

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**SECOND APPEAL No.329 of 2019**

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Mohammad Akhtar, Son of Mohammad Ilyas, Resident of Piro Darzi Tola,  
Purani Kachari, P.S. and Anchal, Piro and District- Bhojpur.

... .. Appellant/s

Versus

1. Mohammad Guddu @ Noor Aalam, Son of Late Mohammad Ilyas, Resident of Piro Darzi Tola, Purani Kachari, P.S. and Anchal- Piro and District- Bhojpur
2. Mohammad Maqsood, Son of Late Mohammad Ilyas, Resident of Piro Darzi Tola, Purani Kachari, P.S. and Anchal- Piro and District- Bhojpur
3. Mohammad Pervej, Son of Late Mohammad Ilyas, Resident of Piro Darzi Tola, Purani Kachari, P.S. and Anchal- Piro and District- Bhojpur
4. Mohammad Saroj, Son of Mohammad Maqsood, Resident of Piro Darzi Tola, Purani Kachari, P.S. and Anchal- Piro and District- Bhojpur

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Mohammed Abu Haidar, Advocate  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**CAV JUDGMENT**

**Date : 10-01-2023**

This Second Appeal has been filed by the appellant against the order dated 27.04.2019 and decree dated 04.05.2019 passed by the learned Additional District Judge – 13, Bhojpur at Ara in Title Appeal No. 15 of 2017 whereby and wherein the appeal was dismissed affirming the order dated 25.11.2013 and decree dated 09.12.2013 passed by learned Munsif 1<sup>st</sup>, Civil Court, Bhojpur at Ara in Title Suit No. 31 of 2012.

The appellant was defendant in the suit. The brief fact of the case is that the plaintiff had instituted the suit claiming title and recovery of possession over the suit property on the



basis of self-acquired property which he purchased from Rajendra Bhoop Bahadur on 23.03.2010 through registered sale deed giving consideration money of Rs. 18,000/- and came in possession over suit property after the purchase of the same. Defendants no. 1 to 3 are brothers of the plaintiff and defendant No. 4 is his nephew. The claim of the petitioner is that on 25.02.2012 defendants entered in the shop of the plaintiff and on protest by the plaintiff they locked the shop. Hence the plaintiff filed the suit.

For the appearance of defendants in the suit, summons ordinary as well as registered post were issued which was duly received by the defendants but they failed to appear and the case was fixed for ex-parte hearing against the defendants. On the basis of oral and documentary evidence adduced by the plaintiff, the ex-parte order has been passed against which the petitioner filed the Title Appeal. The learned Additional District Judge- 13, Bhojpur at Ara vide order dated 27.04.2019 found no merit in the appeal and dismissed the same against which the Second Appeal has been filed on behalf of the appellant.

Heard learned counsel for the appellant on admission.

Learned counsel for the appellant has submitted that the trial court and the appellate court have failed to appreciate that



appellant had no knowledge about the institution of suit and the execution proceeding was initiated then he got the knowledge of the same and he filed Miscellaneous Case No. 1 of 2014 under Order 9 Rule 13 and Section 151 of the Code of Civil Procedure for setting aside the ex-parte decree on the ground that the appellant had not put his signature on the acknowledgment and the said signature is a forged signature. However, the said Miscellaneous Case has been dismissed for default for want of pairvy on behalf of the appellant and the Miscellaneous Case was not decided on merit. He has further submitted that summons of suit has not been duly served on the appellant and he was not given proper opportunity to defend his case. He has also submitted that the learned trial Court has not considered to order for gazette publication for the appearance of the defendants and accordingly, the service against the defendants ought not to be treated as duly served. He also submits that the learned Court below on merit also failed to consider the fact as whether Rajendra Bhoop Bahadur was the owner of the land in question or not? Further it is submitted that ownership of plaintiff is not proved and accordingly judgment and decree of courts below is bad in law as well as on the facts.

From perusal of the order passed by the trial Court as



well as the appellate Court it appears that the trial Court in its order specifically stated that for the appearance of defendants in the suit all legal procedures were adopted but they did not appear in the suit and the suit was fixed for ex-parte hearing against the defendants. The appellate Court on perusal of the trial Court record also observed that summons, ordinary as well as through registered post, were issued to the defendants and by the order dated 08.02.2013 services against the defendants were confirmed and the case was fixed ex-parte against the defendants.

Both the Courts below on merits also given finding that plaintiff has proved his pleadings with oral and documentary evidence that on the basis of the registered sale deed no. 1676 dated 23.03.2010 it is concluded that the plaintiff / respondent is the owner of the suit land who has purchased the same giving consideration money of Rs. 18,000/- and came in possession over the suit property after the date of purchase of suit land and he is entitled to recover the possession of the suit land.

It was rightly observed by the appellate Court, considering the fact that even after the service of notice the appellant did not appear in the trial Court, that the burden of proving the fact that the signature of the appellant on the concerned acknowledgment



was not his signature, was upon the appellant but the appellant did not discharge the said burden of proof.

The law is well settled that this Court cannot entertain a second appeal under Section 100 of the Civil Procedure Code unless a substantial question of law is involved. In this case, there is concurrent finding of facts and there is no perversity in the findings of the courts below.

As discussed above, there is no substantial question of law arises in this Second Appeal. Accordingly, this Second Appeal is dismissed at the stage of admission itself.

**(Sunil Dutta Mishra, J)**

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