

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.564 of 2019

1. Krishna Kumar Sinha @ Krishna Kumar Singh Son of Late Jagdish Sinha @ Jagdish Singh Resident of Village Nabinagar/ Hospital Road P.S. and P.O. Nabinagar District- Aurangabad.
2. Manju Devi Wife of Krishna Kumar Sinha deceased Resident of Village Nabinagar/ Hospital Road P.S. and P.O. Nabinagar District- Aurangabad.
3. Pawan Kumar Sinha @ Pawan Kumar Singh Son of Krishna Kumar Sinha @ Krishna Kumar Singh Resident of Village Nabinagar/ Hospital Road P.S. and P.O. Nabinagar District- Aurangabad.
4. Pankaj Kumar Sinha @ Pankaj Kumar Singh Son of Krishna Kumar Sinha @ Krishna Kumar Singh Resident of Village Nabinagar/ Hospital Road P.S. and P.O. Nabinagar District- Aurangabad.

... .. Appellant/s

Versus

1. Kameshwar Singh Son of Late Sita Ram Singh Resident of Village Nabinagar New Area Near Petrol Pump P.S.- Nabinagar District- Aurangabad.
2. Chandrawati Devi Wife of Shri Kameshwara Singh Resident of Village Nabinagar New Area Near Petrol Pump P.S.- Nabinagar District- Aurangabad.
3. Vijay Kumar Singh Son of Shri Alakhdeo Singh Resident of Village Chandan Bigha P.O. Tandwa P.S.- Tandwa District- Aurangabad, Bihar At Present Sanichar Bazar, Nabinagar P.O. and P.S. Nabinagar, District- Aurangabad.
4. Indrawati Devi Wife of Vijay Kumar Singh Resident of Village Chandan Bigha P.O. Tandwa P.S.- Tandwa District- Aurangabad, Bihar At Present Sanichar Bazar, Nabinagar P.O. and P.S. Nabinagar, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nand Kishore Prasad Sinha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 30-10-2024

Re. : I.A. No. 2 of 2024

This interlocutory application under Section 151 of the CPC has been filed for expunging the name of appellant no.2, namely, Manju Devi who died during the pendency of the



Title Appeal before the learned court below, who has been inadvertently impleaded as appellant no.2 in the instant appeal.

2. Learned counsel for the appellants submitted that heirs and legal representative of appellant no.2 are already on record as appellant 2(a), namely, Pawan Kumar Sinha @ Pawan Kumar Singh and appellant no.2(b), namely, Pankaj Kumar Sinha @ Pankaj Kumar Singh.

3. Considering the aforesaid facts and averments stated in the interlocutory application, the prayer made in the application is allowed.

4. Office is directed to delete the name of appellant no.2, namely, Manju Devi from the memo of appeal.

5. I.A. No. 2 of 2024 stands allowed.

6. In such view of the matter, defect no.26 is ignored.

Re. :I.A. No 1 of 2020

7. This interlocutory application under Section 41 Rule 5 read with Section 51 of the CPC has been filed for staying the further proceeding of Execution Case No. 7 of 2008 pending in the court of learned Munsif, Aurangabad during the pendency of the present appeal.

8. Since the appeal is not admitted, with the consent of both sides, this appeal will be heard today itself at 2.15 PM



on the point of admission under the heading for hearing under Order 41 Rule 11 CPC.

9. Again this case was taken up today at 02:15 pm.

10. Heard the learned counsel for the appellants.

11. This Second Appeal has been filed against the judgment and decree dated 20.05.2019 passed in Title Appeal No. 42 of 2009 by learned Additional District Judge, 2nd, Aurangabad, whereby the judgment and decree dated 20.02.2008 passed by the Civil Judge, Aurangabad in Title Suit No. 182 of 1999 has been affirmed.

12. Defendant Nos. 1 & 2 are the appellants in the instant Second Appeal.

13. The Title Suit No. 182 of 1999 was filed for declaration of title and recovery of possession.

14. The case of the plaintiffs is that the plaintiff no. 1 purchased the suit land bearing Khata No. 89 plot no. 863/486 measuring 1 decimal and khata no. 54 plot no. 244/486 measuring 1 decimal with definite boundary from Anil Kumar Sinha @ Chhotan on 24.08.1981 on consideration amount in favour of plaintiff no. 2 who is the wife of plaintiff no. 1. It is further pleaded that 1½ decimal of plot no. 863/486 and ½ decimal of plot no. 244/486 was purchased from said Anil



Kumar Sinha on 11.05.1992 and again on 11.05.1992, 1½ decimal land of plot no. 244/486 with definite boundary was purchased, and accordingly, their names were mutated in the revenue records vide order dated 18.03.1993 and 23.03.1993. It is also pleaded that the defendant 1st set on 25.11.1989 dispossessed the plaintiffs and opened a door on the land of the plaintiffs. Hence the suit.

15. On summons, the defendants appeared and filed their written statements. Defendant nos. 1 & 2/appellants also filed written statement on 31.05.2001 and denied the claim of the plaintiffs. It is further pleaded that the appellants Krishna Kumar Sinha and Anil Kumar Sinha were full brothers. Partition never took place between both brothers. It is alleged that Anil Kumar Singh was lunatic and insane person. The sale deed is also forged and fabricated. The plaintiffs have no right to claim on the basis of sale deed. The said sale deed is allegedly executed by lunatic person.

16. Defendant nos. 3 & 4 also filed written statement and contested the suit.

17. After pleadings of the parties, the learned trial court framed issues and decided the suit on the basis of evidence adduced by the parties and materials on record. The suit was



decreed by the trial court and the learned trial court has held that the plaintiffs have proved the sale deed and the said sale deed is genuine and executed by Anil Kumar Sinha. It has been specifically submitted that defendant nos. 1 & 2/ appellants after filing of written statement, have not cross-examined the witness of the plaintiffs. No any documentary evidence has been filed by them. The pleadings has not been proved by defendant nos. 1 & 2. The issue with regard to the title has been decided in favour of the plaintiffs.

18. Being aggrieved, defendant nos. 1 & 2/appellants filed Title Appeal and raised their objections.

19. The lower appellate court after considering the submissions and averments as well as materials on records, dismissed the appeal on the ground that the plaintiffs have proved their case on the basis of sale deed executed by the defendant, Anil Kumar Sinha @ Chhotan. The mutation order reveals that just after executing the sale deed, the mutation case was filed which was allowed in favour of the plaintiffs. The specific case of the plaintiffs is that they were dispossessed from the suit land on 25.11.1999. The appellants have not rebutted the claim of the plaintiffs.

20. Considering the aforesaid facts and circumstances



of the case and submissions made by learned counsel for the appellants, the contention that defendant no. 5, who is the vendor of the plaintiffs, is lunatic person is not proved. Apart from written statement, the defendants has not produced any evidence or material on records to show that the said Anil Kumar Sinha is lunatic and trace less person. No any *sanha* has also been produced regarding he being missing. The appellate court is the final court of fact which has upheld the judgment of learned trial court.

21. It is quite apparent that the judgment and decree of the courts below are covered by the findings of facts and no question of law much less substantial question of law involves for consideration in the instant Second Appeal.

22. Accordingly, the instant Second Appeal is dismissed at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

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Premchand/-

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