

(2003) 04 PAT CK 0112
In the Patna High Court
Case No : L.P.A. No. 52 of 1991

Most. Anarsa Devi and Others	Vs	APPELLANT
Most. Radha Devi and Others		RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Citation : (2003) 2 BLJR 1198 : (2003) 3 PLJR 421

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.K. Verma, Navin Prasad Singh, Surendra Kishore Verma, Jitendra Kishore Verma and Narayan Singh, for the Appellant; Shreenath Singh and Pushkar Narain Shahi, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Letters Patent Appeal has been filed against the judgment and decree dated 10-4-1991 passed in F.A. No. 300/81 whereby the judgment and decree dated 16-5-1981 passed in T.S. No. 66/46 of 1978/80 declaring the compromise judgment and decree passed on 12-1-1978 in T.S. No. 33/77 null and void, has been reversed.

2. During pendency of Letters Patent Appeal, Appellant No. 1, namely, Ram Udgar Mahto and Respondent No. 1, namely, Ram Prasad, Rai died., Their heirs were substituted. However, Ram Udgar Mahto and Ram Prasad Rai hereinafter shall be referred to as Appellant No. 1 and Respondent No. 1 respectively for the sake of brevity and clarity.

3. Ram Prasad Rai (deceased) Respondent No. 1, filed T.S. No. 33/77 against the appellants for specific performance of contract stating therein that the Appellant No. 1, Ram Udgar Mahto (deceased) who was in need of money for paying sudbharana money approached him for sale of 2 bighas 12 kathas 12 1/2 dhoors of land described in schedule A of the plaint for a consideration of Rs. 10200/- he agreed to purchase the land and accordingly Ram Udgar Mahto, the Appellant

No. 1 executed a deed of agreement on 5-9-1974. AT the time of execution of agreement he paid Rs. 8000/- and the remaining amount was to be paid at the time of execution of the sale deed within the specified period. Appellant No. 1 again approached him for sale of 1 bigha 3 kathas of land, details of which are mentioned in schedule B, for consideration of Rs. 46000/-. He agreed to purchase and accordingly Appellant No. 1 executed a deed of agreement on 7-10-1976. Out of the consideration money, he paid Rs. 4000/- at the time of execution of agreement and balance amount was to be paid at the time of execution of sale deed within the specified period. He was also put in possession of the land in question in part performance of contract. The Appellant No. 1 also handed over the documents with respect to title of the land in question i.e. the land described in schedule A & B. He was always, willing and ready to perform his part of agreement but the appellants were avoiding to execute the sale-deed and as such he sent a registered legal notice dated 19-4-1977 requesting the Appellant No. 1 to execute sale deeds after receiving the balance amount but he knowing about the notice refused to receive the same and as such suit was filed for specific performance of contract.

4. The Appellant No. 1, Ram Udgar Mahto, on service of notice appeared in the suit through lawyer and on deposit of guardian costs one Permanand Maharaj, Advocate was appointed guardian ad-litem for minor Appellant No. 2. Subsequently a compromise petition signed by the parties and their lawyers was filed on 8-10-1977 and a compromise decree was passed on 12-1-1978.

5. The suit i.e., T.S. No. 66/78 out of which the Letter Patent Appeal arises was filed by Ram Udgar Mahto and his son Moh'an Mahto, appellants, against Ram Prasad Rai, defendant 1st set Respondent No. 1 and one Ram Dhani Sah, defendant 2nd set for declaration that judgment and decree dated 12-1-1978 passed in T.S. No. 33/77 was fraudulent, illegal and void and the defendant 1st set did not derive any right on the basis of two deeds of agreement which were also fraudulent and collusive stating therein that defendants were friends. Defendant 2nd set Ram Dhani Sah was creditor of the appellants, some differences cropped up between them leading to several civil and criminal cases. Ultimately the appellants had to execute certain sale-deed in favour of defendant 2nd set. At the time of execution of sale deed defendant 2nd set, who was a shrewd litigant, obtained his thumb impressions on several papers. The Appellant No. 1 also handed over some sale deeds, documents with respect to properties in the name of his father at the time of execution of the sale deeds to the defendant 2nd set. Defendant 1st set in collusion with the defendant 2nd set filed T.S. No. 33/77 against the appellants for specific performance of contract on the basis of agreement dated 5-9-1974 and agreement dated 7-10-1976 showing payment of Rs. 8000/- and Rs. 14,000/- respectively out of consideration money in respect of schedule A and schedule B properties. Appellant No. 1 alleged that neither such agreement was executed nor he received any amount. No legal notice was ever served on him which he refused to receive. Summons was suppressed and effected "bala-bala" in collusion with the court peon. Defendant

1st set Respondent No. 1 got a forged and fabricated compromise petition dated 8-7-1977 filed through some lawyer purported to have been duly signed by the appellants, though Appellant No. 1 never appeared in the suit through lawyer, and obtained compromise decree fraudulently.

