
(2019) 09 JH CK 0042
In the Jharkhand High Court
Case No : Second Appeal No. 555 Of 2015

Triloke Nath Chatterjee

APPELLANT

Vs

Umesh Gupta And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 JH CK 0042

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Md. Shamim Akhtar, Pooja Kumari, A.K. Das

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Md. Shamim Akhtar, learned counsel appearing for the appellant and Miss. Pooja Kumari, learned counsel for the respondents.

2. The appellant has preferred this second appeal questioning the judgment dated 30.06.2015 and decree sealed on 6.07.2015 and signed on 09.07.2015 passed in Title Appeal No. 20/14 by District Judge-II, Jamshedpur, whereby the appellate court has affirmed the findings of court of Civil Judge (Junior Division)-1 East Singhbhum at Jamshedpur in Title Suit No. 22 of 2012.

3. The appellant filed a title suit against partnership firm, Royal Awas defendant/respondent No.2 and its partner, Umesh Gupta, defendant no.1 for declaration of title of the plaintiff and for issuance of permanent injunction restraining the defendants from, in any way, interfering in the possession of the plaintiff over the suit property, measuring 06 katha (70 fitx67fit, i.e.9.9 decimal) out of RS plot number 2435 and 2437 appertaining to RS Khata 663, corresponding to CS plot number 22, situated at Mauza Bhatia, P.S. Kadma, Jamshedpur.

4. It was the case of the appellant in the suit that suit property was purchased by his mother Late Maya Lata Chatterjee. She executed the registered deed of

attorney in favour of Prakash Kusum Barua on 26.09.2011 and that since then the appellant/ plaintiff has been coming in lawful possession over the suit property through his attorney, who has also constructed the boundary wall around the suit property, which is vacant land. It was further case of the appellant/plaintiff that for the first time, defendant no.1 along with his labourers came over the suit property and tried to trespass and encroach upon the suit property, claiming it to be the property of defendant firm, but that, defendant no.1 failed to show any document to the attorney by the plaintiff when demanded in proof of title to the defendant, and that, however, on that date, i.e. on 07.02.2012, the defendant could not encroach upon the suit land. However, the plaintiff apprehended that any day, the defendant may encroach upon the suit property for the construction of multi-storeyed housing apartment. The suit was filed by this appellant for declaration of title to the plaintiff/appellant and issuance of permanent injunction against the defendant restraining them from interfering in the lawful possession of the plaintiff over the suit property.

5. The case of the respondent/defendant was that the alleged deed of attorney said to have been executed by the appellant/plaintiff in favour of his attorney, Prakash Kusum Barua, is an illegal and void document. It was further case of the defendant that the claim of the plaintiff that his attorney had constructed the boundary wall around the suit property is false. The possession of plaintiff/appellant over the suit land was also denied by the defendant. It was asserted that the respondent/defendants are having absolute and lawful ownership and peaceful possession of land measuring 11.46 decimal i.e equal to 5000 square fit being a portion of RS plots number 2435 and 2437 under RS Khata number 49, situated at Kadma, Jamshedpur. The claim of the appellant/plaintiff that the suit property was purchased by his mother Smt. Maya Lata Chhatterjee, who came in possession thereof, and that after her death, the plaintiff succeeded over it as her sole heir are all false and concocted claims. On these facts and on the basis of pleadings of both the sides the trial Court framed the following issues:-

- i. Whether the suit is maintainable in its present form for the relief claimed?
- ii. Whether the plaintiff has got a valid cause of action for bringing the suit?
- iii. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties?
- iv. Whether the suit is barred under provisions of Specific relief Act or transfer of Property Act or by principles of estoppel, waiver and acquiescence?
- v. Whether the suit is barred by law of limitation ?
- vi. Whether this suit is bad for being grossly under valued and for non-payment of requisite court fee there upon ?
- vii. Whether the plaintiff has got valid right, title, interest and possession over the suit property ?

viii. Whether the plaintiff is entitled for permanent injunction against the defendants or not ?

ix. Whether the plaintiff is entitled to any other relief or reliefs under law or equity ?

6. After discussing all the evidences and exhibits before the trial Court the learned Civil Judge Junior Division-1 came to the finding that no case of the declaration of right title and injunction has been made out and accordingly the same was dismissed on contest but without cost.

7. The appellant filed a Title Appeal no. 20/2014 which was decided by the judgment dated 30.06.2015 and appellate court after considering the issues involved in the appeal and discussing the evidences and exhibits came to the finding that there is no infirmity of the order of the trial Court and accordingly dismissed the appeal. Aggrieved with the judgment the appellant has preferred this second appeal before this court.

8. Mr. Md. Shamim Akhtar, learned counsel appearing for the appellant submits that there is perversity in the judgments of the trial Court as well as the appellate court and the second appeal is fit to be admitted on the substantial question of law.

9. Learned counsel appearing for the respondents submits that there is concurrent finding of the both the courts and there is no substantial question of law involved in this second appeal and the second appeal is fit to be dismissed. She has further argued that the objection raised by the alleged attorney of the plaintiff along with some other persons his construction work over the aforesaid land was stopped and the said Salil Choudhary approached the Hon'ble High Court against such illegal stoppage of work vide W.P.(C) No. 1039 of 2005 and as per the order passed in the said writ petition he approached Town Development Department (Nagar Vikash Bibhag) of the State of Jharkhand by filing necessary representation. Further in the objection filed by the alleged attorney before the local administrative authority against the construction work carried on by the said Salil Choudhry son of late Sambhu Choudhary he along with other persons had specifically admitted the right title, interest and possession of the said Salil Choudhary son of late Sambhu Choudhary over the aforesaid landed property and subsequently the said Salil Choudhary son of late Sambhu Choudhary by executing a registered deed of sale being deed no. 3488/2993 dated 28.04.2008 and delivered possession of the aforesaid landed property to the respondents/defendants.

10. Having heard learned counsel for the parties, this court finds that the trial Court as well as appellate court after discussing all the evidences including the exhibits came to the concurrent finding that the appellant has been failed to prove his case and in view of the settled proposition of law the High Courts in second appeal cannot enter into discussing the evidences adduce by the parties as well as documents found. There is no substantial question of law involved in

this second appeal. Accordingly, the second appeal stands dismissed.