
(2013) 02 PAT CK 0026

In the Patna High Court

Case No : Second Appeal No. 193 of 2011

Amirul Haque @ Md. Amirul Haque and Others

APPELLANT

Vs

Sheikh Shakur and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100

Citation : (2013) 3 PLJR 77

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Asutosh Jha and Mohammad Aquil Ahmad, for the Appellant;

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—Heard learned counsel for the appellants. In the present second appeal the appellants/plaintiffs, are aggrieved by the judgment and decree dated 17.2.2011 and 3.3.2011 respectively, passed by the learned Sixth Additional District Judge, East Champaran, Motihari in T.A. No. 49 of 2008, whereby he has reversed the judgment and decree passed by learned Munsif, Sikrahana at Motihari in T.S. No. 62 of 2004 dated 27.9.2008 and 25.10.2008. The appeal has been placed for hearing under Order 41 Rule 11 of Code of Civil Procedure.

2. As per the plaintiffs' case, the Suit Plot No. 732 appertaining to Khata No. 10 of Mauza-Sirauna, Tola-Kathamaliya has been recorded as Gairmajarua Malik in revisional survey record of rights. Adjacent to this plot on the northern side is Plot No. 254, which is a pond, and some portion of plot No. 732 is flank of the pond. One Sheikh Manger came into possession of 5 kathas of land out of said plot No. 732 few years after revisional survey operation and subsequently the ex-landlord settled that land to Sheikh Manger and created Jamabandi of the same in his name. Further case of the plaintiffs before the trial Court was that Sheikh Manger through registered sale deed dated 18.4.1972 sold his above land on receipt of consideration amount to the plaintiff/appellant No. 1 Md. Amirul Haque

and put him in possession. As per the plaintiffs' case, on the western side of the land settled to Sheikh Manger there was a drain through which water flowed into a pond on the north side and on the south of the land was a road. The defendants/respondents slowly started encroaching upon the land and as plaintiffs did not reside there regularly and only females and children used to reside in the house, on 15.9.2004, the defendants dispossessed the plaintiffs from 15 dhurs of the land as described in Schedule of the plaint, in such circumstance the appellants/plaintiffs filed the suit in the Court of Munsif, Sikrahana at Motihari on 29.12.2004 for declaration of their absolute title over the suit land and for a declaration that possession of the defendants over the suit land was illegal as trespasser. They also sought for a relief for recovery of possession over the suit land.

3. The defendants contested the suit by filing their written statement questioning the case of the plaintiff on settlement of the said 5 kathas of the land Suit Plot No. 732 to the plaintiffs' vendor Sheikh Manger by the ex-landlord as completely false and baseless. The defendants pleaded that Suit Plot No. 732 appertaining to Khata No. 323 having total area of 4 bighas 8 kathas and 2 dhurs was recorded in the R.S. Khatian as Gairmajarua Thikedar Mauza-Sirauna under the proprietorship of ex-landlord. It was further pleaded on behalf of the defendants that the ex-landlord or his employee did never settle any part of plot No. 732 to any person. They contended that no Jamabandi was ever created in favour of the said Sheikh Manger nor did he ever come in possession over the said 5 kathas of land and, therefore, the said Sheikh Manager did not have any right to execute registered sale deed with respect to the suit land and thus, the plaintiffs by virtue of so-called sale deed dated 18.4.1972 did not acquire any right, title and possession over the suit land. The defendants pleaded that they were in possession over the suit land and house which was on the western side of the drain and they had no concern with the lands on the eastern side of the drain.

4. On the basis of the rival pleadings, learned trial Court framed issues including issues No. iv, v and vi which reads thus:--

iv. Is the suit barred under the principles of adverse possession?

v. Have the plaintiffs got any right and title over the suit land?

vi. Is the story of possession and dispossession set forth by the plaintiff correct?