6. Defendant 1 st set Respondent No. 1 appeared in the suit and filed a written statement stating therein that the suit was mis-conceived. Plaintiffs-appellants have no right or cause of action to file suit, the suit is barred by estoppel and acquiescence and principle of constructive re-judicata. Appellant No. 1 was in need of money. He negotiated for sale of land on two occasions, executed two deeds of agreement to sell dated 6-9-1974 and 7-10-1976 after receiving part of consideration money and rest of consideration money was to be paid at the time of execution of the sale deed within the specific period. He denied to be on friendly terms with the defendant 2nd set and in collusion with him filed T.S. No.33/77. Appellant No. 1 who was karta of the joint family had negotiated for sale of the land, details of which have been mentioned in schedule A and B of the plaint and executed deeds of agreement by putting his signature and thumb impression on receipt of part of consideration money for payment of the dues and for expenses over cultivation etc. The appellant also made endorsement about receipt of money as part of the consideration money over the deeds of agreement. He put him in possession over the land in question. At the time of execution of the deeds of agreement he also delivered some documents of his title with respect to the land in dispute i.e. schedule A & B properties. He (Respondent No. 1) was always ready and willing to perform his part of contract but the appellants were avoiding to execute the sale deed pursuant to the agreements and hence legal notice through registered post to execute the sale deeds was sent which he refused to receive and as such he filed T.S. No. 33/77 in which pursuant to the summons the Appellant No. 1 appeared through lawyer and for Appellant No. 2, Guardian ad-litem was appointed. Subsequently, the parties compromised the case and they filed compromise petition. The parties put their thumb impression/signature over the compromise petition. The advocates of the parties also signed the compromise petition. On the basis of compromise petition the suit was decreed. The Respondent No. 1 also filed execution Case No. 6/78 for execution of compromise decree. However, during course of time he was dispossessed from the land covered under schedules A & B and as such he was entitled to mesne profit from the plaintiff-appellants. He denied that any fraud had been committed in obtaining compromise decree in the suit. The compromise decree was binding on the parties. Ram Dhani Sah. defendant-2nd set also appeared in the suit and filed written statement denying the entire allegation made against him. He denied that signature was obtained fraudulently from the Appellant No. 1 or he was in collusion with the defendant-respondent 1 st set. However, he did not contest the suit presumably knowing that he had no interest in the subject matter of the suit.

7. The trial Court own the basis of pleadings framed issues is follows: (i) Is the suit as framed maintainable? (ii) Have the plaintiffs valid cause of action for the

suit? (iii) Are the plaintiffs entitled for declaration as claimed? (iv) to what other relief or reliefs, if any, are the plaintiffs entitled?

8. The trial Court decreed the/ suit on 16-5-1981 and held that the deeds of agreement, Exts. B & B/1 were not executed in due course and they were obtained by fraud. Summons in T.S. No. 33/77 was got fraudulently served and compromise degree was obtained by playing fraud on the Court. The Respondent No. 1 did not come in possession over the land covered under the agreements to sell. The claim of Respondent No. 1 that possession was delivered was wrong. The court also disbelieved experts report and evidence of D.W. 7 and held that thumb impression on the sale deeds admittedly executed by Appellant No. 1 and thumb impression on the vakalatnama which was alleged to have been filed by Appellant No. 1 in T.S. No. 33/77 and the thumb impression appearing on the two deeds of agreement, Exts. B & B/1 were not of the same person. The court also noticed that those who were associated with Mahadnama as witness or compromise petition have not been examined, so adverse inference would be drawn.

