

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.43 of 2022

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1. Sullu Sain @ Sullu Sah @ Sullu Sai, son of late Usuf Sain @ Fullu Sain @ Usuf Sai @ Fullu Sai, resident of Village - Madanpur, P.O. and P.S. - Madanpur and District- Aurangabad.
 2. Firoj Sain @ Firoj Sah @ Firoj Sai, son of Usuf Sain @ Fullu Sain @ Usuf Sai @ Fullu Sai, resident of Village - Madanpur, P.O. and P.S. - Madanpur and District- Aurangabad.
 3. Naseem Sah @ Naseem Sain, son of Usuf Sain @ Fullu Sain @ Usuf Sai @ Fullu Sai, resident of Village - Madanpur, P.O. and P.S. - Madanpur and District- Aurangabad.
 4. Emteyaz Saha @ Butta Sian @ Imteyaj Sai @ Butta Sah, son of late Usuf Sain @ Fullu Sain @ Usuf Sai @ Fullu Sai, resident of Village - Madanpur, P.O. and P.S. - Madanpur and District- Aurangabad.

... .. Appellant/s

Versus

1. Ramchandra Singh, son of late Shivpujan Singh, resident of Village – Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad.
2. Hirdyanand Singh @ Hirdyachand, son of late Dhan Bihari Singh, resident of Village - Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad..
3. Janardan Singh, son of late Dhan Bihari Singh, resident of Village - Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad.
4. Sahendra Singh, son of late Dhan Bihari Singh, resident of Village - Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad.
5. Jitendra Singh, Son of late Dhan Bihari Singh, Resident of Village - Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad.
6. Pintu Kumar, son of late Dhan Bihari Singh Under Guardianship of his eldest brother Hirdyanand Singh, resident of Village - Madanpur, Tola-Sheonath Bigha, P.O. and P.S. - Madanpur, District- Aurangabad.
7. Smt. Basanti Devi, wife of Shyam Narayan Yadav, resident of Village – Dashwat Khap, P.O. and P.S. - Madanpur, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anirudh Kumar Verma, Adv.
Mr .Vyas Kumar Mishra, Adv.

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA



ORAL ORDER

8 08-01-2026 Heard learned counsel for the appellants.

2. This Second Appeal has been preferred against the judgment and decree of affirmance dated 21.12.2021 passed by the Additional District Judge-IX, Aurangabad, in Title Appeal No. 04 of 2019/ 47 of 2019 whereby judgment and decree dated 20.12.2018 passed by the learned Sub Judge- 1st, Aurangabad, in Title Suit No. 128 of 2008 has been upheld.

3. The defendants are the appellants and the plaintiffs are the respondents in the present appeal.

4. The plaintiffs filed Title Suit No.128 of 2008 for declaration of title and recovery of possession as also for permanent injunction and cost of the suit.

5. The case of the plaintiffs is that Ramchandra Singh, Smt. Basanti Devi and Dhanbihari Singh purchased the land with an existing house jointly through registered sale deed dated 28.04.2003 for valuable consideration of Rs.1,95,000/- from Asgar Sai. The details of the land is mentioned in Schedule-A of the plaint. The said Asgar Sai had purchased the said land with constructed house through Sada sale deed dated 10.10.1957 for valuable consideration of Rs. 99 and 12 anna from Buddhan Dom, who was recorded tenant in the Cadestral Survey. The suit property comprised of three rooms with *varandah* surrounded



by the boundary wall measuring an area of 5 decimal and the defendants forcibly dispossessed the plaintiff from the suit property in the month of September 2007 and constructed a temporary shade over the suit land. Hence, the aforesaid suit was filed by the plaintiffs.

6. The defendants/appellants appeared and filed their written statement and denied the claim and possession of the plaintiffs and vehemently pleaded that sale deed dated 28.04.2003 is collusive, fraudulent, inoperative and is not binding upon the defendants/appellants. It is further pleaded that the suit land bearing Khata No. 176 Plot No. 1093/1687, area 5 decimals is recorded in C.S. Khatian as *gairmajarua malik* in possession of Buddhan Dom. The said Buddhan Dom orally sold the suit land to Karam Sai on 19.04.1933 for valuable consideration of Rs. 72/- only through unregistered sale deed. Karam Sai came in possession over the suit land after execution of the unregistered sale deed dated 19.04.1933. The defendants/appellants are the descendants of Late Karam Sai, who are coming in peaceful possession from the time of their father since the year 1933 and they also paid *Chowkidari* rent of the suit property. The defendants never dispossessed the plaintiffs and the story of dispossession is false and fictitious



and the defendants are residing over the suit land from the lifetime of their father.

