

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.237 of 2008

- 1.1. Meena Devi, Daughter of Late Rajendra Ram
 - 1.2. Veena Devi, Daughter of Late Rajendra Ram
 - 1.3. Manju Devi, Daughter of Late Rajendra Ram
 - 1.4. Baby Devi, Daughter of Late Rajendra Ram
 2. Manoj Ram, Son of Late Rajendra Ram
 3. Pintu Ram, Son of Late Rajendra Ram
 4. Kapil Ram, Son of Late Rajendra Ram
 5. Raja Kumar, minor son of Manoj Ram
 6. Anand Kumar, minor son of Manoj Ram
 7. Amarjit Kumar, minor son of Manoj Ram
 8. Sonu Kumar, minor son of Manoj Ram
 9. Prahalad Kumar, minor son of Manoj Ram
- Sl. No. 5 to 9 are under the guardianship of their father.
10. Gauri Shankar, minor son of Pintu Ram, under the guardianship of his father.
- All residents of Mohalla: Alamganj, P.O. & Town, Biharsharif, P.S.-
Laheri, District-Nalanda.

... .. Appellant/s

Versus

- 1.1. Sushila Devi, D/o Late Ramji Ram, Mohalla-Alamganj, P.S.- Laheri,
Dist.- Nalanda. (Biharsharif)
 - 1.2. Rani Kumari, D/o Late Ramji Ram, Mohalla-Alamganj, P.S.- Laheri,
Dist.- Nalanda. (Biharsharif).
 2. Laxmi Ram, S/o Ramji Ram
 3. Biru Ram, S/o Ramji Ram
 4. Munni Ram, S/o Late Ramji Ram
 5. Jitendra Ram, S/o Late Ramji Ram
 6. Guddu Kumar, S/o Late Laxmi Ram
 - 7(a). Sharda Devi, W/o Laxmi Ram, R/o-Alamganj, P.S.-Laheri, P.O.-
Biharsharif, Dist.-Nalanda
 8. Dholi Kumar, S/o Biru Ram
 9. Sonu Ram, S/o Biru Ram
 10. Bablu Ram, S/o Munni Ram
 11. Suraj Ram, S/o Munni Ram
 12. Golu Ram, S/o Munni Ram
- All residents of Mohalla: Alamganj, P.O & Town: Biharsharif, P.S.
Laheri, District: Nalanda.
13. Sabiya Devi, W/o Gopal Ram, resident of village: Hilsa, P.O & P.S.
Hilsa, District: Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Suman Kumar, Advocate



For the Respondent/s : Mr. Amar Nath Singh, Advocate
Mr. Satya Prakash, Advocate
Mr. Anil Kumar Jha, Sr. Advocate
Mr. Binoy Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-02-2024

The instant appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') against the judgment and decree dated 12.03.2008 and 29.03.2008, respectively, passed in Title Appeal No. 53 of 2005 by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Nalanda reversing the judgment and decree dated 19.10.2005 and 27.10.2005, respectively, passed in Title Suit No. 162 of 2002 by the learned Subordinate Judge-I, Biharsharif (Nalanda) whereby decreeing the suit in favour of the plaintiffs/appellants.

02. The appellants were the plaintiffs/respondents and the respondents herein were defendants/appellants before the learned courts below. The plaintiffs before the learned trial court filed the suit for declaration of their title on the suit property mentioned in the plaint and also for partition of suit land to the extent of 50 paise and to carve out their shares by appointment of Survey Knowing Pleader Commissioner and also to declare the sale-deed dated 27.09.1967 forged and fabricated and also to set aside the sale deed. The suit property



as described in the plaint is a residential house comprising of five shops bearing Holding No (old) 419 and 420 Holding No. (new) 549, 550 and 551 situated in Ward No. 28, its old Ward No. 8 of Mohalla Alamganj, Biharsharif, Nalanda measuring 54 feet from north to south and 30 feet from east to west which is which is bounded by road on norther and southern sides, east and west-NIL.