9. The Respondent No. 1 challenged the judgment and decree dated 16-5-1981 passed by the trial Court in T.S. No. 66/46 of 1978/80 in F.A. No. 300/81 before the High Court. The appellant Court after hearing the parties held that the findings of the trial Court that deeds of agreement, exts. B & B/1 were not executed in the course by Appellant No. 1, Appellant No. 1 did not appear in the earlier T.S. No. 33/77 through an advocate he neither entered into compromise nor filed compromise petition on the basis of which compromise decree was prepared and the aforesaid decree had been obtained by playing fraud on the Court are not proper and justified in view of the materials on record and as such the appellate Court set aside the aforesaid findings of the trial Court and held that Mahadnamas, Ext. B& B/1 had been duly executed by Appellant No. 1, he appeared in the earlier T.S. No. 33/77, entered into compromise and filed compromise petition on the basis of which compromise decree was obtained without playing fraud on the Court and accordingly, allowed the appeal. The judgment and decree of the appellant Court has been impugned in this Letters Patent Appeal,

10. On the basis of pleadings, evidence and the submission of learned Counsel for the parties the questions for determination involved in this appeal are whether the deeds of agreement, Ext. B & B/1 are genuine documents executed by Appellant No. 1, the appellant appeared in T.S. No. 33/77, entered into compromise, filed compromise petitioner on the basis of which compromise decree was obtained without playing fraud on the Court.

11. The case of the Appellant No. 1 in the plaint was that Respondent No. 1 and Ramdhani Sah defendant respondent 2nd set were friends. Ramdhani Sah was also his (appellant) creditor. He had some dealings with him. However, some differences had cropped up between him and Ramdhani Sah leading to litigations but ultimately he had to execute some sale-deeds in favour of Ramdhani Sah and

in course of execution of the sale deeds, Ramdhani Sah obtained his thumb impressions on several blank stamp papers. At the time of execution of sale deeds he also handed over title deeds to Ramdhani Sah who did not return the same. Ramdhani Sah handed over blank stamp papers, on which his thumb impression was obtained, to Ram Prasad Rai, Respondent No. 1, who might have converted those stamp papers into deeds of agreement. He denied to have executed the agreements, Exts. B & B/ 1. In support of his stand as indicated above he examined witnesses, namely P.W. 1, P.W. 2, P.W. 18 and he himself as P.W. 19. They deposed to the effect that Ramdhani Sah and Respondent No. 1 were friends. Respondent No. 1 also examined some witnesses denying the friendship between him and Ramdhani Sah rather indicating friendship between Ramdhani Sah and Appellant No. 1. The evidence brought on the record about friendship between Ram Prasad Rai and respondent Ramdhani Sah as deposed by P.Ws. or between Ramdhani Sah and Appellant No. 1 as deposed by D.Ws. does not appear to be satisfactory as there is not specific evidence that they had seen them sitting together, taking tea together or roaming together or dinning together or any act to show that they were friends. The evidence is of general nature that there was friendship between them.

12. Appellant No. 1 in support of his stand that he handed over some title deeds to Ramdhani Sah, examined some witnesses, P.W. 8 was examined in the month of April, 1981 and he deposed to the effect that in his presence Appellant No. 1 had handed over his 5-6 title deeds to Ramdhani Sah about 19-20 years ago meaning thereby in 1961-62 when the deeds of agreement were executed in the years 1974 and 1976. P.W. 9 deposed that in his presence four documents had been given to Ramdhani Sah by Appellant No. 1 and on that day Ramdhani Sah obtained thumb impression and signature of Appellant No. 1 on 8-9 papers, Appellant No. 1 himself deposed that he was debtor of Ramdhani Sah. Subsequently, differences cropped up which were however, settled and he executed sale deeds and sudbharana deeds in favour of Ramdhani Sah. At the time of execution of sale deeds, Ramdhani Sah had obtained his signature and thumb impression on 8-9 sheets of stamp papers, some of them were blank and some contained some writings. He also handed over documents of title to Ramdhani Sah at the time of execution of sale deeds. Ramdhani Sah did not return 5 or 6 documents in spite of demand. In the plaint averment has been made that thumb impression was obtained by Ramdhani Sah but during course of evidence the witness stated that signature was also obtained besides thumb impression which indicates contradictions between the pleadings and the evidence and as such it cannot be accepted to be true. The witness also deposed that he did not execute sale deed or sudbharana deed in favour of Ramdhani Sah with respect to the land in dispute. If this evidence is accepted then there was no occasion to hand over any title deeds with respect to the land in dispute to Ramdhani Sah. Normally title deeds are handed over to the purchaser relating to the land to be sold. He deposed that amount of sudbharana deed was paid back to Ramdhani Sah who returned subharna deed but the aforesaid sudbharana

