



IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.80 of 2018

1. Md. Moin @ Moinuddin
2. Md. Kaila @ Kalmudin @ Kalimuddin Rain
Both son of Md. Karoo Mian, R/o village and Post Kishandaspur, P.S.
Budhuchak (Kahalgaon) Dist. Bhagalpur
... ..Defendants/ appellants/appellant/s

Versus

1. Md. Siddique Rain @ Siddiq Mian son of late Dorai Main, R/o village and
Post Kishandaspur, P.S. Budhuchak (Kahalgaon) Dist. Bhagalpur
... ..Plaintiff/respondent/Ist Party/Respondent 1st party
2. Md. Samim Mian
3. Md Aalam Mian
Both sons of late Md Sirajul Mian @ Sarju Mian R/o Vill. And post
Kishandaspur, P.S. P.S. Budhuchak (Kahalgaon) Dist. Bhagalpur.
... .. Defendants/respondents/ 2nd parties/respondent 2nd party

Appearance :

For the Appellant/s : Mr. Mritunjay Pd. Singh, Advocate
Mr. Rajesh Kumar Singh, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 31-01-2026 Heard learned counsel for the appellants.

2. This second appeal has been filed against the judgment of affirmance dated 21.12.2017 passed in Title Appeal No. 89 of 2015 by learned IIIrd Additional District Judge, Bhagalpur, whereby the learned appellate court has upheld the judgment and decree dated 05.11.2014 passed in Title Suit No. 73 of 2004 by learned Munsif-I, Bhagalpur.

3. The defendants are the appellants and the plaintiff is the respondent no.1.

4. Title Suit No. 73 of 2004 was filed by the plaintiff–respondent no.1 against defendant nos. 1 to 4 for declaration of





title as owner of the schedule property and for a declaration that the survey entry in respect of the suit property is contrary to the possession of the plaintiff and is not binding upon him along with a prayer for injunction, etc. The said suit was decreed by the learned Munsif-I, Bhagalpur, by judgment and decree dated 05.11.2014. Against the said judgment and decree, two of the defendants, namely defendant nos. 3 and 4, filed Title Appeal No. 89 of 2015, which was also dismissed by the learned Additional District Judge-III, Bhagalpur, by judgment and decree dated 21.12.2017, which is under challenge in the instant Second Appeal.

5. The brief facts of the case of the plaintiff is that the plaintiff and the defendants are common descendants of Dorai Mian. The said Dorai Mian owned and possessed immovable properties including the suit land. Dorai Mian had four sons, namely, the plaintiff Md. Siddique Rain @ Siddiq Mian, defendant no.1 Md. Sirajul Mian @ Sarju Mian, defendant no.2 Md. Karoo Mian, and Maullu Mian. Defendant nos. 3 and 4 (appellants) are the sons of defendant no.2, namely Md. Karoo Mian, who died during the pendency of the trial. After the death of Dorai Mian, the property devolved upon his four sons. The suit property as described in Schedule-A is a part of the property





acquired by Dorai Mian.

6. It is further pleaded that after the death of Dorai Mian, there was an amicable family adjustment among the widow and four sons of Dorai Mian in the year 1958, in which the respective co-sharers came in possession of their respective shares allotted to them and enjoyed the usufruct thereof. They all constructed their respective houses over the same. Karoo Mian, one of the sons of Dorai Mian, sold his allotted portion to one Jaddu Mian by virtue of two registered sale deeds (Ext. 1/a and Ext. 1/b) in the year 1970, having an area of 28¼ decimals each. Thereafter, Md. Karoo Mian along with Md. Sirajul Mian @ Sarju Mian jointly sold their share to Jaddu Mian in the year 1974 through a registered sale deed (Ext. 1/c) and the purchaser Jaddu Mian came in possession over the same. It is also pleaded that Maullu Mian, son of Dorai Mian, sold his share in his allotted portion, i.e., an area of 62½ decimals of agricultural land situated in Mouza- Kishandasapur bearing part of C.S. Khata No.116, to the plaintiff Md. Siddique Rain @ Siddiq Mian through registered sale deed dated 21.12.1960 (Ext.1) and after the said purchase, the plaintiff has been coming in peaceful possession over the same. On 03.06.2004, the defendants, in collusion with other antisocial elements, forcibly threatened the





