

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.12 of 2016

Naresh Mahto, son of Panchu Mahto, resident of village- Koni, Post Office-
Tandwa, Police Station- Tandwa, District- Aurangabad.

... .. Appellant/s

Versus

1. Bijay Mahto (Mehta), son of Dhaneshwar Mehta,
2. Shyam Bihari Mehta, son of Chhathu Mehta,
Both residents of village- Koni, Post Office- Tandwa, Police Station-
Tandwa, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bindeshwar Prasad Singh, Advocate
For the Respondent/s	:	Mr. Bishwa Nath Chaudhary, Advocate Ms. Varsha Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

3 11-11-2025 Heard Mr. Bindeshwar Prasad Singh, learned counsel
for the appellant and Mr. Bishwa Nath Chaudhary, learned
counsel for the respondents.

2. This second appeal has been filed against the
judgment of affirmance dated 09.11.2015 passed by the
Additional District Judge-VI, Aurangabad, in Title Appeal
No.02 of 2014/ 33 of 2015, whereby the learned lower appellate
Court has upheld the judgment and decree dated 20.12.2013
passed by the learned Munsif, Aurangabad, in Title Suit No.57
of 2007.

3. The plaintiff is the appellant herein and the
defendants are the respondents. Title suit was filed by the



plaintiff for declaration of title and possession over the suit property and also for setting aside the report of the *Anchal Amin* as well as the order passed in *Simankan* Case No.10 of 2006-07 as also the order passed under Section 144 Cr.PC is bad, illegal and never effects the title of the plaintiff and also for grant of permanent injunction.

4. Learned trial Court after considering the materials available on record as well submissions of the parties dismissed the suit and held that there is no evidence that in plot no.130, Dukhani Devi succeeded the interest of her father and came in possession over 1/3rd area in each of plot including 3 decimals of land of northern side of Plot No.130 under Khata No.05. It is further held that from Ext. A, which is the certified copy of deed of gift executed by Gazadhar Dusaadh in favour of his daughter Dukhani Devi, it appears that both types of land i.e., agricultural and inhabited land were transferred by Gazadhar Dusadh in Khata No.05, total area was 1 acre 19 ½ decimal. The transferred land was related to Plot No.27; total area was 33 decimals out of which 16 ½ decimal was transferred, in Plot No.28; total area was 33 decimals out of which 11 decimals land was transferred, in Plot No.98; total area was 23 decimals out of which 17 decimals land were transferred, in Plot No.303; total



area was 63 decimals out of which 44 decimals of land was transferred, in Plot No.126; total area was 22 decimals out of which 15 decimals of land was transferred and in Plot No.129, total areas was 14 decimals homestead land with one room was transferred by the executant, namely, Gazadhar Dusadh to his daughter Dukhani Devi. However, no any land was transferred by Gazadhar Dusadh with respect to suit Plot No. 130 in favour of his daughter. In this regard, there is no uniformity in respect of 1/3rd land in each plot was transferred by Gazadhar Dusadh in favour of his daughter. It is further held that there is no documentary proof to support the claim of the plaintiff. In this regard, from Ext. B to B/1 i.e., measurement report dated 02.11.2006 and 09.11.2006, it appears that a proceeding under Section 144 Cr.P.C. was initiated between the plaintiff and the defendants and the same was decided in favour of the defendants. In that proceeding, on the direction of Circle Officer, Navinagar, the *Anchal Amin* measured the suit Plot No.130 and he filed his report. According to his report, a temple was situated toward north-east corner of the suit Plot No.130 and no any other land was available in suit Plot No.130 as claimed by the plaintiff. The learned trial Court further held that Ext. C, original sale deed dated 02.04.1956, Ext. D, certified



copy of *Raiyati Khatiyan* and Ext. D/1, certified copy of consolidation *Khatiyan* support the case of the defendants. The trial Court has further held that the plaintiff has miserably failed to prove this fact that Fekoo Paswan, who is maternal grand-son of the Gazadhar Dusadh, has any right to sell 3 decimals of land in Plot No.130 under Khata No.05 to the plaintiff Naresh Mahto and the temple of God Shiva was constructed in Plot No.135 and on the other side, the defendants have succeeded to prove their case in respect of Plot No.130 to establish that temple of God Shiva was situated over the said plot on 3 decimals of land and held that the plaintiff, who was his vendor, had no right, title and possession over the suit land and hence, the suit was dismissed by the trial Court.

5. Being aggrieved by the impugned judgment of the trial Court, the plaintiff preferred title appeal vide Title Appeal No.02 of 2014/ 33 of 2015, which was also dismissed by the learned appellate Court holding that the according to the report of the *Anchal Amin*, the temple was situated towards north east corner of the suit Plot No.130 and no any other land was available in the suit Plot No.130 as claimed by the plaintiff and as per the report, total area of suit Plot No.130 is 9 decimals. The temple is situated on 2 decimals of land and 3½ decimals



land is possessed by Bijay Mahto (defendant) while 3½ decimals land is possessed by Rajendra Singh and there is no ambiguity in the report of the *Anchal Amin*. It is further held that there is no substantive material available on record to show that there was oral partition between Baldeo Tiwary and Gazadhar Dusadh in which 6 decimals of land from southern side was allotted to Gazadhar Dusadh and the plaintiff has failed to establish that temple was established in Plot No.135.

6. Having regard to the facts and circumstances of the case and the submissions made by learned counsel for the parties as well as impugned judgments of the Court below, I am not inclined to interfere with the concurrent findings of the Courts below. No question of law much less substantial questions of law is involved in this appeal.

7. Accordingly, this second appeal is dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

J. Alam/-

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