deed has not been brought on the record nor any sale deed or certified copy of sale deed alleged to have been executed in favour of Ramdhani Sah has been brought on the record. In cross-examination he deposed that he could not say as to on how many blank papers on written papers he had put his signature or thumb impression. The witness admitted that there was litigation with Ramdhani Sah but he had no document about any civil or criminal cases with Ramdhani Sah. He stated that there was compromise between him and Ramdhani Sah but no document of litigation, compromise or any paper relating to the cases was brought on the record. P.W. 8 categorically admitted in his evidence that documents which were handed over to Ramdhani Sah were related to that very land relating to which sale deed was executed in favour of Ramdhani Sah. Appellant No. 1 admitted that there were differences with Ramdhani Sah and also litigations with him. In such a situations, it is highly improbable that Appellant No. 1 would put his thumb impression of signature on blank stamp paper at the instance of his enemy Ramdhani Sah and would hand over title deeds of the land other than those relating to which he was to execute sale deeds in favour of Ramdhani Sah, This aspect of the matter was overlooked by the trial Court. There is no evidence on the record to show that Ramdhani Sah had handed over any title deeds or any stamp paper with signature or thumb impression of Appellant No. 1 to Ram Prasad Rai, Respondent No. 1, further appears from the evidence that Ram Prasad Rai was an illiterate man. Ram Prasad Rai, D.W. 5, has put his thumb impression on his deposition, In such a situation, it is most unlikely that an illiterate person would be chosen by Ramdhani Sah for handing over alleged stamp paper with signature and thumb impression of Appellant No. 1. Therefore, in view of the discussion and evidence on record the stand of the appellant and his evidence are not worthy of reliance.

13. On the other hand, Respondent No. 1 brought on record the documents, Ext. D. Sudbharana deed. Ext. C series sale deeds. They all relate to the land in dispute i.e. covered by the deed of agreements, Ext. B & B/1. It is his case that those documents of title were handed over by Appellant No. 1 when he executed deeds of agreement. The deed of agreement, Ext B also contain recital that sale deed executed by one Waris Ali in the year 1923 and another sale deed executed on 5-11-1936 by Hafizur Rahaman were handed over to him. However, it was pointed out by learned Counsel for the appellant that Ext. D is not a sale deed but Sudbharana deed and as such recital in the deed of agreement, Ext. B obviously is not correct. This appears to be a simple mistake because document number and year of execution and the name of executant have been mentioned in Ext. D. Ram Prasad Rai in his evidence stated that at the time of execution of second deed of agreement, Ext. B/1, the documents of title had been given to him by Appellant No. 1. Since the major part of consideration money was paid at the time of execution of deeds of agreement, it is expected that documents of title relating to the land in dispute would have been handed over to Ram Prasad Rai, Respondent No. 1 by Appellant No. 1. In such a situation the story given by Appellant No. 1 that he had handed over some title deeds to Ramdhani Sah at

the time of execution of Kewala in his favour which were not connected with the sale deed, cannot be accepted to be true and the stand of Respondent No. 1 as to how the documents, Ext. D, Ext. E & E/1. E/c came in his possession appears to be cogent and acceptable.

14. With respect to the execution of deeds of agreements, Ext. B & B/1, Respondent No. 1 examined himself as D.W. 5. He deposed that Appellant No. 1 approached him to sell his land and he executed deeds of agreement, Ext. B & B/1 after receiving Rs. 800/- and Rs. 4,000/- respectively out of part of consideration money, D.W. 4 is scribe. He deposed that he had been scribing documents for about 40 to 45 years. He admitted that he had scribed both the deeds of agreement, Ext. B & B/1, and in his presence Respondent No. 1 paid Rs. 8000/- and Rs. 4000/- to Appellant No. 1. Appellant No. 1 put his signature as well as his thumb impression on the deeds of agreement. He also handed over some documents to the Respondent No. 1 at the time of execution of deeds of agreement. He deposed that stamp paper is purchased by the vendor. He had obtained thumb impression of Appellant No. 1 on both the deeds of agreement. At the time of the execution of first deed of agreement, Ext. B, there were five persons and at the time of execution of the second deed of agreement, Ext B/1 there were 3 to 4 persons. The witness has given clear picture with respect to execution of the agreement and payment of part of consideration money. It was pointed out by learned Counsel for the appellants that documents were in Urdu but there is no cross-examination on the point as to whether the scribe took assistance of others in getting Urdu document read, The trial Court observed that the evidence of witness cannot be relied because of his cross-examination in Paragraphs 8, 9, 10, 11, 12 & 16 but the trial Court did not discuss the contents of these paragraphs. In para 8 of his evidence the distance between his residence and registration office has been mentioned. In para 9 he stated that the seller of the land purchases the stamp, in para 10 stated that he checked the proper valuation, in para 11 he stated that when the person is illiterate he never puts his signature, In para 12 he stated that he had obtained thumb impression on both the deeds of agreement. In para 16 he stated that Appellant No. 1 had handed over two title deeds to Respondent No. 1. From the evidence as discussed above it does not appear how the trial Court observed that his evidence is not worthy of reliance. In fact no reason has been assigned for coming to the conclusion, In the same manner he rejected the evidence of D.Ws. and as such finding with respect to the evidence of witnesses made by trial Court cannot be upheld.