Case of the Plaintiffs:-

03. One Ram Kishun Ram @ Fateh Ram was the common ancestor of the plaintiffs and the defendants, who had purchased the suit house from the income of joint family fund and came into its possession along with his brothers Lalu Ram and Nandu Ram. With subsequent partition, the suit house exclusively came in the joint possession of plaintiffs and defendants. Further case of the plaintiffs is that said Ram Kishun Ram @ Fateh Ram had four sons, namely, Ramji Ram-defendant no. 1, Punna Rma, Nageshwar Ram and Rajendra Ram-plaintiff no. 1 and two daughters Sabiya Devi and Jamuni Devi. Out of six siblings, Punna Ram, Nageshwar Ram and Jamuni Devi died issue-less and the wife of Ram Kishun Ram @ Fateh Ram died during his life time. Sabiya Devi was married with one Gopal Ram who has been made defendant no.



13 in the suit. Further case of the plaintiffs is that Ram Kishun Ram was the *karta* of the joint family and after his death, defendant no. 1 Ramji Ram became *karta* of the joint family and had been managing the entire affairs of the family. The plaintiffs and defendants were residing in the suit house along with their family members whereas shops existing in the suit house had been let out on rent to different tenants and the rent had been realized by defendant no. 1. When the plaintiffs demanded proportionate share in the rent, the defendant no. 1 did not pay any heed and evaded the matter and finally refused to give share to the plaintiffs. It has further been pleaded that when the plaintiffs asked the defendants to start their mess separately and also for repair of the house, then the defendants filed a case in Laheri Police Station and after inquiry report was submitted by the police for starting proceeding under Section 107 of Cr.P.C. against both the parties. It has further been pleaded that the plaintiff no. 1 had full faith and confidence on defendant no. 1, who used to take Left Thumb Impression (LTI) of plaintiff no.1 on blank papers and even on papers to be used in Government Department. If defendant no. 1 had manufactured any deed with the help of those papers, the same would be deemed to be illegal, void, not having binding



effect and the defendants cannot take any advantage from it. The plaintiffs have claimed that the suit house is still joint and the plaintiffs have got unity of title and unity of possession over the suit house along with defendants in which their shares are to the extent of half and the same has not been partitioned by metes and bounds. Cause of action date is stated to be 27.03.2002, when plaintiffs made their demands for partition of their half share and requested to effect partition by the defendants.

04. During trial, the plaintiffs got their plaint amended by adding para-8 (ka). Through this amendment, the plaintiffs denied the factum of partition taking place on 26.05.1961, preparation of *Yadast* in respect of it, execution of sale deed dated 27.09.1967 by plaintiff no. 1 in favour of defendant no. 1 and characterized the same as forged, fabricated without consideration, void and inoperative documents, which was not known to the plaintiffs earlier. The plaintiffs have claimed that they came to know about it for the first time when defendants filed written statement disclosing therein about the existence of sale deed. The plaintiffs further made out their case that the defendant no. 1 was *karta* of the joint family and plaintiff no. 1 being a simpleton and illiterate



person, reposed full confidence in him and he used to put his LTI where ever original defendant no. 1 told him to put the LTI. The plaintiffs have further claimed that defendants in order to grab the half share of the plaintiffs in the suit house brought the said sale deed into existence and the plaintiffs reiterated that the plaintiffs were and are in joint possession over the suit house with the defendants. The suit house was neither partitioned, nor plaintiff no. 1 transferred his half share nor resided in the house of Sarju Prasad, situated in Mohalla-Bhaisasur on rent, nor he asked the defendants to give portion of the suit house on monthly rental at the rate of @ Rs. 400/- per month.

Case of the Defendants:-

05. In the suit, two sets of written statements were filed. One set of written statement was filed by the contesting defendant nos. 1 to 5 whereas another set of written statement was filed by *Guardian-ad-litem* representing the minor defendants. In their written statement, defendant nos. 1 to 5 have taken a number of pleas like no valid cause of action, suit barred by law of limitation, principles of estoppel, waiver and acquiescence and also barred under Section 34 of the Specific Relief Act. The valuation of the suit property was also



