plaintiff's tenant namely Anchhi Kuer wife of Basudeo Thakur and also in consolidation proceeding the suit land and house were



recorded in the name of Ramashish Dusadh but in remarks column name of Anchhi Kuer is also recorded on the basis of possession. It is case of the plaintiff that Anchhi Kuer and her husband got some fraudulent papers were prepared and obtained regarding the suit land and became privilege tenants and also obtained bogus chokidari receipts. The house in the suit land fell down in due course and became culturable land and thus came in khas possession of the plaintiff as Anchhi Kuer left the village. Before filing of the aforesaid suit, a proceeding under Sections 144 and 145 Cr.P.C were started in the year 1986 and 1989 the said proceedings was decided against the plaintiffs.

After summons defendant appeared and filed a written statement stating therein that defendant no. 2 is the purchaser of suit house and land from Anchhi Kuer through registered sale deed dated 15.04.1986 for valuable consideration and after payment of consideration amount this defendant has come in possession and occupation and they are residing in the house with their family members. It is also stated that prior to purchase from Most. Anchhi Kuer, Anchhi Kuer was living in this house over suit land with her husband for more than 12 years, with full knowledge of the plaintiffs



and their ancestors. The title of defendants have perfected also by law of adverse possession. Further case of the defendant is that the suit land was *ghair-mazarua malik* land of Jagdeo Dusadh who was living in the house as a tenant at the Will of the landlord who died issueless. Therefore, the land became bakasht land and came in khas possession of the landlord. Later on the landlord of the suit land settled to Basudeo Thakur husband of Anchhi Kuer as barber. Basudeo Thakur, the husband of the Anchhi Kuer came in village and constructed a house over the suit plot and after death of Basudeo Thakur, Anchhi Kuer was living in the suit house and remained in possession of the suit land. When she needed money, she sold the suit property to the defendant no. 2 and put her in possession of the same. Since after defendant no. 2 along with her family members has been coming in possession and occupation of the suit premises. The defendants have denied that Jagdeo Dusadh was related to the plaintiffs and have also denied that Kujur Dusadh and Jagdeo Dusadh were full brothers. It is further stated that Kujur Dusadh was not related to Sheolochan Dusadh therefore, the plaintiff cannot claim any title and possession in the suit premises and also denied the genealogical table given by the plaintiffs. The



defendants have also denied the entry made in consolidation proceeding in the name of plaintiffs. The defendant's further case is that Basudeo Thakur who came in the said village from other village got constructed a house and was paying chokidari tax with respect to the suit premises and after purchase by the defendant no. 2, the house is mutated in the name of defendant no. 2.

Both the lower courts after perusing of the evidences oral as well as documentary held that plaintiff has failed to establish the relationship with Kujur Dusadh and Jagdeo Dusadh with Sheolochan Dusadh, the appellate court has also rendered the finding that the defendant came in possession on the basis of sale deed dated 15.04.1986 which was never challenged by the plaintiffs. Learned appellate Court also held that Sections 50 and 60 of the Indian Evidence Act envisages where a court has to form an opinion of relationship of one person with another, evidence of opinion expressed by conduct as to the existence of such relationship of a person special means of knowledge as a member of the family or otherwise of such relationship is irrelevant the evidence led by the plaintiffs regarding genealogy of the recorded tenant Jagdeo Dusadh and in connection with the



plaintiffs with him are infirm and contradictory and cannot be believed. As per the plaintiffs their ancestor Sheolochan Dusadh was full brother of Kujur Dusadh and father of the recorded tenant Jagdeo Dusadh but there is no cogent or consistent evidence to connect them with the recorded tenant rather documentary evidence of Exhibit-D suggest Sheolochan Dusadh was son of Sukh Lal Paswan. The evidence of PW 2, namely, Ram Nagina Singh says that Jagdeo Dusadh and Sukh Lal Dusadh were full brothers the evidence is inconsistent and contradictory as it is not a case of the plaintiff that Sukhu Dusadh and Dukhu Dusadh who were sons of Sheolochan Dusadh as disclosed by PW 3 in his evidence. The appellate court further held that there is no documentary evidence to establish the genealogy as claimed by the plaintiffs and oral evidence adduced by them do not appear cogent and reliable.

In the aforesaid findings the appellate court affirms the finding of the trial court.

Considering the impugned judgment and material available on record it is clear that plaintiffs have failed to establish relationship that Jagdeo Dusadh and kujur Dusadh with Sheolochan Dusadh. It is further clear that the defendant-



respondent had come in possession by virtue of sale deed dated 15.04.1986, which remain unchallenged at the hands of plaintiffs. The plaintiffs failed in adducing evidences to satisfy the scope and ambit of Section 50 and 60 of the Indian Evidence Act and the evidences on the point is inconsistent and contradictory and the genealogical table brought by the plaintiffs is not established by any cogent evidence. On perusal of the material available on record, both the lower Courts have concurrently held about the said facts.

In the said circumstances, this Court does not find any illegality in the impugned judgments and decree of the learned Courts below nor does it find any substantial questions of law involved in the instant Second Appeal, which is, accordingly, dismissed at this stage of “Hearing under Order XLI, Rule 11 of the CPC”.

(Khatim Reza, J)

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