5. The trial Court decreed the suit in favour of the plaintiff on the basis of his appreciation of the evidence and material available on record. The learned trial Court for reaching to its finding relied upon certain statements of D.Ws. regarding the plaintiffs' case of settlement by the ex-landlord and on the basis of sale deed and rent receipts filed and exhibited on behalf of the plaintiffs,

6. The judgment and decree of the learned trial court was challenged by the respondents/defendants mainly on the plea that as the plaintiff brought the suit for declaration of title and recovery of possession based on story of settlement

by the ex-landlord and creation of Jamabandi and grant of rent receipt by ex-landlord and after vesting of zamindari by the State of Bihar, the onus was upon the plaintiff to prove title of his vendor to transfer the suit land by virtue of the sale deed dated 18.4.1972. It was pleaded on behalf of the defendants that the plaintiffs did not file any proof in support of their case of settlement, creation of Zamabandi and grant of rent receipts.

7. The first appellate Court framed three points including point No. A "Have the plaintiffs/respondents succeeded in proving their or their vendors" title over the suit land?" Learned first appellate Court taking note of the fact that the plaintiffs/appellants did not disclose even in their plaint as to whether settlement of land to the plaintiffs" vendor Seikh Manger by the ex-landlord was oral or documentary as also the fact that the plaintiffs did not file any document in support of the story of settlement by the ex-landlord in favour of the plaintiffs" vendor; on the basis of the evidence both oral or documentary produced in course of trial, came to the finding that the plaintiffs failed to-prove their vendor"s title over the suit land. The Appellate Court accordingly held that no title in such circumstance could pass to the plaintiffs/appellants on the strength of the registered safe deed dated 18.4.1972 executed by Seikh Manger in favour of the plaintiffs.

8. Learned Courts below in view of such finding allowed the appeal and set aside the judgment and decree of the learned trial Court. It is in such circumstances that present second appeal has been preferred on behalf of the appellants.

9. Learned Counsel appearing on behalf of the appellants has vehemently submitted that the first appellate Court failed to consider and meet all the reasons assigned by the learned trial Court while setting aside the judgment and decree and, therefore, the second appeal involved a substantial question of law for the purpose of its admission. Learned counsel for the appellant has submitted that the findings of the first appellate Court are erroneous and based on wrong appreciation of the evidence and material available on record. He has relied upon a Division Bench judgment of this Court reported in 1976 BBJ 411 (Rohan Kumar vs. Luxman), to contend that non-consideration of all the aspects by the first appellate Court which weighed with the trial Court would not be in accordance with law and the High Court could interfere in second appeal. He has also placed reliance on a Supreme Court judgment reported in Madhukar and Others Vs. Sangram and Others, so as to contend that the first appellate Court is bound to address all the issues of law and facts and decide the same by giving reasons in support of the findings.

10. On perusal of the judgment of the learned first appellate Court, I find that it has taken into account all the aspects considered by the learned trial Court while reaching, to his own findings. The judgment of this Court and that of the Supreme Court relied upon by the learned counsel for the appellants do not support his case, in view of the fact that he has not been able to point out as to which issue or which aspect of the case which weighed with the trial court was

not considered by the first appellate Court. He has also not been able to point out that any finding of the learned first Appellate Court was based on no material or could be said to be contrary to the material available on record.

11. Learned counsel for the appellants also failed to satisfy this Court with reference to any material- discussed by the learned trial court on the basis of which it could be successfully contended that the plaintiffs" vendor had right, title and interest over the suit land.

12. The limitation of this Court in exercise of power u/s 100 of the CPC is of now well established. This Court cannot entertain a second appeal unless the appeal involves any substantial question of law. No question of law much less substantial question of law has been raised by the learned counsel for the appellants which according to him the present second appeal involves.

13. In view of the several pronouncements of the Supreme Court unless findings of final Court of fact i.e. the first appellate Court are found to be perverse based on no material or could be said to be contrary to the evidence, this Court would not interfere in exercise of power u/s 100 of the Code of Civil Procedure. In view of the above, I am of the view that the present second appeal does not merit admission and is, accordingly, dismissed.