

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.100 of 2018

1. Rameshwar Singh Son of late Manchit Singh

2. Laxmi Singh Son of late Manchit Singh

All Residents of Village- Barkarba, P.S. Kurhani, District- Muzaffarpur.

... .. Appellant/s

Versus

1. Bishwanath Jha Son of late Bhubneshwar Jha resident of Village- Chardhua, tole, Barkurba, P.S. Kurhani, District- Muzaffarpur.

2. Shail Devi Wife of Yogendra Singh, D/o late Manchit Mahto (Singh). Resident of Village- Karma, wrongly written in decree Karama Sarbar, P.S. Kurhani, District- Muzaffarpur.

3. Ram Kumari Devi wife of Bhikari Singh. D/o late Manchit Mahto (Singh) Resident of Village- Karma, wrongly written in decree Karama Sarbar, P.S. Kurhani, District- Muzaffarpur.

4. Pukari Devi Wife of late Ram Lagan Singh, D/o late Machit Mahto(Singh) Resident of village-- Imad P.S. Kurhani, District- Muzaffarpur.

5. Ram Jali Devi wife of Chandradeo Singh, D/o late Manchit Mahto(Singh) Resident of Village- Madhaul, P.S. Kurhani, District- Muzaffarpur.

6. Munjhar Devi Wife of Meghu Singh, D/o late Manchit Mahto(Singh) Resident of village and P.S. Kurhani, District-Muzaffarpur.

7. Hari Nanda Singh Son of late Manchit Singh, Resident of Village- Barkurba, P.S. Kurhani District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

9 23-09-2024 This Second Appeal has been filed by the plaintiffs-appellants against the judgement and decree of affirmance. Title Suit No. 20 of 1995 has been filed by the plaintiffs-appellants for declaration of right, title and confirmation of possession and alternatively for recovery of possession, if plaintiffs found dispossessed during the pendency of the suit. The said suit was



dismissed by the learned Munsif, West Muzaffarpur by judgement and decree dated 19.08.2006 against which plaintiffs/appellants filed Title Appeal No. 48 of 2006 which was also dismissed by the learned Additional District Judge-VI, Muzaffarpur by its judgement and decree dated 15.12.2017, which is under challenge in the instant appeal.

2. The case of the plaintiffs, in brief, is that the suit land measuring 4 Katha 16 dhurs of R.S. Plot No. 847 has been carved out from C.S. Plot No. 393 area 14 decimals and R.S. Plot No. 394 area 8 decimals. Cadastral Survey Plot No. 393 stands recorded in the name of Nanda Jha having an area of 15 decimals and Cadastral Survey Plot No. 394 stands recorded in the name of Kant Ojhain @ Fen Ojhain having an area of 12 decimals. It is pleaded that after the death of Nanda Jha and the widow of Mohar Jha, the aforesaid two plots along with plot no. 395 came in possession of Jagarnath Jha, who was maternal grandson (Nati) of the recorded tenant. Later on, Jagarnath Jha sold the entire land of the aforesaid three plots to the original plaintiff namely Manchit Mahto on 15.06.1965 appertaining to C.S. Plot Nos. 393 and 394 admeasuring 4 Kathas 16 dhurs on payment of consideration money and put Manchit Mahto (original plaintiff) in possession of the said land. It is further



pleaded that by mistake of scribe C.S. Plot No. 395 was wrongly mentioned in the sale deed dated 15.06.1965 instead of C.S. Plot No. 394 while boundary was given of C.S. Plot No. 394. South of the aforesaid land, appellant had his residential house and Sahan etc. over R.S. Plot No. 848 which stands recorded in the name of original plaintiff, Manchit Mahto. It is further pleaded that the aforesaid Jagarnath Jha has also land bearing C.S. Plot No. 395 along with other lands, who sold the same to the defendants/respondents through registered sale deed dated 13.03.1964 in favour of Binay Kumar Jha, who is the brother-in-law of Jagarnath Jha. It is contended that the land in suit after purchase amalgamated with R.S. Plot No. 848 but in the Revisional Survey, the suit land was wrongly recorded in the name of defendant-respondent. The plaintiff raised objection before the Consolidation Officer, Kurhani for correction of survey entry *vide* Objection Case No. 556 of 76/ 18 of 90 which was allowed *vide* order dated 07.12.1990 against which the defendant/respondent filed Consolidation Appeal bearing Consolidation Appeal No. 01 of 1991 before the Deputy Director of Consolidation which was allowed *vide* order dated 04.11.1991.

3. Being aggrieved by the order of Deputy Director of



Consolidation, plaintiffs preferred Revision No. 117 of 1992 before the Joint Director of Consolidation, Muzaffarpur, who set aside the order of Deputy Director of Consolidation and remanded the matter to the Deputy Director of Consolidation to pass a fresh order but thereafter, the consolidation operation was suspended hence, no fresh order was passed by the Deputy Director of Consolidation and the order of Consolidation Officer remained intact but the Karamchari did not accept rent from the original plaintiff. Hence the necessity of the suit arises.

