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Court : Patna

Decided On : Aug-31-2001

Judge : Someshwar Nath Pathak, J.

Appeal No. : Appeal From Appellate Decree No. 285 of 1987

Appellant : Alakhraj Devi and ors.

Respondent : Ram Surith Singh and ors.

Disposition : Appeal Dismissed

Judgement :

S.N. Pathak, J.

1. This second appeal is directed against the judgment dated 27th July, 1987 passed by the Sub-Ordinate Judge- IV, Aurangabad, in Tittle Appeal No. 13 of 1982/1 of 1987, whereby the learned Sub-ordinate Judge confirmed the judgment passed by the Additional Munsif, Aurangabad, in Title Suit No. 105 of 1979/136 of 1980. The plaintiffs of the suit were the appellants in the lower Court and they are the appellants before the Court as well.

2. The case of the plaintiff-appellants, in substance, was that Plot Nos. 315, 323,324 and 325 were the lands of one Lakhmini Kuer, mother of the plaintiffs. She transferred 1 Katha 1 Dhur and Dhurki of land out of Plot No. 315 to Jagdeo

Singh, father of defendant Nos. 1 and 2, who has joint with his brother Hit Narayan Singh. She also transferred 3 Katha 15 Dhurs of land out of plot Nos. 323, 324 and 325 to the joint family of Jagdeo Singh and his brothers and the aforesaid land was in possession of defendant Nos. 1 to 3 who are in the descendants of Jagdeo Singh. However, the defendants encroached upon the suit land which was described in Schedule-1 of the plaint and this encroachment was over 3 decimals of Plot No. 315, 5 decimals of Plot No. 323 and half decimal of Plot No. 325. So all the plaintiffs had filed the suit seeking injunction against the defendants from making any construction over the suit land and from digging the earth from the same.

3. Case of the defendant-respondents is that, of course, their family had acquired : 1 Katha, 1 Dhur and 6 Dhurkies of Plot No. 315 and they had acquired 3 Katha 15 Dhurs of plot Nos. 323, 324 and 325. However, their further case was that Jagdeo Singh had purchased 5 decimals of land from Plot No. 323 towards west and 5 1/2 decimals in Plot No. 324 towards east and 1 decimal in Plot No. 325 towards west. The joint family of the defendants consisting of Jagdeo Singh, Hit Narayan Singh and Mukhdeo Singh (whose heirs were later impleaded as defendant Nos. 7,8 and 9) had acquired 3 1/2 decimals of land over Plot No. 324 from Lakhmini Kuer before 1947 orally towards west of the said plot on payment of Rs. 50/-. Jagdeo Singh acquired 8 decimals at two places of Plot No. 315 in the year 1955 from Chendradeo Singh, Kesho Singh and Ramraj Singh, sons of late Mungeshwar Singh and in lieu of aforesaid lands, Jagdeo had given 3 decimals to them from Plot No. 333. Since the aforesaid land of plot No. 315 was agricultural land and 3 decimals land of Plot No. 333 was homestead, the exchange in this connection was affected between the parties and the value of aforesaid lands was less than Rs. 100/- and, therefore, the exchange was oral. There was separation in the family consisting of Mungeshwar Singh, Ram Autar Singh and Ram Janam Singh and on account of family arrangement Chandradeo and his brothers had got 8 decimals of land at two places from Plot No. 315. So the aforesaid exchange took place between them on the one hand and the defendants family on the other. Thus, the case of the defendants was for acquisition of more lands from the plaintiffs' family than the same as averred by them and, accordingly, they pleaded that there was no encroachment by them as alleged by the plaintiff and so they

further pleaded that they were in possession over the suit land, and hence, the suit was prayed to be dismissed.

4. Both the lower Courts discussed the documentary and oral evidence led by the parties and held by specific findings that the plaintiffs had failed to prove encroachment upon the lands and the suit was, accordingly, dismissed. The substantial question of law framed in this appeal was whether the lower appellate Court committed an error in arriving at the finding without taking into consideration the boundary of sale-deed (Ext-C). I find that Ext-C was a sale-deed of 1947 executed by Lakhmini Kuer in favour of Jagdeo, over plot Nos. 315, 323, 325 and 324. The aforesaid sale is admitted. I am, therefore, unable to answer as to what would transpire from the boundary of the plots in question sold. This is so because the alleged the suit plots mentioned in Schedule-I of the plaint, the encroachment over which has been alleged, do not contain any boundary, although a sketch map has been attached. It was prepared by the plaintiffs themselves and so it was one-sided affair which cannot be accepted to be true. Moreover, a Pleader Commissioner was appointed and he was also examined in the trial Court and both the lower Courts have discussed his evidence and relying on it held that there was no encroachment, as alleged by the plaintiff appellants. Besides the above, I find that the plaint does not indicates as to when the alleged encroachment upon the suit plots started and what was the exact nature of encroachment, though it was prayed that the defendants be restrained from filling up of earth or from making any construction over the suit land. However, the defendants have pleaded their possession over the suit land on the basis of oral sale, over and above what was admittedly by transferred by registered deed by Lakhmini Kuer herself, from co-owners of the plaintiffs' ancestor. It was submitted before me by the appellants' lawyer that Chandradeo Singh had lost in the partition suit and, therefore, he had no authority to alienate any land, but it was not denied that Chandradeo was co-owner of plaintiffs' ancestor. It was further admitted that the decision against Chandradeo Singh was pending in appeal before the High Court. So the acquisition by the defendants in this connection cannot be termed as illegal and, even it be so. if they came in possession on the basis of sale-deed and the oral-sale and the two lower Courts have held that they were in possession, the findings of the trial Court in this connection would be final.

5. The findings of the trial Court with respect to possession of the defendants were findings of fact and this Court cannot interfere unless it is pleaded that these findings were perverse. Of course, the boundary was referred to and direction of the alleged encroachment were referred to by the appellant's lawyer but the absence of the boundary in the description of the encroached portion of the suit land, as given in the plaint, all the arguments regarding the direction of encroachment would become irrelevant and immaterial. I have already held above that findings of the trial Court regarding the alleged encroachment over the suit land by the two lower Courts were findings of fact and they are conclusive and final. So I am further of the opinion that no substantial question of law was involved in this second appeal which can impel this Court to interfere with the findings of fact arrived at by the lower Courts.

6. In the result, I do not find any merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.