challenged and stated to be insufficient. The defendants have further claimed that plaintiffs have cleverly filed title suit in the garb of partition suit to save the court fee. While denying the averments made by the plaintiffs, the contesting defendants have set up their own case. According to the defendants, Sanichar Tanti was the common ancestor, who had three sons, namely, Laloo Ram, Ram Kishun Ram @ Fateh Ram and Nandu Ram. Ram Kishun Ram was born from first wife of Sanichar Tanti. After the death of first wife, Sanichar Tanti again performed his marriage and from the second wife, he had two sons, namely, Lalu Ram and Nandu Ram. The above named three sons of Sanichar Tanti had purchased Holding No. 238, converted in Holding No. 234, from Sheikh Abdul Gani, a resident of Mohalla-Alamganj on payment of proper consideration money in the year 1922 by virtue of sale deed and came in joint possession over the same. Subsequently, Laloo Ram and Nandu Ram declared their intention to transfer their share in the suit property whereupon Ram Kishun Ram became ready to purchase the same and he purchased the same on 10.04.1933 on payment of proper consideration amount and became owner of the entire suit house and started residing there along with his family members. Further case of the defendants



is that Nageshwar Ram was unmarried and he died during the life time his father and Punna Ram was married but he died issue-less in the life time his father and his wife also died a few months after his death. The wife of Ram Kishun Ram predeceased him and Ram Kishun Ram died soon after the riot which took place in the year 1946. It is also the case of the contesting defendants that after the death of Ram Kishun Ram, his sons Rajendra Ram and Ramji Ram remained joint in mess and business. After few years, differences arose and two brothers got their suit house partitioned to the extent of their half share. Eastern half portion was allotted to Ramji Ram and western half share was allotted to Rajendra Ram. In token of partition so effected, a *Yadast* document was prepared on 26.05.1961. Rajendra Ram is said to have put his L.T.I. and got it signed through Rameshwar Dayal. A copy of *Yadast* was handed over to Rajendra Ram and its original was kept by Ramji Ram. With passage of time, *Halka Number* and Holding Number were changed in municipal register. Holding Nos. 417 and 418 were created in respect of portion allotted to Ramji Ram whereas Holding Nos. 419 and 420 were created in respect of portion allotted in the share of Rajendra Ram. Further case of the defendants is that Rajendra Ram was in



need of money and he declared his intention to transfer his share in the suit house, whereupon Ramji Ram became ready to purchase it and subsequently purchased it through registered sale deed dated 17.09.1967 on payment of proper consideration amount and came in possession over the purchased portion. In this way, Ramji Ram became absolute owner of the entire suit house. Thereafter, he got his name mutated in the municipal record and paid house taxes for which receipts were issued in his name. Subsequently, Ramji Ram let out that portion to one Ram Kishun Chandak for which registered tenancy was created in the year 1969 who started whole-sale and retail cloth business on payment of rent to original defendant-Ramji Ram. This tenant vacated the premises in the year 1990. Further case of the defendant is that before letting out on rent, Holding Nos. 419 and 420 were merged into one Holding No. 551 and the roof of both portions were converted into one. After vacation by Ram Kishun Chandak, it was let out on rent to one Suresh Kumar Sinha in the year 1990 through a registered tenancy, who paid rent to original defendant no. 1 Ramji Ram. It is further case of the defendants that after transfer of the property, the original plaintiff no. 1 Rajendra Ram vacated the premises and started living in the house of one Sarju Prasad, a resident of



Mohalla-Bhaisasur on payment of rent and started tea stall near State Raj Transport Bus stand situated by the side of Ranchi Road. The financial condition of the original plaintiff no. 1 became worse and he requested the defendant no. 1 to let out a portion of his house on rent. The defendant no. 1 considering the pitiable condition of his brother, gave back portion of Holding Nos. 419 and 420 to him in the month of March, 1998 on payment of rent at the rate of Rs. 400/- per month. The original plaintiff no. 1 paid rent up to April, 2000 and stopped paying the same without any rhyme or reason. Thereafter, defendant no. 1 filed Eviction Suit No. 09 of 2003 against plaintiff no. 1, which was pending in the court of learned Munsif, Biharsharif. It has also been submitted on behalf of the defendants that plaintiff no. 1 got the proceeding under Section 107 Cr.P.C. started against the defendants at the instance of their enemies but the same was subsequently dropped.

The written statement filed on behalf of minor defendants through *guardian-ad-litem* contained formal objection challenging the maintainability of the suit as well as the relief sought in it.