7. On the basis of pleadings of both the parties, the learned Trial Court framed issues and after considering the pleadings and materials on record, decreed the suit of the plaintiffs/respondents. The learned Trial Court held that the disputed property was admittedly recorded as *gairmajarua malik* in possession of Buddhan Dom. The defendants claimed that the suit land was purchased through unregistered sale deed in favour of Karam Sai on 19.04.1933. On the contrary, Sullu Sai (defendant no. 1), in his cross-examination, during the trial accepted that the defendants claim their right, title over the Plot No. 1055/1683 in the proceeding under Section 144 which was initiated against the plaintiffs and defendants *vide* order dated 11.06.2007 passed in Case No. 658 of 2007 (Ext.-4). Therefore, it is apparent from the record that no claim was raised by the defendants for the suit land till 2007. The land in dispute was purchased by the plaintiffs through registered sale deed dated 28.04.2003 which was never challenged by the defendants in any suit and accordingly, the learned Trial Court after considering the materials on record, held that the plaintiffs have successfully proved their case. The right, title and interest has



been proved on the basis of the documents and evidence adduced by the plaintiffs and further held that from the record it appears that the defendants have raised no claim about the suit land till June, 2007 and, accordingly, the defendants were directed to vacate the suit land within three months.

8. Being aggrieved, the defendants/appellants had filed Title Appeal against the judgment and decree of the Trial Court which was dismissed by the Appellate Court affirming the judgment and decree of the Trial Court. The First Appellate Court has held that source of title of the plaintiffs/respondents is *Sada* sale deed executed by recorded tenant (Ext. 1A). The registered sale deed executed (Ext. 1) in favour of Ramchandra Singh, Dhanbihari Singh and Basanti Devi is a valid, legal and reliable document. There is nothing on record to disbelieve and disprove the documents exhibited by the plaintiffs/respondents. It is apparent from the record that just after dispossession, the plaintiffs/respondents have rightly filed a case under Section 144 of Cr.P.C. in which both the parties appeared and had contested the matter, wherein, the defendants (especially defendant no. 1) have stated in their claim that the defendants have no any concern with Khata No. 176, Plot No. 1093/1687, area 5 decimals which is the suit land. This fact has been



admitted by defendant no. 1 in his cross-examination during the trial and further held that respondents (plaintiffs) have successfully proved the chain of the title i.e. the recorded tenant had rightly executed a sale deed dated 10.10.1957 (Ext. 1A) and the vendor of the plaintiffs/respondents acquired valid right to transfer the suit property and the vendor has rightly executed the registered sale deed in favour of the plaintiffs. The plaintiffs have proved story of dispossession in the month of September, 2007 and consequently, the learned First Appellate Court has not interfered in the judgment of the Trial Court. Accordingly, the appeal was dismissed.

9. Having considered the submissions made on behalf of the appellants and upon perusal of the materials on record including the judgments of the learned courts below, it appears that the learned courts below after considering the pleadings of the parties and evidence adduced by them came to a definite conclusion that defendant no. 1 has admitted in his cross-examination that the defendants/appellants have no any concern with Khata No. 176, Plot No. 1093/1687, Area 5 decimals, which is the suit land. The learned courts below categorically held that till June, 2007, the defendants had raised no claim about the suit land. The plaintiffs have proved their chain of title



from the recorded tenant, who had executed *Sada* sale deed in favour of the vendor of the plaintiffs, who in turn executed the registered sale deed on 28.04.2003 in favour of the plaintiffs, which has not been challenged by the defendants in any suit and no counter claim was filed by the defendants in the aforesaid suit.

10. Both the courts below have concurrently held that the defendants dispossessed the plaintiffs from the suit land.

11. For the foregoing reasons, this Court does not want 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.

12. Accordingly, this appeal is dismissed at the stage of admission under Order XLI Rule 11 CPC.

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

(Khatim Reza, J)

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