



IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.86 of 2021

Kranti Devi, wife of Late Ilo Sada, resident of Awadh Board, Khagaria, P.S.
Muffasil (Khagaria), District Khagaria.

... .. Appellant/s

Versus

Ravindra Yadav, son of Lakshmi Yadav, resident of Village Ranko, P.S.
Muffasil (Khagaria) District Khagaria.

... .. Respondent/s

with

SECOND APPEAL No. 98 of 2021

Kranti Devi, wife of Late Ilo Sada, resident of Awash Board, Khagaria, P.S.-
Muffasil (Khafaria), District Khagaria.

... .. Appellant/s

Versus

Ravindra Yadav, son of Lakshmi Yadav, resident of Village Ranko, P.S.-
Muffasil (Khagaria), District- Khagaria.

... .. Respondent/s

Appearance :

(In SECOND APPEAL No. 86 of 2021)

For the Appellant/s : Mr. Dronacharya, Advocate
Mr. Rama Shankar Kumar, Advocate

For the Respondent/s : Mr.

(In SECOND APPEAL No. 98 of 2021)

For the Appellant/s : Mr. Dronacharya, Advocate
Mr. Rama Shankar Kumar, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 20-01-2026 Heard learned counsel for the appellant(s).

2. These two Second Appeals arise out of Title Suit No. 04 of 2014, which was decreed partly. Against the judgment of Title Suit No. 04 of 2014, two appeals were filed; one by the plaintiff-appellant vide Title Appeal No. 07 of 2016 and another by the defendant-appellant vide Title Appeal No. 05 of 2016.





Both the appeals were heard separately and Title Appeal No. 07 of 2016 filed by the plaintiff-appellant was allowed while Title Appeal No. 05 of 2016 filed by the defendant-appellant was dismissed. Against both the judgments and decrees, these two second appeals have been filed separately against respective judgment and decree.

3. The defendant is the appellant in both the instant Second Appeals. The plaintiff-respondent filed suit bearing Title Suit No. 04 of 2014 for declaration of title and recovery of possession of the Schedule B land along with mesne profits from the date of dispossession till recovery of possession of the suit land.

4. The case of the plaintiff, in brief, is that the plaintiff had purchased the land described in Schedule A of the plaint through a registered sale deed dated 06.09.2006 for a consideration of Rs. 55,000/- from one Arjun Yadav. It is further pleaded that Schedule A consists of 3 plots of land i.e. (i) Khata No. 28, Plot No. 73, Area 6 katha 3 dhur and 3 dhurki; (ii) Khata No. 70, Plot No. 74, Area 4 katha 10 dhur and (iii) Khata No. 42, Plot No. 285 Area, 1 katha 16 dhur and 15 dhurki.

5. It is further pleaded that after purchase, the vendor had put the plaintiff in possession of the Schedule A land on the





date of purchase, and subsequently, the plaintiff got his name mutated in the revenue records, and after mutation Jamabandi No. 86 of total purchased land measuring 12 katha 9 dhur 18 dhurki was created. After payment of rent, rent receipts have been issued in favour of the plaintiff by the authorities concerned. It is further pleaded that land, in dispute, is mentioned in Schedule B of the plaint bearing Khata No. 42 Plot No. 285 measuring an area 1 katha 16 dhur and 15 dhurki which is part of the Schedule A land and was purchased through the same deed dated 06.09.2006.

6. The plaintiff further pleaded that the defendant, with the help of anti-social elements, tried and threatened to evict the plaintiff from the suit land on 08.02.2014 and 10.02.2014. The plaintiff was forcibly evicted from the suit land mentioned in Schedule B of the plaint by making illegal construction of thatched hut over the suit land. The defendant has no valid title with respect to the suit land and the defendant was not in possession of the suit land prior to the forceful eviction of the plaintiff. The local people of the area told the defendant to vacate the suit land but, the defendant refused to vacate the suit land.

7. The defendant has filed his written statement and





vehemently denied the assertions of the plaintiff. It has been asserted that Arjun Yadav, who happens to be the vendor of the plaintiff, is necessary party of the instant suit. In the absence of necessary party, the present suit would not proceed.

8. The further case of the defendant is that the plaintiff purchased the suit land from Arjun Yadav through a sale deed. The said Arjun Yadav sold the land of Khata No. 22, Plot No. 63 and Khata No. 70, Plot No. 74 to the plaintiff. The land of Khata No. 142, Plot No. 285 has not been sold to the plaintiff. If the plaintiff had purchased the land of Khata No. 142, Plot No. 285, then the sale deed would be forged and without consideration.