peaceful possession of the plaintiff over the Schedule-A property, which was acquired property of the plaintiff through Ext.1. The further case of the plaintiff is that during the course of discussion, the plaintiff came to know for the first time that the portion purchased by him through registered sale deed dated 21.12.1960 (Ext.1) had been renumbered as Plot Nos. 1718 and 1719 and the same had been recorded in the name of defendant nos. 1 and 2 in the revisional survey khatiyan (Ext.2). Hence, the plaintiff filed the suit for correction of the said entry in the survey khatiyan.

7. On summons, defendant no.1 appeared and filed his written statement and supported the case of the plaintiff. During the trial, defendant no.2 died. Defendant nos. 3 and 4 are the sons of defendant no.2, who completely denied the sale of the property by defendant no.2 either to Jaddu Mian or to the plaintiff through Ext.1 series. However, defendant no.2 neither appeared nor filed any written statement.

8. From the judgments of the learned Courts below, it appears to this Court that the learned Court of appeal below, being the final Court of facts, after considering the pleadings of the parties and the evidence adduced by the plaintiff, came to a categorical finding that defendant nos. 3 and 4, despite having





appeared and filed their written statement, failed to adduce any evidence even after issuance of Gazette notification for substituted service of notice after restoration of the suit. As per the pleadings of defendant nos. 3 and 4, the entries made in the survey khatian (Ext.2) with regard to the suit land were claimed to be correct, but as evident from Exts. 1/a, 1/b and 1/c, defendant no.2 had already sold away his property way back in the years 1970 and 1974.

9. The contesting defendant nos. 3 and 4, who are claiming through defendant no.2, have no right whatsoever to claim their title on the suit land on the basis of entries made in the survey record of rights i.e., Ext.2. The said defendants never challenged the sale deeds i.e. Exts. 1/a, 1/b and 1/c, before claiming the entries in Ext.2 to be correct. Except mere denial in their written statement, the contesting defendants did nothing to nullify those sale deeds. However, defendant no.1 has already admitted that the entries made in Ext.2 in his name were wrong. The learned appellate court further held that the record of rights is not a document of title at all and the entries in such document do not prove exclusive title of a person so recorded therein. In this connection, the plaintiff filed his sale deed with regard to the suit land (Ext.1). Since defendant nos. 3 and 4 (appellants)





appeared in the suit and filed their written statement but did not rebut or challenge the sale deeds by any cogent evidence, there was no question of remand of the suit before the trial Court, and accordingly, the appeal was dismissed.

10. In the light of the above findings of the learned Courts below, this Court is of the view that the plaintiff-respondent, on the basis of materials on record, has been able to prove that the suit property was purchased by him and that he is in possession of the Schedule-A land. The said land is part of the sale deed dated 21.12.1960 (Ext.1). Defendant nos. 3 and 4 have not adduced any oral or documentary evidence in support of their pleadings. It is a settled principle of law that entry in the survey khatian is not evidence of title. The question as to the effect of entry in the record of rights and whether the presumption of correctness of such entries is conclusive or rebuttable has been examined several times by different Courts, including in the case of *Narshing Mishra & Anr. vs. Rajendra Mishra & Ors.*, reported in **2009 (2) PLJR 1028**.

11. From the concurrent findings of both the learned Courts below, it is apparent that the plaintiff has proved his title and possession and that the entry in the revisional survey (Ext.2) is wrong, which defendant nos. 3 and 4 failed to demolish.





12. In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned judgments and decrees of the learned Courts below, nor does it find any substantial question of law involved in the instant Second Appeal, which is accordingly dismissed at the stage of admission under Order XLI Rule 11 of the CPC.

13. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

Premchand/-
Shyambihari/-

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