15. Respondent No. 1 got thumb impression of Appellant No. 1 on the admitted documents and disputed documents examined by the expert i.e. finger print expert, D.W. 7, D.W. 7 deposed that he compared the admitted thumb impression of Appellant No. 1 on registered sale deed dated 5-12-1974, Ext. 1 and three thumb impressions appearing on the first Mahadnama. Ext. B and two thumb impressions appearing on second Mahadnama, Ext. B/1 and thumb impression appearing on the vakalatnama filed on behalf of Appellant No. 1 in

previous T.S. No. 33/77 and found that all the thumb impressions were of the same person, The trial Court, however, rejected his evidence on the ground that the witness found only four points of similarity. The reason assigned does not appear to be correct. It appears from the report Ext. C that he has given characteristic point of similarity under four heads and the total number of characteristic points of similarity included in the report are ten. The witness during his evidence has also deposed that he found ten points of similarity which indicates that the trial Court did not consider the entire evidence of the witness. Similarly the trial Court did not consider the evidence of witness that he denied the suggestions put to him during the course of cross-examination that certain portion of one of the finger prints was blurred. Thereafter, it appears that the trial Court has rejected his evidence without considering it thoroughly. The appellate Court has discussed the aforesaid aspect of the matter and has set aside the finding of the trial Court and held that the evidence of the witness is worthy of reliance.

16. Besides as stated above D.W. 1 and D.W. 2 have deposed that they were present when Appellant No. 1 was talking to sell his land to Respondent No. 1, Appellant No. 1 had executed the deed of agreement, Ext. B, after receiving Rs. 8000/- as part of consideration money. The scribe D.W. 4, deposed that five person were present at the time of execution of first deed of agreement. Therefore, it appears that D.W. 1 and D.W. 2 were present and their evidence is consistent to the evidence of the Scribe, on consideration of the entire evidence and pleadings it appears that evidence adduced on behalf of Respondent No. 1 with respect to the execution of deeds of agreement Ext. B & B/1 is consistent, probable and worthy of reliance, whereas, evidence adduced on behalf of Appellant No. 1 suffers from improbability, inconsistency and he failed to establish his case, The evidence brought on the record clearly establishes that deeds of agreement were executed by Appellant No. 1 and he put his signature/thumb impression over the same. The thumb impressions on the deeds of agreement were examined by the expert and he after their scientific comparison with the admitted documents came to the conclusion that thumb impression over the deeds of agreement and admitted documents were of the same person and thus, Respondent No. 1 had succeed in establishing his case.

17. The stand of Respondent No. 1 in the written statement was that he was put in possession after execution of deeds of agreement but the trial Court did not accept it as correct. Learned Counsel for appellants in the circumstances pointed out that since this finding is against Respondent No. 1, the case of execution of agreement becomes doubtful. In this regard it would not be out of place to mention herein that the aforesaid finding even if accepted would not affect the genuineness of the deeds of agreement, Exts S.B. & B/1. Exts. B & B/1 did not cite any stipulation that Respondent No. 1 was put in possession over the land covered by the documents. In such a situation possession cannot be crucial for the purpose of determination of issue involved in this case, it was pointed out by learned Counsel for Respondent No. 1 that there was an order of injunction by

the trial Court and because of the same he could not continue in possession over the land in dispute. The statement to the aforesaid effect has also been made in para 35 of the written statement. In such a situation, the finding with regard to possession in my view is not very material.