Findings of the Trial Court:-

06. The learned trial court on the basis of the



pleadings of the parties, framed the following issues:-

“1) Is the suit as framed is maintainable?

2) Have the plaintiffs got valid cause of action for the suit?

3) Is the suit barred by Law of Limitation, waiver, estoppel, acquiescence (sic.) acquiescence and under valued?

4) Is there any unity of title and possession in between the plaintiffs and defendants and the plaintiffs are entitled to decree of partition as prayed for?

5) Has the partition not taken place in between the plaintiffs and defendants and the alleged sale deed dated 27.09.1967 is forged and fabricated document?

6) To what relief or reliefs the plaintiffs are entitled?”

07. The learned trial court firstly took up the issues no. 4 and 5 and having considered the oral and documentary evidence(s) and submission of parties, decided the issues in affirmative in favour of the plaintiffs. The learned trial court held that the plaintiffs have also been residing in the suit property in which the defendants are residing and there is unity of title and possession between them. The learned trial court further held that the plaintiffs and defendants are entitled to half share each after death of their father in 1946. The learned



trial court disbelieved the case of the defendants based on sale-deed and held that the defendants failed to prove the genuineness of the sale-deed. The learned trial court further held that all other issues except valid cause of action and maintainability have not been raised by other side and decided the issues in favour of the plaintiffs. In this manner, the learned trial court decreed the suit on contest without cost.

Findings of the First Appellate Court:-

08. The learned first appellate court though did not frame points of determination, however, it took up the following issues for adjudication:-

“1. Is the suit as framed maintainable?

2. Have the plaintiffs got any valid cause of action for the suit?

3. Is the suit barred by law of limitation?

4. Is the suit barred by the principles of estoppel, waiver and acquiescence?

5. Is there unity of title and unity of possession between the parties with respect to the suit property and are plaintiffs entitled to obtain decree of partition as prayed for?

6. Did partition take place between plaintiffs and defendants as claimed by the defendants?

7. Is the sale deed dated 27.09.1967 forged, fabricated void and inoperative document?

8. To what other relief or reliefs are the



plaintiffs entitled?”

09. The learned first appellate court also discussed the details of the documents exhibited on behalf of the parties. The documents exhibited on behalf of the plaintiffs are as follows:-

Exhibit-1-Receipt showing payment of rent of Rs.2000/- by Suresh Kumar Sinha to the landlord Ramji Ram in respect of Holding Nos. 419 and 420.

Exhibit 2- Legal notice dated 09.01.2003 sent on behalf of defendant no. 1 to the tenants.

Exhibits 3 to 3/c- Postal registration receipts.

Exhibit 4 -List of documents dated 18.06.2003.

Exhibit 5 -Yadast paper dated 03.10.2004.

Exhibit 6-Petition dated 04.10.2004 filed by defendants in Title Suit No. 162 of 2002.

Exhibit 6/a- Rejoinder filed on 5.10.2004 in respect of defendants' petition above dated 04.10.2004 in Title Suit No. 162 of 2002.

Exhibit-7- Notice of 107 Cr.P.C. proceeding against defendant no. 1 issued from the court of S.D.M., Biharsharif.

Exhibit-8- Certified copy of police report for launching proceeding U/s 107 Cr.P.C. against Ramji Ram and Rajendra Ram.

Exhibit-9-Certified copy of voter list with respect to Bihar Legislative Assembly election.



Exhibit-10- Xerox copy of compromise petition filed before the S.D.O., Biharsharif.

At the same time, documents exhibited on behalf of defendants are as follows:-

Exhibits- A to A/2-Municipal tax payment receipts standing in the name of defendant no. 1 Ramji Tanti.

Exhibit-B- Signature of Rajendra Gopal as witness on the Yadast dated 26.05.1961.

Exhibit-C- Rejoinder dated 16.08.2004 filed on behalf of the defendants in Title Suit No. 162 of 2002.

Exhibit-D- Plaint of Eviction Suit No. 09 of 2003 filed by Ramji Ram-plaintiff no. 1, against defendant no. 1 Rajendra Ram.

Exhibit-E- Summons of Title Suit No. 162 of 2002 issued against Smt. Manjula Davi for production of sale deed dated 18.05.2004 executed in his favour.

