
(2001) 12 PAT CK 0048

In the Patna High Court

Case No : Appeal from the Appellate Decree No. 685 of 1986

Shri Nageshwar Singh and Others

APPELLANT

Vs

Shri Karamdeo Singh and Others

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Citation : (2001) 12 PAT CK 0048

Final Decision : Allowed

Judgement

Ashok Kumar Verma, J.—The Plaintiffs-Appellants have filed this Second Appeal against the judgment and decree, dated 30.07.1986 and 13.08.1986 respectively passed by Shri Sita Ram Choudhary, Additional Subordinate Judge, III, Aurangabad, in Title Appeal No. 9 of 1983/ 106 of 1983, whereby the learned Additional Subordinate Judge has allowed the Title Appeal and set aside the judgment and decree passed by the learned Additional Munsif, II, Aurangabad, in Title Suit No. 39 of 1979/13 of 1982.

2. According to the Appellants, the lower appellate Court has failed to appreciate the evidence of the parties and has not considered the registered sale deed (Exhibit 1) which shows that Raj Mohan Singh was dead in the year 1932 whereas the Defendants have shown his signature in the deed of exchange in the year 1935 which is Exhibit "C."

3. The following substantial questions of law had been formulated:

(A) Whether the lower appellate Court while reversing the judgment of the trial Court is justified in not considering the material evidence and all the reasonings given by the trial Court and also not taking into account all the considerations which weighed with the Trial Court?

(B) Whether the Defendants have been able to establish their plea on the basis of deed of the year 1935, the onus of which heavily lay upon them and the lower appellate Court has not correctly answered this issue because Exhibit 1 (certified registered deed) shows that Raj Mohan Singh was dead before 1932 whereas the

sada deed of exchange Exhibit "C" contains his signature?

(C) Whether the lower appellate Court is justified in holding that the plea of oral sale deed by the Plaintiff is wrong and the Defendant's plea of exchange of disputed land is correct?

4. The Plaintiffs have filed the suit for declaration of their title over the suit land and for confirmation of their possession over it.

5. In short the case of the Plaintiffs-Appellants is that the Plaintiffs and Defendants are near agnates and descendants of a common ancestor. The lands of plot Nos. 1519 measuring 7 decimals, 1517 measuring 2 decimals and 1522 measuring 1 decimal appertaining to khata no. 72 of village Chain were recorded in the names of ancestors of the Defendants as their house and homestead land. The lands of plot Nos. 1518 measuring 5 decimals, 1516 measuring 2 decimals, measuring 2 decimals and 1523 measuring 1 decimal appertaining to khata No. 94 of the same village were recorded in the name of ancestors of the Plaintiffs as their house and homestead land: After the cadastral survey the ancestors of the Plaintiffs started reconstructing their house and orally purchased plot No. 1517 and from the ancestors of the Defendants for a consideration of Rs. 65/- only in the year 1925 and constructed their house making these two plots as part and parcel of it. When the ancestors of the Plaintiffs started reconstructing their house the ancestors of the Defendants also started to reconstruct their own house and they required two decimals of plot No. 1518 and 1 decimal of plot No. 1521 belonging to the ancestors of the Plaintiffs. The ancestors of the Plaintiffs orally sold 2 decimals of plot No. 1518 of west and .1 decimal of plot No. 1521 on west to the ancestors of the Defendants for consideration of Rs. 65/- only.

6. The Defendants got a proceeding u/s 144 of the Code of Criminal Procedure initiated with respect to plot Nos. 1521, 1522 and 1523 and portion of plot No. 1524 which comprised in the house of Plaintiffs and the Subdivisional Officer, Aurangabad, made the rule absolute against the Plaintiffs by his order, dated 16.10.1975. Therefore the Plaintiffs had to file the suit. In the proceeding u/s 144 of the Code of Criminal Procedure it was falsely alleged by the Defendants that they had acquired the entire plot Nos. 1521, 1522 and 1523 by exchange and they had also produced a forged and fabricated document in support of it.

7. The Defendants had contested the suit and filed written statement. According to the Defendants, the Plaintiffs have not acquired any title and possession over the suit land and they had never been in possession over any portion of the suit land. The Defendants have all along been coming in possession openly and peacefully without any disturbance and objection for more than many twenty years to the knowledge of all including the Plaintiffs. The suit plots are situated in front of the Baithaka of the Defendants. Plot No. 1522 has been recorded in the cadastral survey record of rights in the name of Kali Singh ancestor of the Defendants. The ancestor of the Defendants acquired plots Nos. 1521 and 1523 through exchange in the year 1935 and they had never sold plot No. 1521. The

ancestors of the Defendants had not sold plot Nos. 1517 and 1522 and the fact is that the ancestors of the Defendants had exchanged plot No. 1517 for plot Nos. 1521 and 1523 on 15.06.1935 and a "sada" exchange deed dated 15.06.1935 was executed among them. According to the Defendants, the Plaintiffs are not entitled to any relief.

8. It was submitted by the learned lawyer for the Appellants that the lower appellate Court has not considered the fact that Raj Mohan Singh had died in the year 1932, and Most. Yashoda Kuer, wife of Raj Mohan Singh, had executed a sale deed on 12.08.1932 and the certified copy of the sale deed is Exhibit 1 and so Raj Mohan Singh had not executed the "sada" deed of exchange in the year 1935. It was also submitted by him that the lower appellate Court has not considered the evidence in this regard.

9. It is relevant to mention here that Exhibit "C" is a "sada" deed of exchange, dated 15.06.1935 executed between Haribans Singh and Raj Mohan Singh. D.W. 5 Mukhdeo Singh, who is a witness examined in the trial Court on behalf of the Defendants, has stated that the deed of exchange was written before him. He has stated that Raj Mohan Singh had put his thumb impression on it and it bears the signature of Haribans Singh. He has stated in his evidence that he has not seen Raj Mohan Singh after 1932. The said "sada" deed of exchange is dated 15.06.1935. Exhibit 1 is certified copy of sale deed, dated 12.08.1932 executed by Most. Yashoda Kuer, wife of Raj Mohan Singh. There is endorsement on it that presented for registration between 10.30 A.M. to 01.30 P.M. on the 12th day of August, 1932 at the Aurangabad Sub Registry Office, District Gaya, by Most. Jasoda Kuer widow of Raj Mohan Singh. So according to Exhibit 1 Raj Mohan Singh was dead on 12.08.1932, i.e. the date on which the sale deed was executed by Most. Yashoda Kuer, wife of Raj Mohan Singh. The learned Additional Munsif has considered Exhibit 1, the certified copy of the sale deed and Exhibit "C" the sada deed of Exchange and the evidence of D.W. 5 in his judgment passed in Title Suit No. 39 of 1979/13 of 1982. The learned Additional Subordinate Judge has not considered these evidence on the point of exchange of land in his judgment passed in Title Appeal No. 9 of 1983/106 of 1983 and held that the story of exchange is naturally proved. 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 especially in case of reversal.

10. In the facts and circumstances of the case, the judgment and decree passed by the Additional Subordinate Judge, III, Aurangabad, in Title Appeal No. 9 of 1983/106 of 1983 is not tenable in law and it is fit to be set aside. Therefore, this Second Appeal is allowed and the judgment and decree passed by the learned Additional Subordinate Judge, III, Aurangabad, in Title Appeal No. 9 of 1983/ 106 of 1983 is set aside and the judgment and decree passed by the learned Additional Munsif, II, Aurangabad, in Title Suit No. 39 of 1979/13 of 1982 is confirmed.