

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.419 of 2022

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1. Ram Narayan Sah Son of Late Raghunandan Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapara).
 2. Falindra Sah @ Falindra Sao Son of Late Raghunandan Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapara).
 3. Nageshwar Sah, Son of Late Raghunandan Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapara).
 4. Rajeshwar Sah, Son of Late Raghunandan Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapara).
 5. Kanhai Sah Son of Late Mukhlal Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapara).

... .. Appellant/s

Versus

Laxmi Narayan Sah Son of Bhuneshwar Sah, Resident of village - Chintamanganj, P.O. - Rahampur, P.S. Garkha, District - Saran. (Chhapra).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Radha Mohan Pandey, Advocate Mr. Rajeev Ranjan No.II, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 12-12-2024 Heard Mr. Radha Mohan Pandey, learned counsel for the appellants.

2. This Second Appeal has been filed against the judgment and decree dated 14.09.2022 passed in Title Appeal No. 30 of 2018 by the learned Additional District Judge XII, Saran at Chapra whereby, the learned Appellate Court affirmed the judgment and decree dated 12.09.2017 passed in Title Suit No. 140 of 2014 by the learned court of Sub Judge XI th, Saran at Chapra, whereby the learned trial court decreed the suit.



3. The defendants are the appellants and the plaintiff is the sole respondent. The plaintiff filed suit for declaration of title and possession with regard to the suit land. Later on, recovery of possession has been claimed by way of amendment.

4. The case of the plaintiff is that ancestor of the plaintiff-respondent namely, Sukun Sah had three sons namely, Haricharan Sah, Raghunandan Sah and Mukhlal Sah. After the death of Sukun Sah, the partition took place between his sons in the year 1940 and they also separated their business. It is further contended that after partition, Haricharan Sah began to run a kirana shop in village from his own fund, he had one son namely, Bhuneshwar Sah. Bhuneshwar Sah had one son namely, Laxmi Narayan Sah, who is the plaintiff in the present case. It is further contended that after partition, the suit land detailed in plaint was settled by ex-landlord in favour of Haricharan Sah in the year 1945 and since then it is in possession of Haricharan Sah. After vesting of Zamindari, Return was filed by the ex-landlord in favour of Haricharan Sah with regard to suit land as a Raiyat and Register II was also prepared in his name. Rent receipts were also issued in the name of Haricharan Sah and after his death, his grandson (plaintiff) paid the rent to the State of Bihar and collected rent receipts.



The suit land is hotchpotch with the land of the plaintiff wherein there is a Veranda/Dalan of asbestos where the plaintiff resides. The defendant-appellants are men of power and have dispossessed the plaintiff from the suit land and encroached over it. The defendant-appellants have no concern with the suit land. When the defendant-appellants began to encroach the possession of the plaintiff-respondent, there took a mediation (Panchayati) between the parties but, the Sarpanch and other under influence of the defendant-appellants threatened the plaintiff-respondent to dispossess him from the suit land so a proceeding under Section 144 Cr.P.C. was initiated which resulted in proceeding under Section 145 Cr.P.C. but the police submitted a report in collusion with the defendant-appellants. Hence the suit was filed.

5. On summons, the defendants appeared and filed their written statement and denied the claim of the plaintiff and submitted that the story of partition in the year 1940 is false. It is further submitted that the suit is not maintainable on the ground of non impleadment of the vendor of the parties. It is further specific case that the suit land was settled in Baishakh, 1950 by the ex-landlord in the name of all the three sons of Sakun Sah. Their names were entered and return was filed in the



name of all the three brothers and accordingly, Jamabandi Register II was prepared. After some dispute in between the females of the family, all the three brothers partitioned the land and in the aforesaid partition towards the north side, Mukhlal was allotted his share and just adjacent southern part, Raghunandan was allotted his share and southern most part was allotted to Haricharan. Son of Mukhlal namely, Kanhai Sah began to run a kirana shop in the land allotted to him and adjacent to south Raghunandan and his son Ram Narayan Sah run a flour mill. It is further pleaded that the land allotted to Haricharan in partition was settled to Harijan community by Government of Bihar. The Jamabandi and Register II are in the name of Haricharan Sah and others and accordingly, the rent is being paid by all. The defendant-appellants also claimed the suit land on the basis of adverse possession. Earlier also, the plaintiff-respondent had filed a Title Suit No. 41 of 2011 wherein, Advocate Commissioner was appointed who inspected the suit land and prepared the map and submitted the report. Thus, it is clear that the plaintiff-respondent has no exclusive title over the suit land.

6. Considering the pleadings and evidences adduced by the parties and materials available on record, the learned



Trial Court decreed the suit in favour of the plaintiff.

7. Learned Trial Court has held that it is admitted fact of the parties that suit land was settled by the ex-landlord but there is dispute with regard to settlement as to in whose favour the settlement was made by ex-landlord either in favour of Haricharan Sah or all the three sons of Sakun Sah.

8. The learned Trial Court has held that the suit land is settled in favour of the Haricharan Sah and the Jamabandi is also mentioned in the name of Haricharan Sah and thereafter, others have been interpolated by making fraud. It is also submitted that the word Ors. (Wagaira) has been added in different pen. Further, it was ordered that receipts shall be issued in the name of whose possession is continuing from since beginning, this order has been passed on the basis of report submitted by Karamchari which shows that along with Haricharan Sah in all places Ors. (Wagaira) word has been added in different pen. There is no clarification about this fact. It is also submitted that the defendants' case is that there is no partition between the parties after the death of Sakun Sah. The case of the defendant is that the suit land was settled in favour of all the three sons of Sakun Sah in the year 1950 and after considering the fact and material on record the suit was decreed



by the trial court.

9. Being aggrieved by the judgment and decree, the appellants filed the Title Appeal and raised questions with regard to earlier partition and settlement. It is also clear that no documentary evidence was filed before the learned Trial Court, but in appeal by way of additional evidence some of the documents were filed which was exhibited in appeal as Ext. A to A/B are government receipt, Ext. B to B/4 are Malikan receipts, Ext. C is application for correction of Jamabandi. Ext. C/1 is the order passed in proceeding under Section 144 Cr.P.C.

10. Considering the aforesaid facts and averments made by the appellants as well as materials available on record, it is apparent from the judgment and decree of both the Courts held that fraud has been committed by adding word Ors. (Wagaira) and concurrently found the land in question has been settled in favour of Haricharan Sah and declared the title in favour of plaintiff-respondent.

11. In the circumstances stated above, I do not see any force in the present appeal nor does it find any substantial questions of law involved in the instant Second Appeal, which is accordingly dismissed at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure.



12. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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