

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.172 of 2019

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Most. Panchola @ Parmila Devi wife of Late Vinay Prasad, resident of Mohallah- Bakarganj, Bajaja Gali, Police Station- Pirbahore, Post office- Bankipur, District- Patna.

... .. Appellant/s

Versus

Sri Krishna Kumar son of Sri Munna Sao, resident of Mohallah- Bakarganj Gola Road, Police Station Pirbahore, Post office- Bankipur, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Advocate
For the Respondent/s : Md. Jubair Ansari, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 06-08-2024

Heard learned counsel for the appellant under Order 41 Rule 11 of the Code of Civil Procedure.

2. The defendant, who is appellant herein, has filed this Second Appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.03.2019 passed by learned Additional District Judge VI, Patna in Title Appeal No.18 of 2006 whereby the learned appellate court has affirmed the judgment and decree dated 03.01.2006 passed by Munsif IIIrd, Patna in Title Suit No.51 of 1999.

3. The brief facts of this case is that the suit property was purchased by Smt. Ganga Devi through registered sale deed



who sold the same to the plaintiff by registered sale deed dated 01.11.1998. The plaintiff filed the suit being Title Suit No.51 of 1999 for declaration of title and recovery of possession against the defendant (daughter-in-law of Smt. Ganga Devi) by evicting her from the suit property claiming that she was in permissive possession over the same. In written statement, the defendant claimed that the suit property was not under the exclusive possession of Ganga Devi as the same was purchased out of joint family fund by her husband in her name. The defendant has been in possession over the suit property in her own right as co-sharer. It is further claimed that on reference made by joint family members to the *panches*/arbitrators for partition of the suit property on 27.05.1988 who passed the award on the same day wherein the defendant was allotted the suit property in her share.

4. The learned trial court vide judgment dated 03.01.2006 held that the award in question was forged and fabricated document and no right in the suit property could be claimed by the defendant on that basis. The suit was, accordingly, decreed.

5. Earlier in first appeal, the appellate court reversed the finding of the trial court, allowed the appeal and set aside the judgment and decree of the trial court against which Second



Appeal has been preferred by the respondent before this Court.

6. In the said earlier Second Appeal being Second Appeal No.242 of 2009 this court had formulated the substantial questions of law, heard the parties and after considering the rival submissions on behalf of parties the said Second Appeal was allowed and impugned judgment and decree of appellate court below was set aside and the matter was remitted back to the appellate court for decision afresh on the basis of material on record.

7. It has been observed to the effect that :

(i) The principle of law is no more *res-integra* that the property standing in the name of a person shall be presumed to be his/her exclusive property until the contrary is established. This principle is based upon the celebrated doctrine that the apparent state of affairs would be accepted to be the real state of affairs until the contrary is established.

(ii) It is evident that the sale deed in the name of Ganga Devi for the suit property and its subsequent transfer by her to the plaintiff through sale deed have not been denied, and in fact the real contest is not over the title of Ganga Devi but the acquisition of title by defendant over the suit property as a co-sharer of Ganga Devi on the strength of award.

(iii) It was the defendant who has come out with the case of award as the basis of her title over the suit property. The said award has admittedly been not made the rule of court nor has been registered.

(iv) The conclusion that the trial court had no jurisdiction to go into the genuineness of award as it was not challenged as required by the Arbitration Act



is not legally sustainable in the facts of the present case. The appellate court was required to reconsider the said finding of the trial court upon the basis of appraisal of evidence.

(v) As the genuineness of the award is the fulcrum of the claim of the defendant in the suit property and the appellate court has not at all touched the finding of fact as recorded by the trial court holding that the award to be forged and fabricated document.

8. On remitted back to the appellate court below the matter was heard and vide impugned judgment dated 11.03.2019 the learned first appellate court dismissed the title appeal and the judgment and decree passed by the trial court was affirmed. Hence, being aggrieved by the same, the appellant/defendant has preferred this Second Appeal.

9. Learned counsel for the appellant has submitted that the learned trial court as well as the learned appellate court failed to appreciate that the suit filed by the plaintiff/respondent for declaration of title and recovery of possession against the defendant/appellant in the garb of eviction suit is not maintainable under B.B.C. Act wherein the eviction suit can only be filed by the landlord on any of the grounds specifically provided in Section 11 therein. It is further submitted that both the courts below have failed to decide the matter of relationship of landlord and tenant by framing the issue as main issue for obtaining the decree of eviction. Learned counsel has further



submitted that this court had set aside the judgment and decree dated 21.04.2009 passed by the appellate court on the point of validity of *panchnama* and remanded back the matter to the appellate court for giving fresh decision on the basis of material on record and after hearing the parties. The issues such as relationship of landlord and tenant, court fee and the point that Ganga Devi as necessary party to the suit have neither been involved as substantial question in Second Appeal No.242 of 2009 nor the findings on the same have been set aside.

10. Learned counsel for the appellant has further submitted that the appellate court erred in holding that the defendant has failed to prove her case which is against the law as the onus is on the plaintiff to plead and prove his case. Learned counsel further submits that both the courts below failed to consider the pleadings as well as evidence on record on the issue whether Ganga Devi had any fund or personal income by which the suit holding had been purchased by herself as her self acquired property. He has lastly submitted that there are substantial questions of law arise in this Second Appeal. Accordingly, this appeal may be admitted for hearing.

11. Having heard learned counsel for the appellant and on perusal of the judgment of both courts below i.e. trial court



and first appellate court, it appears that both courts have held that the plaintiff is absolute owner of the suit premises and has got title and defendant's possession thereof is merely permissive out of grace and sympathy and she has no right, title and interest. The trial court held that the plaintiff has brought the instant suit against the defendant because she is residing in the suit premises, except defendant no other third person is required to be evicted from the suit premises. Ganga Devi, the vendor of plaintiff, is not a necessary party and suit is not bad for non-joinder of Smt. Ganga Devi which has been reaffirmed in the appeal. It is also held that the alleged award is a forged and fabricated document and have no force in law. The appellate court also held that the *panchnama* is doubtful document regarding signature of *panches* and date.

12. In the present case, admittedly the plaintiff/respondent filed Title (Eviction) Suit for declaration of title along with eviction of appellant/defendant and it cannot be said that the suit is purely eviction suit under B.B.C. Act which governs the relationship of landlord and tenant. Indisputably, the issue as regards title over a property can be decided by a Civil Court in a regular suit.

13. The court cannot entertain a Second Appeal unless a



substantial question of law is involved. The expression “substantial question of law” has acquired definite connotation through various judicial pronouncement.

14. Both the courts below on scrutiny of the pleading and evidence have come to hold that plaintiff has established his title over the suit property and defendant’s possession on the suit property is merely permissible having no right, title and interest. This is the finding of facts which is not required to be re-appreciated in this Second Appeal.

15. There is concurrent finding of fact stated above by the courts below and no perversity in the findings of the courts below could be established on behalf of the defendant/appellant. A concurrent finding of fact based on evidence cannot be disturbed in an appeal under Section 100 of the Civil Procedure Code on the ground that other view is also possible on the basis of same set of evidence. It is not the case of the appellant that findings of the courts below are contrary to the evidence available on record or without any evidence on record.

16. As such, there is no substantial question of law arising for consideration in this Second Appeal, which is accordingly, dismissed at the admission stage itself.



17. The interlocutory application, if any, stands closed/disposed of.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	28.06.2024
Uploading Date	06.08.2024
Transmission Date	