Exhibit-F- Certified copy of sale deed dated 18.5.2004 executed by Md. Kutubuddin in favour of Smt. Manjula Jain.

Exhibit. F/1- Original sale deed dated 27.09.1967 executed by plaintiff no. 1 Rajendra Ram in favour of defendant no. 1 Ramji Ram in respect of suit house.

Exhibits-G and G/1- Notice of S.C.C. Case No. 221 of 1981 along with its enclosure.



Exhibit- G/2- Notice issued from the office of Chief Inspector against Rajendra Ram under Bihar Shops and Establishment Act.

Exhibit- G/3- Demand notice dated 31.1.1996.

Exhibit- H- Order sheet dated 25.02.1969 and 17.02.1969 drawn in the proceeding started under Bihar Municipal Act.

Exhibit- H/1- Order sheet dated 25.04.1969 and 17.06.1969 drawn in a proceeding started under Bihar Municipal Act.

Exhibit. H/2- Certified copy of order-sheet dated 30.07.1982 passed in S.C.C. Case No. 221 of 1981.

Ext. H/3- Certified copy of order-sheet dated 11.07.1990 drawn in Mutation Case No.66/67/90-91 dated 29.06.1990 to 11.07.1990.

Exhibit. I- Carbon copy of counter foil bearing No.7/V/69-70 containing contents of petition and final order passed by Special Officer on 20.11.1969.

Exhibit. J- Registered deed of tenancy dated 14.11.1969 executed by defendant no. 1 Ramji Ram in favour of Ram Kishun Chandak.

Exhibit. J/1-Registered deed of tenancy executed by defendant no. 1 Ramji Ram in favour of Suresh Kumar Sinha.

Exhibit- K- Unregistered deed of Yadasta dated 26.05.1961.

10. Having regard to the oral and documentary



evidence(s) adduced by the parties, the learned first appellate court came to the conclusion that the suit property was partitioned in between the plaintiff no. 1 and defendant no. 1 on 15.06.1961 by virtue of which half share towards western side was allotted to plaintiff no. 1 and the remaining half share towards eastern side was allotted to defendant no. 1 and as such the suit property was not in joint possession of the parties. Therefore, the question of unity of title and possession between the parties with respect to suit property did not arise at all. The learned first appellate court held that the plaintiffs are not entitled to get a decree for partition of the suit property and the findings recorded by the learned Sub. Judge-I, Biharsharif in its judgment relating to these points are not correct, rather it is erroneous, bad in law and not based on correct interpretation of law. With the aforementioned findings, the issue no. 4 and 5 framed by the learned first appellate court were decided and the findings of the learned trial court was reversed.

11. On the issue of the validity of the sale-deed dated 27.09.1967 as to whether it was a forged, fabricated, void and inoperative document, the learned first appellate court decided the issue no. 7 to hold that sale-deed dated 27.09.1967 was forged, fabricated, void and inoperative document. The learned



first appellate court held that the defendants failed to prove the proper execution of the sale-deed and the onus lied heavily on the defendants which they failed to discharge.

12. The learned first appellate court also discussed the issue no. 3 regarding suit being barred by Law of Limitation. Learned first appellate court returned a finding that as the plaintiffs were having full knowledge about existence of Exhibit-F/1 since 11.07.1990, they ought to have filed the suit within three years from 11.07.1990. As the suit has been filed on 30.09.2002 much after the expiry of three years, therefore, the suit was held to be barred by Law of Limitation. The learned first appellate court held that the suit filed was not maintainable as a clear finding was recorded by the learned trial court that partition between the plaintiff no. 1 and the defendant no. 1 regarding suit house was effected on 25.06.1961, by virtue of it, half share of western side was allotted to plaintiff no. 1 and remaining half share of eastern side was allotted to defendant no. 1 and they came in exclusive possession over their respective shares. The learned first appellate court further held that the suit house cannot be partitioned afresh and the suit was found not maintainable. Similarly issue no. 2 was decided by the learned first appellate



court while holding that the plaintiffs had no valid cause of action for filing the suit. The learned first appellate court held that in view of the settlement of other issues, the said issue did not require separate discussion. On issue no. 7, the learned first appellate court held that plaintiffs are not entitled to any relief as claimed.