9. It is further alleged that the plaintiff never came in possession of the suit land. The defendant purchased the land on 22.02.2011 from Arjun Yadav for a consideration of Rs. 80,000/-, which was registered on 14.03.2011, the defendant got possession over the land and also got her name mutated in the revenue records. After mutation, Jamabandi No. 812 was created in the name of defendant, and on payment of rent, rent receipts were issued by the authorities concerned. The details of the land purchased by the defendant have been mentioned in the written statement as Khata No. 142, Plot No. 285, Area 1 katha 13 dhurs. Since the date of purchase, the defendant has been in





possession of purchased land. So far as dispossession of the plaintiff is concerned, the defendant vehemently denied the same as the defendant was in possession of the suit land from 2011, therefore, no question of dispossession arises.

10. On the basis of pleadings, the learned trial court framed issues and partly decreed the suit. The learned trial court held that the claim of both the parties are based on registered sale deeds executed by Arjun Yadav. The plaintiff got his sale deed executed and registered in the year 2006, whereas, the defendant got her sale deed executed and registered in the year 2011. There is no dispute with regard to the ownership of the suit land executed in favour of the vendor of plaintiff, who later executed the sale deed (Ext. 1) in favour of the plaintiff. The defendant filed Exts. A and B, which suggested that Khata No. 142, Plot No. 285 was executed in favour of defendant, which is not the land, in question, and therefore has no relevancy in the present case.

11. On the point of dispossession and recovery of possession of the suit land, the plaintiff did not take steps to get a Pleader Commissioner appointed by the Court who could have well advance any material evidence on record with regard to the configuration of the suit land. The defendant has proved her





case on the basis of sale deed with regard to Khata No. 142, Plot No. 285, having possession of the said land and not over the suit land. The plaintiff has failed to prove that the land of Khata No. 142, Plot No. 285 purchased by the defendant from Arjun Yadav is the same as the suit land. The plaintiff has not been able to prove his case of dispossession from the suit land. Both the parties have admitted the fact that Arjun Yadav has been traceless since 2011, and it is established that the vendor of the plaintiff, Arjun Yadav, had title over the suit land prior to the execution of the sale deed to the plaintiff. After execution of the sale deed, Arjun Yadav was left with no interest in the suit land. Therefore, it cannot not be said that Arjun Yadav, the vendor of the plaintiff, was a necessary party in the suit. Hence, the suit does not appear to be bad for non-joinder of a necessary party. The sale deed dated 06.09.2006 (Ext. 1) executed by Arjun Yadav in favour of plaintiff with respect to the suit land is valid, genuine and for consideration and the plaintiff has acquired title on the basis of aforesaid sale deed.

12. The learned trial court lastly held that the plaintiff has been successful in establishing the assertions that he is entitled to the title over the suit land on the basis of the sale deed dated 06.09.2006 and the suit was partly decreed on





contest against the defendant.

13. Being aggrieved by the judgment and decree dated 06.04.2016 passed in Title Suit No. 04 of 2014, two appeals were filed; one by the plaintiff bearing Title Appeal No. 07 of 2016 and the second by the defendant-appellant bearing Title Appeal No. 05 of 2016. Both the aforesaid appeals were heard and decided separately. The defendant-appellant filed Title Appeal No. 05 of 2016 against the judgment and decree dated 06.04.2016 with regard to the finding given by the trial court in respect of Issue No. IV and VI, while plaintiff-respondent filed Title Appeal No. 07 of 2016 against the judgment and decree dated 06.04.2016 with regard to the finding decided on Issue No. VII.

14. The learned First Appellate Court after hearing the parties and on perusal of materials on record as well as the judgment of the trial court dismissed the Title Appeal No. 05 of 2016, whereas, Title Appeal No. 07 of 2016, filed by the plaintiff was allowed, which are under challenge in both the Second Appeals by the defendant-appellant.

