

(2020) 01 JH CK 0136
In the Jharkhand High Court
Case No : Second Appeal No.133 Of 2016

Prayag Lal Mahato And Ors	Vs	APPELLANT
Guddu Saw And Ors		RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Transfer Of Property Act, 1882 — Section 44
Code Of Civil Procedure, 1908 — Order 2 Rule 2, Order 8 Rule 10

Citation : (2020) 01 JH CK 0136

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : S.N. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. S.N. Das, assisted by Mr. Ramchander Sahu, learned counsel for the appellants.

2. The appellants have preferred this second appeal against the judgment and decree dated 18.12.2015 and 04.01.2016 respectively passed in Title

Appeal No.160 of 2006 by the District Judge-VI, Dhanbad who has affirmed the judgment and decree dated 07.09.2006 and 25.09.2006 respectively

passed in Title Suit No.156 of 2004 by the learned Munsif-II, Dhanbad.

3. The appellants/plaintiffs instituted the suit seeking a decree of declaration that appellants/plaintiffs have got valid right, title and interest over 72

decimal of land appertaining to Plot No.327 under Khata No.44, Mouza No.91, Mouza Nohatamurcha, P.S. Tundi as mentioned in Schedule-A and

further sale deed no.4734 dated 02.07.2004 executed by Adiya Mahatain in favour of Guddu Saw and Giri Saw with respect to 70 decimals in plot

no.320, 327 and 322 under Khata No.54, Mouza 91 be declared as null and void.

It was further case of the appellants/plaintiffs that the lands under Khata No.44, Plot Nos.175, 320, 327 and 322 total area 3.08 acres of mouza Nohatamurcha, P.S. Tundi originally belonged to Raghu Teli son of Kali Charan Teli who sold and transferred 1.54 acres of the above land to Muchiram Teli on 04.09.1943 by sale deed no.8834 and put him in possession.

Muchiram Teli sold and transferred the same of his two daughters namely Rudhi Mahatain and Adia Mahatain on 12.03.1970 by sale deed no.4720 and put them in possession over the same thereafter 72 decimals of land in Plot No.327 to Akli Mahatain wife of Balram Mahato on 22.09.1976 for valuable consideration and put her in possession over the same. Akli Mahatain was mother of plaintiffs and her purchased land was mentioned as Schedule-A in the plaint which was inherited by appellants/plaintiffs after her death. Appellants/Plaintiffs came to know on 06.07.2004 that Adiya Mahatain had wrongly sold and transferred 70 decimals of land in all the plots purchased by her father in the year 1943 including the land in Plot No.327 and executed sale deed no.4734 dated 02.07.2004 in favour of Guddu Saw and Giri Saw for a consideration of Rs.32,000/-. Adi Mahatain had no right to transfer as she along with her sisters Radhi Mahatain had sold and transferred 72 decimals of land in Plot No.327 to Akli Mahatain, the deceased mother of appellants/plaintiffs in the year 1976 through sale deed no.9257 sale deed no.4734 dated 02.07.2004 was not binding upon the appellants/plaintiffs. Further case of the appellants/plaintiffs was that the Title (Partition) Suit No.83 of 1986 was filed by the appellants/plaintiffs but the land of Muchiram Teli situated at different places could not be partitioned because no final decree was prepared.

The defendant nos.1 and 2 did not appear before that court to contest it so that the trial court passed the order that the suit would proceed against them as ex-parte. The defendant no.3 appeared but she did not file any written statement, therefore, it was ordered that the suit would proceed against her under Order VIII Rule 10 of CPC. Therefore, the learned court below has not framed any issue while deciding the suit. The appellants/plaintiffs examined five witnesses and got exhibited the documents which were marked as Ext.1 to Ext.8. The trial court after discussing the PWs as well as the Exhibits and considering the decree and judgment passed in Title (P) Suit No.83 of 1986 came to the finding that it is very surprising that in the

present case appellants/plaintiffs had already filed the partition suit and they claimed 1/4th share of Khata No.44, Plot No.327 as a legal successors of

late Mochiram Mahato and in that suit they claimed over the disputed Plot No.327 of Khata No.44 as their mother Akli Mahatain purchased 72

decimals of land in Plot No.327 from Radhi Mahatain and Adiya Mahatain vide sale deed no.9259 dated 22.07.1976 the said sale deed was exhibited

as Ext.2. On perusal of the Ext.2 i.e. sale deed the trial court found that Radhi Mahatain and Adi Mahatain sold and transferred the disputed land by

virtue of this sale deed only a portion of land i.e. 72 decimals of Plot No.327. This sale deed suggests that the defendant no.3-Radhia Mahatain did not

sale the entire land of Plot No.327. The appellants/plaintiffs could not adduce any chit of paper to show the how many total area has in the plot no.327

of Khata No.44 of Mouza Noatmorchha and no khatian has been produced by the appellants/plaintiffs in the court below and the suit was dismissed

under Order VIII Rule 10 of CPC against the defendant no.3 and dismissed ex-parte against the defendant nos.1 and 2.

