

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.422 of 2016

Ajay Kumar Singh and Anr

... .. Appellant/s

Versus

Bijendra Prasad Singh

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shakti Suman Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 14-03-2023 Heard learned counsel for the appellants.

This Second Appeal has been filed against the judgment and decree dated 30.06.2016 passed by the Learned Additional Judge, VII, Patna in Title Appeal No. 32 of 2013 whereby the judgment and decree dated 30.04.2013 passed in Title Suit No. 14 of 2010 by the learned Munsif, 1st, Patna has been affirmed.

The case of the plaintiffs-appellants is that the father of the plaintiff and husband of the plaintiff no. 2 acquired landed properties bearing Khata No. 811 Plot No. 11 total one acre and 35 decimal as well as other adjoining lands at Mauza Alamgirpur, Phulwarisharif, Patna through registered sale deed dated 09.08.1952 from rightful owner. Further case of the plaintiff is that during his lifetime Ram Prakash Singh developed the said plot and he carved out a 10 feet wide lane



running north to south in the middle of the Plot No. 11 and thereafter by plotting he sold some part adjacent west of the said lane. Further case of the plaintiff is that Ram Prakash Singh gifted one part of the plot in question to his youngest son Ajay Kr Singh to the south western corner who installed a Petrol Pump. In the year 1984 father of the plaintiff no. 1, namely, Ram Prakash Singh executed a registered sale deed in favour of Bijendra Prasad Singh (defendant no.1) having an area of 2730 sq. feet and the said sale deed was executed in Calcutta. The defendant on his assurance that he will pay the consideration amount to Ram Prakash Singh, neither he paid the balance consideration amount nor shown any interest in the property as described in Schedule-I of the plaint and the same remained in occupation and possession of Ram Prakash Singh as a defendant failed to pay the consideration amount and voluntarily told Ram Prakash Singh in presence of plaintiff no. 2 in the month of October, 1984 that he is not interested in Schedule-I land and hence, it is upon Ram Prakash Singh either to sell off the same to any other or keep it for own use as to the south of the Schedule-I is the land of the Ram Prakash Singh over which the Petrol Pump is installed. Further case of the plaintiff is that all of a sudden after lapse of twenty five years the defendant came



with three-four known persons over the Schedule-I properties on 17.05.2010 and wanted to take forceful possession which was objected by the plaintiff. The defendant is claiming the suit land on the basis of sale deed and the plaintiffs are in possession within their knowledge hence, the plaintiffs have perfected their title by way of adverse possession.

On the other hand defendant appeared and filed his written statement and contended that suit as framed is not maintainable. The suit is barred under Section 34 of the Specific Relief Act. Further case of the defendant is that it is true that father of defendant no. 1 was the owner of the Plot no. 11 measuring one acre and 35 decimal. The defendant neither admit nor deny whether he was also owner of the adjoining lands of the Plot No. 11. Further case of the defendant is that he has denied the statement of Paragraph 2 of the plaint that he had carved out 10 feet wide passage in the middle of the Plot no. 11 and western side of Survey Plot No. 15, 14 and 12. Further case of the defendant is that the defendant admitted that he purchased 2730 sq. feet of the Plot No. 11 under registered sale deed dated 14.08.1984 after paying balance consideration money and he has been coming in possession which was registered at Calcutta. Further case of the defendant is that the defendant was in



service at Bilaspur in the State of Madhya Pradesh and retired in the year 1998 and came back to his home. After execution of the sale deed, the defendant Ram Prakash Singh separated the suit land after the due measurement and demarcating stone were fixed for identification of the suit land of the defendant. Further the case of the defendant is that the plaintiff asked the defendant to sell the land to him which defendant refused only on the ground that he will construct his house over it. When he started repairing of compound wall which has fallen at certain places which led to a case under Section 144 of the Cr.P.C. The police inquired the matter on the spot and submitted a report stating therein that the land has been coming in possession of the defendant.

Both the lower courts especially the trial court on perusal of documentary evidence as well as oral evidence held that the defendant purchased 2730 sq. feet of land in Survey Plot. No. 11 under the registered sale deed which was registered on 14.08.1984 at Registry Office, Calcutta and the price was fixed at 20,000/- out of which the defendant paid 17,000 at Phulwarisharif, Patna and the remaining consideration money of Rs 3,000/- was to be paid at the time of Chirkut Badlain (Ex-3). The defendant paid the balance consideration amount of Rs



3,000/- to the father of the plaintiff no. 1 in presence of Shri Jawahar Prasad Singh and Shri Sanjay Prasad Singh and he endorsed on the registration receipt in favour of the defendant who thereafter withdrew the original sale deed from Calcutta Registry Office so the original sale deed came in custody of defendant (Ex-A).

The trial court further discussed about the evidence of Plaintiff no. 1 in 2nd paragraph no. 30 of his cross-examination stated that he doesn't know the fact that mutation was made and the State Government rent receipts are being issued in the name of defendant and land possession certificate was issued to the defendant of the sold land.

PW-4 (Plaintiff no. 1) in paragraph no. 37 of his deposition proved the Ext.-A original sale deed which was filed by defendant from his custody in his cross-examination this witness denied that he cannot get examine his mother due to her advanced age. This witness also stated that his mother is second wife of his father and Title Declaration Suit No. 209 of 1992 is pending in the court of Sub-Judge, Patna. This proves that no heirs of said RP Singh has any claim over the suit land because all the other heirs know the fact that Ram Prakash Singh sold the disputed land to Bijendra Prasad Singh (defendant) on



receipt of full consideration money and the defendant has been coming in peaceful possession over the suit land. The trial court also discussed about the evidence of DW-6 who is the defendant in this Case. The suit has been filed after 26 years of the sale deed dated 14.08.1984. During his examination-in-chief this witness has proved three Government rent receipts in his name dated 28.03.1990, 03.01.2005 and 01.06.2010 which are Ext-C, Ext-C1 and Ext-C2 respectively. Ext-D police report in Non-FIR No. 117 of 2010 in Case No. 664 (M) of 2010 and land possession Certificate over the suit land under the sale deed dated 14.08.1984 (Ext-A). He deposed that on 06.11.1984 he paid the remaining consideration amount of Rs 3,000/- and put the signature on the Chirkut on the same day and the defendant withdrew the original sale deed which was produced in the suit and marked as Ext.-A on admission during cross-examination of the plaintiff as PW-4 Ext-A is the valid, genuine and operative document.

The trial court has held that the defendant has proved that he paid the entire consideration money of 20,000/- to the said Ram Prakash Singh. On the other hand the plaintiff failed to bring on the record to show that defendant did not pay the consideration amount to the vendor and the plaintiff's title



was not proved. The Learned Appellate Court also on analyzing the judgment of trial court as well as material available on record held that the sale deed in question is legal and valid. The suit is barred by law of limitation and it is not maintainable and held that plaintiff-appellant are not entitled to any relief.

Considering the impugned judgments and decree and material available on record the plaintiff failed to prove his case on the point of payment of balance remaining amount of Rs 3000/- and also failed to prove title by way of adverse possession and the plaintiff-appellant challenged the sale deed of 1984 in the year 2010 which is hopelessly time barred.

In the result, this appeal fails as being de-void of merit. The issues which are concluded by concurrent findings of facts and no question of law much less Substantial Question Of Law arises for consideration in the Second Appeal, which is, accordingly, dismissed at the stage of Order 41 Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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