

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.325 of 2022

Prabhu Mandal, son of Late Mishri Mandal, Resident of Village- Bhawanipur,
P.O.- Bhawanipur Rajdham, Police Station- Bhawanipur, District- Purnea.
... .. Appellant/s

Versus

Sushila Devi @ Lukhi Devi, wife of Late Ganesh Mandal, Resident of
Village- Bhawanipur, P.O.- Bhawanipur Rajdham, Police Station-
Bhawanipur, District- Purnea.
... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

5 01-09-2025 Heard Mr. Jitendra Prasad Singh, learned counsel for
the appellants.

2. This Second Appeal has been filed against the judgment of affirmance dated 22.08.2022 passed by learned Additional District Judge-V, Purnea, in Title Appeal No. 33 of 2017 whereby the judgment and decree dated 24.05.2017 passed by learned Sub-Judge- Dhamdaha, Purnea, in Title Suit No. 117 of 2008 has been upheld.

3. The defendant is the appellant in the instant Second Appeal.

4. The Title Suit No. 117 of 2008 was filed by the plaintiff/respondent/respondent for declaration of right, title and interest over 3 decimals of land, out of which 2 decimals of land were purchased from Bhanu Mandal and 1 decimal of land from



Most. Girja Devi, and also for cancellation of sale deed dated 19.08.1998 executed in favour of defendant, namely, Prabhu Mandal. The said suit was decreed in favour of the plaintiff and against the defendant.

5. Being aggrieved, Title Appeal No. 33 of 2017 was filed by the defendant/ appellant against the said judgment and decree passed by learned Sub- Judge, Dhamdaha, Purnea in title Suit No. 117 of 2008.

6. Learned counsel for the appellant submits that the learned trial court did not consider the oral evidence as well as documentary evidence of the defendant and passed the decree in favour of the plaintiff/respondents. The trial court passed the decree only on the basis of two sale deeds executed on 19.10.1995 and 10.01.1997 by the successor-in-interest, Bhanu Mandal and Most. Girja Devi. It is also submitted that the learned appellate court has not properly considered the evidence of the defendant. After hearing the parties, the learned Appellate Court affirmed the judgment and decree passed by the learned Trial Court and dismissed the appeal filed by the defendant/ appellant.

7. Having heard learned counsel for the appellant and on going through the materials available on record as well as



judgment of both the courts below, it appears that the learned court of appeal below which is the final court of facts, discussed each and every deposition of the defendant/appellant and considered the evidence adduced by the parties. It is admitted case of the parties that Most. Girja Devi was the title holder from whom both the parties purchased the land.

8. It is vehemently submitted that only 9 decimals of land were partitioned between two brothers, namely, Akal Mandal and Govind Mandal and as such, 4.5 decimals of land were allotted to each brother. After the death of Akal Mandal, his widow, Girja Devi sold 4.5 decimal of land to the defendant on 19.08.1998 and since then, he is in possession of the suit land and constructed a *Pucca* house over the suit land. The plaintiff was dispossessed from the suit land on 08.11.1998 after purchase through sale deed dated 19.08.1998 by the defendant. It is apparent from the record that the suit was filed only for 3 decimals of land and the said suit was decreed with regard to said 3 decimals land and the subsequent sale deed dated 19.08.1998 executed by Most. Girja Devi with regard to 4.5 decimals in favour of defendant has no force in law. The plaintiff purchased 2 decimals of land through sale deed dated 19-10-1995 from Bhanu Mandal, who acquired the said land



through gift deed dated 16.06.1994 executed by Most. Girja Devi and 1 decimal of land was purchased from the Most. Girja Devi on 10.01.1997, i.e. much prior to the purchase of the defendant sale deed dated 19.08.1998 (Ext.A).

9. It is held that the plaintiff was dispossessed from the suit land on 08.11.1998 by the defendant, for which G.R. Case No. 2553 of 1998 was filed by the plaintiff. Ext. B is the certified copy of the judgment passed in G.R. Case No. 2553 of 1998 on 30.05.2003, which shows that alleged dispossession took place on 08.11.1998. The title holder, namely Girja Devi, had already transferred three decimals of land earlier by executing two deeds; gift deed dated 16.06.1994 in favour of Bhanu Mandal, with respect to two decimals of land out of Khata No. 1, Plot No. 4760/6162 in favour of Bhanu Mandal, who in turn, sold the same land to the plaintiff on 19.10.1995 (Ext.1), and a registered sale deed dated 10.01.1997 was executed by Girja Devi with respect to one decimal of land out of Khata No. 1, Plot No. 4760/6162, in favour of the plaintiff.

10. Since the deed executed and registered prior to the execution of subsequent sale deed is to be acted upon, the learned Lower Appellate Court has rightly relied upon the judgment in the case of *Gurbax Singh vs. Kartar Singh*



reported in **2002 (1) SCCR 318**. Further, reliance has been placed in the case of **Vimal Chand Ghevarchand Jain and Others vs. Ramakant Eknath Jadoo** reported in **(2009) 5 SCC 713**, wherein, the Hon'ble Supreme Court has held that a registered sale deed is presumed to be a valid and genuine document unless the contrary is proved by the person challenging the said registered deed. The onus of proof, thus, lies on the person who leads evidence to rebut such presumption. The learned lower appellate court further observed that the plaintiff has successfully proved her case on the basis of both documentary and oral evidence. The plaintiff has validly purchased the suit land from the rightful owner, who had every manner of right, title, interest, and possession over the suit land.

11. On the other hand, the defendant adduced evidence based on a registered sale deed dated 19.08.1998 (Ext.A) executed by Girja Devi, who had no right to execute the suit land in favour of the defendant. Accordingly, it was held that the judgment and decree passed by the learned Trial Court suffer from no infirmity, and the suit has rightly been decreed. The cancellation of *jamabandi* created in the name of the defendant with respect to 0.3 decimals of land which was previously purchased by the plaintiff, has also rightly been



declared void.

12. Considering the aforesaid facts and circumstances of the case as well as the materials on record, it appears to this Court that it is an admitted case of the parties that Girja Devi was the title holder of the suit land. The gift deed was executed on 16.06.1994 by Girja Devi in favour of Bhanu Mandal, her nephew, in respect of two decimals of land with specified boundary (Ext. 1/B), which was later transferred by Bhanu Mandal in favour of the plaintiff on 19.10.1995 (Ext. 1). Thereafter, one decimal of land adjacent to the aforesaid two decimals, was sold to the plaintiff by Girja Devi out of Khata No. 1, Plot No. 4760/6162. The said two sale deeds have never been challenged by the defendant or by any other person. Therefore, the said sale deeds are presumed to be valid and genuine. Accordingly, the plaintiff has rightly been held to be the rightful owner of three decimals of land executed by the rightful owner of the said land.

13. In view of the above discussion, it is quite apparent that the judgment and decree of the learned courts below are covered by finding of facts, and no question of law, much less substantial question of law, arises for consideration in the instant second appeal, which is, accordingly, dismissed at



the stage of hearing under Order XLI Rule 11 of the C.P.C.

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

(Khatim Reza, J)

Premchand/-
Shyambihari/-

U			
---	--	--	--