4. Aggrieved with the same, the appellants/plaintiffs filed the title appeal being Title Appeal No.160 of 2006 which was decided vide judgment dated

18.12.2015 by the District Judge-VI, Dhanbad. The appellate court also discussed the evidences and documents and found that the Title Suit No.156

of 2004 was filed subsequent to Title (P) Suit No.83 of 1986 by the Prayag Mahato & Ors., are appellants/plaintiffs. Smt. Adi Mahatain and her

vendees are defendants in which, plaintiffs with a pleading that Plot Nos.175, 320, 327 & 322, of Khata No.44, Mouza 91 Mouza Nahtamurcha,

belongs to Muchiram Teli who sold it to his two daughters namely Radhiya Mahatain and Adiya Mahatain vide sale deed no.4720 dated 12.03.1970

and subsequently Radhiya Mahatain and Adiya Mahatain sold 72 decimals in Plot No.327 to mother of plaintiff Akli Mahatain. The cause which

compel the plaintiffs to bring the present suit was execution of sale deed no.4734 dated 06.07.2004 by which Adiya Mahatian sold 70 decimals of Plot

No.175, 320, 327 and 322 to defendant nos.1 and 2. The cause of action as started by appellants/plaintiffs is that Adiya Mahatain had already sold her

entire interest in Plot No.327 to Akli Mahtain so, she had no interest in Plot No.327 which she could have sold to defendant nos.1 and 2.

Further pleaded that the Plot No.327, under Khata No.44, Mouza No.91 was one of the suit property of Title (P) Suit No.83 of 1986 regarding which,

appellants/plaintiffs claimed unity of title and unity of possession and claimed 1/4th share in it and same was decreed in their favour. The present suit

which is subsequent to Title (P) Suit No.83 of 1986 and the same was filed by the same appellants/plaintiffs with a pleading that vide sale deed

no.9259 dated 22.07.1976 (Ext.2) Radhia Mahatain and Adiya Mahatain sold 72 decimals of land in plot no.327 to their mother Akli Mahatain the

earlier suit as well as present suit reflects some active concealment of facts by the appellants/plaintiffs because the earlier suit was filed after

execution of sale deed No.9259 dated 22.07.1976 with regard to Plot No.327 but this fact was not mentioned in the former suit.

The lower appellate court below after discussing the Section 44 of the Transfer of Property Act and Order II Rule 2 of CPC found that the

appellants/plaintiffs did not advance the larger claim made in the present suit, in the earlier suit, between the same parties they are debarred from

claiming it in the present suit, accordingly, the suit is barred under Order II Rule 2 of CPC as well as the principal of res-judicata and has dismissed

the title appeal vide judgment dated 18.12.2015.

Aggrieved with the same, the appellants/plaintiffs have preferred this second appeal.

5. Mr. S.N. Das, learned counsel appearing for the appellants submits that the subject matter of the earlier title suit is different from the present suit,

thus, the trial court as well as the appellate court has come to a wrong finding in view of Order VIII Rule 10 of C.P.C. The suit was not to be

dismissed by both the court below. He further submits that there is substantial question of law involved in this second appeal which may kindly be

admitted.

6. Having heard the learned counsel for the appellants, this Court perused the judgments passed by the trial court as well as the appellate court and

finds that both the court below have rightly discussed the evidences as well as the exhibits which were exhibited in the court below by the

appellants/plaintiffs and also discussed at threadbare basis the documents relied by the appellants/plaintiffs and in view of the Title Suit No.156 of 2004

and Title (P) Suit No.83 of 1986, the two fact finding courts have rightly come to a concurrent finding. This Court is not inclined to further discuss the

evidences adduced by the appellants/plaintiffs. This Court further finds that there

is no substantial question of law involved in this second appeal.

7. Accordingly, the second appeal stands dismissed.