18. Learned Counsel for appellants pointed out that Ext. B is on stamp paper which was purchased on 26-9-1961 from the vendor. Similarly Ext B/1 is on stamp paper which was purchased on 2-9-1959, though the documents are said to have been executed on 5-9-1974 and 7-10-1976 respectively, which go to show that the documents were suspicious. In this regard stand of Respondent No. 1 was that stamp papers are purchased by the seller and as such he could not be faulted, nor the document can be doubted. The scribe, D.W. 4, has deposed that seller has to procure stamp paper and on Ext. B & B/1 there are endorsements of the stamp vendor that the stamp paper had been sold to Ram Udgar Mahto, Appellant No. 1. Therefore, it is evident that stamp paper was provided by Appellant No. 1 the seller Respondent No. 1 is an illiterate person. In such a situation. If old stamp papers were used it is for Appellant No. 1 to explain as to why he made available such old stamp papers. Therefore, submission of learned Counsel for Appellant No. 1 cannot be accepted.

19. Learned Counsel for Appellant No: 1, however, contended that service of summons in T.S. No. 33/77 was not effected on him. The process server has been examined as D.W. 12. He deposed that summons and notices were duly served and the service report Ext. J & K on the back of summons and notice was in his pen. Service report discloses that process server had gone to the spot, and had served notice on Appellant No. 1. He refused to put his signature on the summons and the notice. The witness admitted that he was not personally knowing Appellant No. 1 from before but service report bears signature of the witness, namely, Mathura Singh. It was pointed out by learned Counsel for the appellants that Mathura Singh is also witness to Ext, B the deed of agreement which indicates collusion of Mathura Singh with Respondent No. 1. The submissions of the learned Counsel to the aforesaid aspect of the matter is not correct in view of the submission made by learned Counsel for Respondent No. 1 that witness to Ext. B is Mathura Prasad and not Mathura Singh, Mathura Prasad and Mathura Singh are two different persons. Therefore, it appears that the evidence brought on the record establishes service of summons and notice on Appellant No. 1.

20. learned Counsel for the appellants. However, next contended that Appellant No. 1 did not appear in the previous title suit i.e. Title Suit No. 33 of 1977. In this regard it would not be out of place to mention herein that the evidence of the process server has already been noticed and discussed and the same has been found to be satisfactory to the effect that summons and notices had been duly served upon him. The evidence of the finger expert, D. W. 7, has also already been considered and it has been found to be satisfactory. The expert examined the thumb impression on the Vakalatnama which had been filed on

behalf of the Appellant No. 1 in the previous title Suit No. 33 of 1977 and the expert opined that thumb impression on the Vakalatnama is of the same person whose thumb impression appears on the sale-deed dated 5-12-1974 which admittedly contains thumb impression of Appellant No. 1. The Respondent No. 1 himself examined as D.W. 5 and stated about the compromise. D.W. 6, Ram dhani, deposed that in his presence Appellant No, 1 had told the Respondent No. 1 that in case Respondent No. 1 paid him the remaining consideration money then he would compromise the case. The petitions for time filed on behalf of the Appellant No, 1 Exts. M and M contain initial of the Advocate, Ram Murty Choudhary in whose favour Vakalatnama containing the thumb impression of Appellant No. 1 was opined by the expert to be identical to thumb impression on the admitted sale deed dated 5-12-1974. The compromise petition contains the signature of the parties and also of their advocates including the guardian ad-litem. Moreover, on perusal of all the thumb impressions, admitted and disputed, showed that there are similarity in all of them and have been put by the same person. The evidence of the expert is also consistent to the aforesaid effect. Therefore, stand of the Appellant No. 1 that he did not receive the notice and summons or he did not appear in the previous suit cannot be accepted rather evidence on the record establishes that Appellant No. 1 had appeared in the previous title suit and entered into the compromise. The trial Court has not appreciated the evidence properly and has merely accepted the argument of the appellants. The appellate Court has considered the aforesaid aspect of the matter and has set aside the finding of the trial Court after considering the entire evidence on the record. The finding arrived at by the appellate Court does not require any interference.

21. Thus on consideration as discussed above, it appears that finding arrived at by the first Appellate Court are based on evidence available on the record and do not suffer from any vices. Thus, in the circumstances, I do not find any reason to interfere with the findings recorded by the appellate Court.

22. Thus I do not find any merit in this appeal. Accordingly, it is dismissed but without cost.