

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.137 of 2017

1. Ram Lagan Yadav
2. Laldeo Yadav Both Sons of Late Ram Jatan Yadav, Residents of Village-Ranipur Paijwa, P.S. Chowk (Mehndiganj), Patna City, District- Patna.

... .. Appellant/s

Versus

- 1.1. Most. Sunaina Devi W/o Late Vidya Nand Singh, resident of Ranipur, Khiri, Gangpar, P.O.-Jhauganj, P.S.-Mehandiganj, Patna City, District-Patna.
- 1.2. Sri Shashi Bhushan Sinha, son of Late Vidya Nand Singh, resident of Ranipur, Khiri, Gangpar, P.O.-Jhauganj, P.S.-Mehandiganj, Patna City, District-Patna.
- 1.3. Sri Braj Bhushan Sinha, son of Late Vidya Nand Singh, resident of Ranipur, Khiri, Gangpar, P.O.-Jhauganj, P.S.-Mehandiganj, Patna City, District-Patna.
- 1.4. Smt. Munni Devi, D/o Late Vidya Nand Singh, resident of Ranipur, Khiri, Gangpar, P.O.-Jhauganj, P.S.-Mehandiganj, Patna City, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. D.K.Sinha, Sr. Advocate Mr. Shanti Pratap, Advocate
For the Respondent/s	:	Mr. Ravindra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 25-06-2024

1. Heard learned Senior counsel for the appellants and learned counsel for the respondents.

2. The instant appeal has been preferred against the judgment dated 28.1.2017 passed in Title Appeal no.17 of 2011 by the learned 6th Additional District Judge, Patna City, Patna whereby he was pleased to dismiss the appeal and affirm the judgment and decree dated 28.10.2010 passed in Title Suit no.56 of 2001 by the learned Additional Munsif - II, Patna City, District-Patna.



3. The plaintiff filed Title Suit no.56 of 2001 for declaration of title and recovery of possession of the suit property which was decreed by the learned trial Court by the judgment and decree dated 28.10.2010. The appeal preferred against the said judgment and decree by the defendants was dismissed by judgment dated 28.1.2017 by the learned lower appellate Court. It is against this judgment dated 28.1.2017 that the instant appeal has been preferred.

4. For the sake of convenience, the parties will be referred to as per their position in the title suit.

5. The property in dispute is a piece of agricultural land measuring an area of 8 kathas in Tauzi no.15, Khata no.305, Khesra no.4371, Thana no.19, situated in Mauza Ranipur, P.S. Chowk, Patna City in the district of Patna and hereinafter referred to as the 'suit property'. It is not in dispute that the suit property is in the boundary of plaintiff's land.

6. As per the plaintiff's case, the suit property was sold by a registered sale deed dated 28.5.1968 executed by one Devanand Singh in favour of Ram Jatan Yadav for valuable consideration. On the death of Ram Jatan Yadav, the defendants being his sons inherited the said property.

7. It is the case of the plaintiff that Devanand Singh



had executed a registered usufructuary mortgage deed in favour of the plaintiff on 9.11.1966 with respect to the suit property for a period of three years. The plaintiff had come in possession over the same. Admittedly, the said mortgage was not redeemed and in the meantime, Devanand Singh executed a registered sale deed dated 28.5.1968 in favour of Ram Jatan Yadav.

8. The plaintiff also being the adjoining raiyat to the suit land, filed an application for pre-emption under section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act') depositing 10% extra amount, as stipulated under the Act. The application was registered as Case no.13 of 1968-69 before the Deputy Collector Land Reforms, Patna City. The case was decided in favour of the plaintiff against which the defendants preferred Revision Case no.390 of 1986 in the Board of Revenue which was dismissed vide order dated 2.12.1987. Thereafter the defendants preferred a writ application in the Patna High Court which was also dismissed. Finally, the DCLR, Patna City executed a registered sale deed no.3433 dated 23.7.1990 with respect to the suit property on behalf of the father of the defendant namely, Late Ram Jatan Yadav in favour of the plaintiff. Thus the plaintiff became the absolute and



exclusive owner of the suit property. It is further case of the plaintiff that he started paying rent to the authority and was being granted rent receipt. However, on 25.11.1997, the defendants illegally dispossessed the plaintiff and are now cultivating the same and enjoying the usufruct thereof. As such the plaintiff filed the instant case.