13. In this manner, the learned first appellate court disposed of the matter holding that the judgment and decree of the learned lower court, decreeing the suit of the plaintiffs is not sound and the same was set aside. Accordingly, the title appeal was allowed.

Analysis of this Court:-

14. After admitting the second appeal, a Co-ordinate Bench of this Court formulated the following substantial questions of law for consideration in this appeal:-

(I) Whether after reaching to the conclusion on the basis of scrutiny of evidence that the sale deed dated 27.09.1967 is forged, fabricated, void and inoperative document, the appellate court below has acted in accordance with the settled principles of law in refusing the relief with regard to the sale deed dated 27.09.1967 (Ext. F/1) on



the ground of bar of limitation?

(II) Whether the non-consideration of the oral evidence adduced on behalf of the plaintiffs by the appellate court below has vitiated its judgment of reversal?

Submission on Behalf of Appellants:-

15. Mr. Amarnath Singh, learned counsel for the appellants has mainly assailed the judgment and decree of the learned first appellate court on a number of counts.

(i) The learned counsel for the appellant, Mr. Singh submitted that the learned first appellate court found the suit of the plaintiff barred under Limitation Act on the ground that sale deed (Exhibit-F/1) was not challenged within the limitation period but the said document was held to be forged, fabricated, void and inoperative by the learned trial court, hence no question of limitation would arise.

(ii) Further, Mr. Singh submitted that the learned first appellate court relied on Exhibit-H and Exhibit-H/1 for believing that the plaintiff/appellant before this Court were having knowledge in year 1969 about the execution of the sale deed and they did not challenge the sale deed for such a long period. However, perusal of Exhibit-H and Exhibit-H/1 shows that plaintiff-Rajendra Ram was not served and there was no *tamila*



report on record. Further, order-sheet of the municipal officers shows that plaintiff Rajendra Ram appeared and agreed for mutation in the name of defendant, Ramji Ram. If *tamila* was not served at the first instance, the municipal authority should have taken further recourse to serve the plaintiff but sudden appearance of the plaintiff Rajendra Ram before the municipal authority smacks of fraud and the same might have been perpetrated by the defendant Ramji Ram. It is admitted case of the parties that Rajendra Ram was illiterate and whatever was told to him by the defendant Ramji Ram, he acquiesced to it without understanding its implications. Therefore, placing reliance on Exhibits-H and H/1 by the learned first appellate court for imputing knowledge to Rajendra Ram was completely wrong.

(iii) Further, the learned first appellate court did not consider the oral evidence of the parties at all and gave a complete go-by to the oral evidence of the parties which was discussed in detail by the learned trial court. In this regard, the learned counsel tried to distinguish the approach of the learned courts below with regard to appreciation of oral evidence. Mr. Singh also assailed the decision of the learned appellate court with regard to suit being barred by principles of estoppel, waiver and acquiescence. Learned counsel submitted that while deciding this issue, learned trial court recorded the finding that these issues



were not raised by the other side and deciding the issues in affirmative in favour of the plaintiff whereas the learned appellate court has also stated that these issues have not been pressed at the time of hearing of the first appeal. Then how can the learned first appellate court decided that the principles of estoppel, waiver and acquiescence would come into play and stop the plaintiffs to re-agitate the matter.

(iv) Mr. Singh further submits that defendant no.1 deposing as DW-6 admitted that his father died in 1946 and a partition took place between the brothers just one and half years later. But subsequently the defendant made out a case that partition took place in 1961 which is contradictory to his own admission.

(v) In support of his contention, Mr. Singh relied on the decision of Hon'ble Apex Court in the case of *S.V.R. Mudaliar v. Rajabu F. Buhari*, reported in *AIR 1995 SC 1607* in which the Hon'ble Apex Court held that on findings of facts if judgment of reversal by the appellate court is recorded, then reasons given by the trial court or its finding must be considered by the appellate court. Further, Mr. Singh relied on the decision of this Court in the case of *Ram Charitra Mahto v. Satya Narain Sahu*, reported in *(2001) 4 PLJR 627*, wherein this Court observed that power of High Court in