15. The learned First Appellate Court has observed that it is an admitted fact that Arjun Yadav is the vendor of both the parties and held that it is apparent from Ext. 1 (sale deed)





that it consists of 3 Khata numbers and 3 Plot numbers in favour of plaintiff which shows that the disputed land (Schedule B) is part of the sale deed (Ext. 1) bearing Khata No. 42, Plot No. 285, Area 1 katha 16 dhur and 15 dhurki whereas the defendant purchased the land from said Arjun Yadav through Ext. A bearing Khata No. 420, Plot No. 240, Area 1 katha 13 dhur with a definite boundaries which was claimed to be rectified by Ext. B, Unregistered Correction Deed by which Khata number, Plot number and boundaries of the land were rectified as Khata No. 142, Plot No. 285, Area 1 katha 13 dhurs with boundaries; North- Panchanand Verma, South- Bajo Yadav @ Suraj Yadav, East- Vinay Yadav (co-sharer), West- Ramji Pandit which is the same boundary as mentioned by the plaintiff in Schedule B of the plaint. It is an admitted fact that the defendant originally purchased Khata No. 420, Plot No. 240, Area 1 Katha 13 dhurs, with definite boundaries, which was claimed to be rectified to the boundaries as mentioned in the Schedule B of the plaint, but with a different Khata and Plot number. The said rectification through an unregistered document is in the teeth of Section 49 of the Registration Act. The defendant could not claim the property with definite boundary through an unregistered document.





16. The learned Appellate Court further held that the sale deed (Ext. 1) has been executed and registered which has been challenged by the subsequent purchaser claiming to be the same boundary of the plaint through an unregistered document could not be sustainable.

17. Accordingly, Issue No. IV and VI decided in favour of plaintiff have been affirmed.

18. The Title Appeal No. 07 of 2016 filed by the plaintiff against the finding with regard to Issue No. VII decided by the judgment and decree dated 06.04.2016 was taken up for consideration.

19. After hearing the parties and perusing the materials on record as well as the judgment of the trial court, the First Appellate Court allowed the appeal in favour of the plaintiff-respondent.

20. The learned First Appellate Court observed that the land of the Schedule B of the plaint was purchased by the plaintiff alongwith other lands from Arjun Yadav through a registered sale deed on 06.09.2006 whereas, the defendant-appellant purchased the land through sale deed (Ext. A) bearing Khata No. 420, Plot No. 240, Area 1 katha 13 dhur with boundaries different from those of the Schedule B land of the





plaint. The said sale deed claimed to be rectified through an unregistered deed (Ext. B) with the same boundary as mentioned in the Schedule B of the plaint.

21. The defendant D.W. 8 admitted in her cross-examination that she is in possession of the land as per the boundaries given in the Schedule B land, though she claimed that she purchased Khata No. 142, Plot No. 285, Area 1 katha 13 dhur. The claim of the same boundary by the defendant through unregistered Correction Deed is not permissible in the eye of law. The claim on the basis of unregistered document is unsustainable in view of Section 49 of the Indian Registration Act.

22. Since the plaintiff has right, title and interest with regard to Schedule B land and the defendant admitted that she is in possession of the same land though disputing the Khata number. The suit has been brought before the court after dispossession on 10.02.2014 which is well within 12 years of dispossession. The plaintiff has right to recovery of possession over Schedule B land and it was directed to the defendant to vacate the land mentioned in Schedule B within two months from the date of passing of the judgment.

23. Having considered the submissions on behalf of





the appellant and after perusal of the materials on record including the judgment of learned courts below, it appears that learned court of appeal below, which is final court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to clear finding that the suit property which is part of the sale deed (Ext. 1) clarify the site of the situated plot through boundaries. The same boundaries is claimed by the defendant through registered sale deed (Ext. A) and unregistered Correction Deed (Ext. B) which is purchased by the defendant from the same vendor and she is in possession of the land mentioned in the Schedule B properties. Only dispute is that the plaintiff has not purchased same Khata and Plot number of the defendant although both the boundaries mentioned in Ext. 1 and Ext. B are the same. It is settled principle of law that when the dispute with regard to identification of land occurs, the details given in the boundary prevails as it identifies the land in question. Both the courts have concurrently held that the plaintiff has right, title and interest in the suit property and the defendant herself admitted that she is in possession over the same boundary though the said claim is on the basis of unregistered rectification deed, which is not permissible in the eye of law. Hence, the learned First Appellate Court rightly held





that plaintiff is entitled to recovery of possession of Schedule B land.

24. Having regard to the facts and circumstances as well as the materials on record, it is quite apparent that the judgment and decree of the learned Courts below are based on finding of facts, and no question of law much less any substantial question of law arises for consideration.

25. Thus, both the Second Appeals are dismissed at the stage of hearing under Order XLI Rule 11 of the C.P.C.

26. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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