

(2001) 03 PAT CK 0093

In the Patna High Court

Case No : Appeal From Appellate Decree No. 556 of 1986

Chandrika Singh and Another

APPELLANT

Vs

Awadh Behari Singh

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Citation : (2001) 2 PLJR 312

Hon'ble Judges : Ashok Kr. Verma, J

Bench : Single Bench

Advocate : Devendra Pd. Sharma, Mahendra Pd. Singh, Arbind Kumar Singh and Krishna Murari Kumar, for the Appellant; Susheel Ch. Sinha and Nawan Kishore Sharma, for the Respondent

Final Decision : Allowed

Judgement

Ashok Kr. Verma, J.—This second appeal has been filed by defendant nos. 2 and 4 against the judgment and decree passed by Sri Sitaram Choudhary, 3rd Additional Subordinate Judge, Aurangabad, in Title Appeal No. 66/1974/13/83, whereby the learned Additional Subordinate Judge has confirmed the judgment and decree of Title Suit No. 171 of 65 passed by the learned Munsif, Aurangabad. The learned Munsif had decreed the suit of the plaintiff which had been filed for declaration that he has right to get the registered sale deed executed by the principal defendant and the proforma defendant in respect of the land in suit by virtue of Baibiyana deed dated 10.7.1964. According to the plaintiff, defendant no.1 had entered into a contract to sell the land in suit to him for a consideration of Rs. 900/- and had received Rs. 100/- as part of it and executed a Baibiyana on 10.7.1964 and had promised to execute a registered sale deed within two months. Thereafter the principal defendant went on putting off the execution of the sale deed. In spite of legal notice the principal defendant did not execute the sale deed in respect of the land in suit and did not perform his part of contract and he began selling the land along with other lands to the proforma defendant who are defendant nos. 2 to 4. The plaintiff had informed the proforma

defendants about the Baibiyana executed by the principal defendant and in spite of full knowledge of prior Baibiyana the proforma defendants got the sale deed executed and registered on 22.5.1965. Proforma defendant nos. 2 and 3 had filed joint written statement and according to it there was never any contract for sale between the plaintiff and the principal defendant for sale of the suit land or any land. There was already a previous contract for sale dated 15.5.64 by defendant no.1 to these defendants, their mother and other members of their family. Since the sale of the land, the family of the defendants are in possession of the purchased land including the suit land. The land in suit and other lands, had been acquired by these defendants with defendant no.1 under a settlement from the then Malik and they had been in joint possession though in specified shares. There was no contract for sale of the land between the principal defendant and the plaintiff and no Baibiyana was executed on 10.7.64. These defendants are bonafide purchasers of the land, and they are in possession of the land under valid deeds of transfer.

2. Against the judgment and decree of the trial court defendant nos. 2, 3 and 4 who are proforma defendants preferred an appeal and the lower appellate court dismissed their appeal and confirmed the judgment and decree of the trial court.

3. The question of law in this second appeal is whether while concurring with the findings of the trial court lower appellate court which is final court of fact can ignore to consider the evidence on record on which the findings might have been arrived at by the trial court. It was submitted by the learned lawyer for the appellants that the lower appellate court has not considered the evidence, oral or documentary, and has confirmed the judgment and decree of the trial court. It was also submitted by him that the lower appellate court has not discussed the evidence which has been adduced by the parties during the trial of the case.

4. It appears from the perusal of the judgment of the lower appellate court that the learned Additional Subordinate Judge has not even mentioned any of the witnesses examined on behalf of the parties during the trial of the case. He has referred to Ext.1, the Baibiyana and Ext.8, the report of the Finger Print Expert and its connecting Exts. 9, 9/A, 10 and 10-A, but has not discussed the evidence of the Finger Print Expert and Exts. 9, 9/A, 10 and 10/A. The learned Addl. Subordinate Judge has not made any discussion of the report of the Finger Print Expert (Ext. 8) and the Baibiyana (Ext.1), and has not discussed the oral and documentary evidence adduced on behalf of the parties, and confirmed the judgment and decree of the trial court and dismissed the appeal.

5. It has been held by the Patna High Court in the case of Narain Singh and Others Vs. Kanta Singh and Others, , that first appellate court must consider evidence and reasonings of trial court specially in case of reversal. The trial appellate court should consider the evidence which" are connected with the disputed issue in the case. In the present case the lower appellate court has not considered and discussed the oral and documentary evidence. The learned Addl. Subordinate Judge should have stated the reasons for confirming the judgment

and decree of the trial court. The first appellate court is the final court of fact. Therefore, the first appellate court must consider and discuss the evidence and should state the reasons for confirming the judgment and decree of the trial court. In the present case the lower appellate court has not given reasons for concurring with the findings of the trial court. Therefore, this second appeal is allowed and the judgment and decree passed by the learned Addl. Subordinate Judge is set aside. It is remanded to the lower appellate court for disposal in accordance with law.