Second Appellate jurisdiction to interfere with the perverse finding of fact is well settled. In case of reversal judgment of the trial court, the first appellate court should consider the reasoning of the trial court. If the learned first appellate court ignores important evidence on record, its conclusion is not binding in second appeal. In the case of *Ram Charittar Sahu v. Sadrul Hassan*, reported in (1997) 1 PLJR 880, this Court also recorded that mentioning of words “adverse possession” was not specifically mentioned by trial court or lower appellate court, it cannot be held that no such plea was taken when the plea of adverse possession was fully covered by Issue No. 4 framed on the point of title, possession and dispossession. Learned counsel further relied on the decision of Hon’ble Apex Court in the case of *Dilbagrai Punjabi v. Sharad Chandra*, reported in *AIR 1988 SC 1858* on the point that the High Court while hearing the appeal under Section 100 of the CPC has no jurisdiction to reappraise the evidence and reverse the conclusion reached by the first appellate court, but at the same time its power to interfere with the finding cannot be denied if when the lower appellate court decides an issue of fact and a substantial question of law arises. The first appellate court is under a duty to examine the entire relevant evidence on record



and if it refuses to consider the important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorized to set aside the finding.

Submissions on behalf of the Respondents:-

16. On the other hand, Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the respondents vehemently contended that the impugned judgment and decree are perfectly valid and legal and there is no infirmity in it.

(i) Countering the contentions of the learned counsel for the appellants, it has been submitted by the learned senior counsel Mr. Jha that mere perusal of Exhibit-H and Exhibit-H/1 show that it was not a simple case where no notice was further issued after the first notice was unserved. In this regard, the learned senior counsel pointed out that in order sheet dated 25.04.1969 drawn in a proceeding started under Bihar Municipal Act, the municipal authority directed for further issuance of notice specially in Exhibit-H/1 wherein it has recorded that "दोनो पक्षों को सूचित किया जाय.....". The registered notice was sent with date of hearing so it was the plaintiff Rajendra Ram himself appeared and showed his no objection with regard to mutation being made in favour of defendant Ramji Ram for Holding Nos. 419 and 420. The learned senior counsel further submits that it



could not be said by any stretch of imagination that Exhibit-F/1 is a fraudulent document. Even the plaintiff deposing as PW-6 has not denied his thumb impression on the document. He has merely said that its a wrong document/duplicate but how it is fraudulent it has nowhere come in the plaint of the plaintiffs or in their evidence.

Further, Exhibit-H/3, namely, certified copy of the order-sheet dated 11.07.1990 drawn in Mutation Case No. 66/67/90-91 dated 29.06.1990 to 11.07.1990 which shows the wife of the plaintiff filed a mutation case. In this case the competent authority refused mutation on the ground that sale deed dated 27.09.1967 Exhibit-F/1 was in existence and unless it was cancelled or declared inoperative by a competent court, no mutation could be done in favour of the wife of the plaintiff, Rajendra Ram.

(ii) Mr. Jha further submitted that this order-sheet specifically mentions sale deed no. 11393/1967 and this also goes on to show that the plaintiffs were having knowledge about the sale deed even in the year 1990 but they did not take any steps.

(iii) Mr. Jha further submitted that the plaintiffs never challenged Exhibit-H and Exhibit-H/1. Exhibit-H/3 is very categorical about knowledge of the plaintiffs. So the plaintiffs cannot deny at the time of filing of the plaint they were having no



knowledge of Exhibit-F/1.

(iv) Mr. Jha further submitted that the plaintiffs had very cleverly drafted their plaint and filed the same against the defendants to deny their claim by mentioning existence of Exhibit-F/1 since the defendants brought this fact on record. The plaintiffs moved before the learned trial court for making amendment in their plaint and by making such amendment denied the knowledge about the existence of Exhibit-F/1. It was nothing but apology of the plaintiffs to save their suit from being hit by the provisions of the Limitation Act. Since Section 3 of the Limitation Act provides that even when no defence has been set up, the learned lower court was duty bound to consider that whether the suit was maintainable or not maintainable on the ground of limitation.