9. The case of the defendants in brief is that Late Ram Jatan Yadav purchased the suit property through a registered sale deed dated 28.5.1968 and was coming in possession over the same since the date of purchase. After his death, the defendants being his sons have been coming in peaceful possession of the suit property. Ram Jatan Yadav was paying rent on earlier occasion and thereafter the defendants have been paying rent.

10. With respect to the plaintiff's claim over the suit property on the basis of the registered sale deed dated 23.7.1990 executed by the DCLR, Patna City in connection with pre-emption case under section 16(3) of the Act, it was submitted that the same bars any suit and cannot be adjudicated in a Civil Court. The same has to be decided by the Collector or the Board of Revenue. It was further case of the defendants that the plaintiff had no valid cause of action, the suit was barred by the



law of limitation as also under section 43 of the Act and the defendants being in possession over the suit property under registered deed of sale dated 28.5.1968 the suit was fit to be dismissed.

11. It was contended by learned Senior counsel appearing for the defendants-appellants that the learned Court below failed to appreciate that the suit was barred under section 9 of the Code of Civil Procedure read with section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. It was further submitted that possession over the suit land having been taken on 25.11.1997 was contrary to the plaintiff's admission in Title Suit no.79 of 1997 which was filed by the plaintiff seeking a decree for eviction of the defendants from the suit land in view of the sale deed dated 23.7.1990 executed in compliance of the order passed under section 16(3) of the Act. It was finally submitted that the learned Courts below failed to appreciate that the defendants were in possession of the land in question from the date of execution of the sale deed on 28.5.1968 in favour of their father, as successor in interest.

12. Having heard learned Senior counsel for the appellants, learned counsel for the respondents and having



perused the material on record, the facts not in dispute are that soon after the execution of the sale deed dated 28.5.1968 executed by Devanand Singh for valuable consideration in favour of Ram Jatan Yadav (father of the defendants), on the ground of being an adjoining raiyat the plaintiff filed an application for pre-emption under section 16(3) of the Act which was registered as Case no.13 of 1968-69 and allowed in favour of the plaintiff by the DCLR, Patna City. The revision preferred by the defendants in the Board of Revenue was dismissed on 2.12.1987 and the writ petition preferred by them in the Patna High Court was also dismissed. It was then that the registered sale deed no.3433 dated 23.7.1990 was executed by the DCLR, Patna City on behalf of the defendant's father Late Ram Jatan Yadav in favour of the plaintiff and the plaintiff became absolute owner thereof. The plaintiff having been dispossessed by the defendants on 25.11.1997, the instant suit was filed for declaration of title and recovery of possession of the suit property described in Schedule-A of the plaint.

13. There being no dispute with respect to the execution of the registered sale deed by the DCLR, Patna City pursuant to the plaintiff having succeeded in their application for pre-emption filed under section 16(3) of the Act, the learned trial



Court as also the learned lower appellate Court correctly decided that the said sale deed was legally valid and binding on the defendants. Further even accepting the claim of recovery of possession of the plaintiff being based on the registered sale deed dated 23.7.1990 executed in their favour pursuant to having succeeded in their pre-emption application filed under section 16(3) of the Act, the suit having been filed within a period of 12 years, the issue was correctly decided in favour of the plaintiff and against the defendants. The Court is of the opinion that the defendants-appellants in the instant appeal have not been able to raise any substantial question of law for consideration by this Court.

14. The Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	
CAV DATE	23.04.2024
Uploading Date	25.06.2024
Transmission Date	