4. On summon, defendant appeared and filed his written statement and raised objection with regard to maintainability of the suit on the ground that the suit is barred under Section 4(b) of Bihar Consolidation Act. It is further contended that the village where the land in suit is situated has not be denotified under Bihar Consolidation Act. It is further pleaded that C.S. Plot No. 393 belonged to and was recorded in C.S. Khatyan in the name of Anrup Ojhain, wife of Nanda Jha and C.S. Plot No. 394 stands recorded in the name of Kant Ojhain, wife of Mohar Jha. Further case of defendant is that, Anrup Ojhain wife of Nanda Jha surrendered C.S. Plot No. 393 to Jagdamba Prasad Shahi and Chandrika Prasad Shahi, both sons of Basudeo Narain Shahi on 09.08.1930, who were the ex-



landlord and she executed a registered deed of Istifanama in their favour. The further case of the defendant is that the said landlord namely Jagdambi Prasad Shahi and Chandrika Prasad Shahi executed registered Patta dated 28.05.1931 in favour of Bhubneshwar Jha, father of the defendant-respondent Ist party in respect of C.S. Plot No. 393 and put him in possession of the suit land. Since then, defendant is in possession of the said land. It is false to say that Mohar Jha was like a maternal grandson of Jagarnath Jha. However, Jagarnath Jha died issueless and after the death of Kant Ojhain, widow of Mohar Jha, the father of the present defendant, who was nephew of Mohar Jha and a near relation, came in possession of Plot no. 394 on the basis of survivorship. Further case of the defendant is that Bhubneshwar Jha executed mortgage deed on 20.08.1951 in favour of Bansoo Rai and later on Bhubneshwar Jha also executed mortgaged deed on 06.12.1958 in favour of Ramphal Thakur in respect of C.S. Plot No. 393 and 394. Later on, it was redeemed by the father of the defendant. Kant Ojhain was the aunt of father of the defendant and after her death, the father of the defendant inherited the property of Kant Ojhain on the basis of survivorship. It is further contended that Kant Ojhain had no concern with the family of Jagarnath Jha. Father of the



defendant has title and possession over C.S. Plot No. 394. After redemption of mortgage deeds, father of the plaintiff came in possession of the aforesaid land. Defendant and his father had title over C.S. Plot No. 393 and 394. Jagarnath Jha never came in possession of the said land. The entry in the name of father of the defendant with regard to R.S. Plot No. 847 is rightly recorded in the revisional survey in record of rights. Plaintiffs have never come in possession over the suit land.

5. After hearing, the averments made on behalf of the appellants and after perusal of materials on record including the judgement of the learned courts below, it is manifest from a plain reading of judgments of both the courts below that it has been concurrently found that plaintiff had claimed his right, title and possession on the basis of survivorship. Plaintiff did not enclose family tree to show that Jagarnath Jha was successor of Nanda Jha and Mohar Jha. No documentary evidence has been produced by the plaintiff to show that Jagarnath Jha was maternal grandson (Nati) of Nanda Jha and Mohar Jha. Plaintiff also failed to prove that Jagarnath Jha was legal successor of Mohar Jha and Nanda Jha. Plaintiff had also not proved that Nanda Jha and Mohar Jha were brothers. Plaintiff also did not disclose the name of daughter of Nanda Jha as claimed by him.



Ext 3 (D) and 6 did not prove the point of successorship. Plaintiff has also failed to prove that Jagarnath Jha was maternal grandson (Nati) of Nanda Jha and as such, the sale deed executed by Jagarnath Jha on 15.06.1965 in favour of original plaintiff namely, Manchit Mahto (father of the appellants) has no right, title to transfer the suit land. Consequently, on the basis of sale deed plaintiff had no right, title and interest over the suit land. There is specific case of the plaintiff that Jagarnath Jha was the maternal grandson (Nati) of Nanda Jha. Defendant, Bishwanath Jha also accepted that Jagarnath Jha was the grandson (Nati) of Nanda Jha but property of Kanti Ojhain @ Fen Ojhain appertaining to C.S. Plot No. 394 has not been inherited by Jagarnath Jha.

6. Learned Appellate Court has held that plaintiff has failed to prove that Plot No. 848 is part of C.S. Plot No. 394. Learned Appellate Court further held that plaintiff has failed to prove that Jagarnath Jha, who was the vendor of original plaintiff has any title over the suit land. Jagarnath Jha had no right, title to execute the sale deed in favour of Manchit Mahto (original plaintiff) on 15.06.1965. Plaintiffs have no title on the basis of aforesaid sale deed.

7. Considering the aforesaid facts and circumstances



as well as the materials on record, it is quite apparent that the judgement and decree of the courts below are covered by the findings of facts and no question of law, much less substantial question of law arises, for consideration in the instant Second Appeal.

8. Accordingly, this Second Appeal is dismissed at the stage of hearing under Order 41 Rule 11 CPC.

(Khatim Reza, J)

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