(v) Mr. Jha further submitted that merely on vague allegations a document could not be declared fraudulent, void or inoperative. No evidence has been brought on record to show that the Exhibit-F/1 was fraudulent one. In this regard, learned senior counsel relied on the decision of Hon'ble Apex Court in the case of ***C. S. Ramaswamy Versus V. K. Senthil***, reported in ***2023 1 PLJR (SC) 44***, paragraph nos. 7.1 and 7.9 which reads as under:-

“7.1. At the outset, it is required to be noted that by filing the respective suits, the original Plaintiffs have prayed to cancel the registered Sale



Deeds, which were executed by the original Plaintiffs. The respective suits have been filed in the year 2015/2016, i.e., after a period of 10 years from the date of execution of such registered sale deeds. Therefore, the Defendant filed the applications and prayed to reject the respective complaints in exercise of the powers Under Order VII Rule 11(d) Code of Civil Procedure on the ground that the suits are clearly barred by the law of limitation. On the other hand, it is the case on behalf of the Plaintiffs that as the sale deeds/documents were got executed by fraud and misrepresentation and the Plaintiffs signed the said documents believing or treating it as Joint Venture Agreement and the Plaintiffs did not go through the contents of the said documents and as in the year 2015, the Plaintiffs came to know about such fraud and obtaining the documents/sale deeds by misrepresentation, considering Section 17 of the Limitation Act, the said suits cannot be said to be barred by limitation. It is the case on behalf of the Plaintiffs that in any case, the question of limitation being a mixed question of law and facts, and, therefore, in the facts and circumstances of the case, the complaints may not be rejected in exercise of the powers Under Order VII Rule 11(d) Code of Civil Procedure. It is the case on behalf of the Plaintiffs that while considering the application Under Order VII Rule 11 Code of Civil Procedure, the allegations and averments in the complaints are required to be considered.

7.9. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers Under Order VII Rule 11 Code of Civil Procedure to the facts of the case on hand and the averments in the



plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the complaints in exercise of powers Under Order VII Rule 11(d) Code of Civil Procedure. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the Plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the complaint and the bundle of facts stated in the complaint, we are of the opinion that by clever drafting, the Plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective complaints are required to be rejected in exercise of powers Under Order VII Rule 11 Code of Civil Procedure.”

(vi). The plaintiff has not denied his thumb impression on the document Exhibit-F/1 and he has not even denied its execution. Further no prayer for its cancellation has been made which was required under the law. Merely saying the document to be a bogus document which was void without taking any detailed plea in this regard and without leading elaborate evidence, such



claim cannot be sustained.

(vii) Mr. Jha further submitted that the Hon'ble Supreme Court in the case of *Suraj Lamp & Industries (P) Ltd v. State of Haryana & Anr*, reported in *AIR 2009 SC 3077* held that for registration of a document is notice to the whole world and a person cannot say that he was having no knowledge of a registered document.

(viii) Mr. Jha further submitted that the sale deed could not be challenged even on the ground of inadequacy or for non-consideration in view of provision of Section 54 of the Transfer of Property Act, which reads as under:-

“54. “Sale” defined- *“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made.—

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—



A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

(ix) Mr. Jha further submitted that in view of the provisions of Transfer of Property Act, no sale-deed can be challenged for want of proper consideration. Mr. Jha also submitted that after 1976 amendment in the Code, filing of cross objection has not remained mandatory and it is optional on part of the defendant and without filing the cross objection, he can challenge adverse findings by the first appellate court. On this aspect, Mr. Jha relied on the decision of the Hon'ble Supreme Court in the case of ***Ravinder Kumar Sharma v. State of Assam***, reported in ***AIR 1999 SC 3571***.

(x) Learned senior counsel, Mr. Jha, further relied on the decision of this Court in the case of ***Devji Shivji v. Karsandas Ramji***, reported in ***AIR 1954 Pat 280*** on the point that if a document cannot be rejected as illegal and void, then onus lies on the plaintiff to show that the said document is not actually what it purports to be. Further, Mr. Jha relied on the decision of this Court in the case of ***Harbans Singh v. Tekamani Devi***, reported in ***AIR 1990 Pat 26*** on the proposition that title passes forthwith upon the registration of the deed to the transferee with all the interest which the transferor had been capable of passing in



the property. A sale becomes complete, although the consideration amount or a part thereof has not been paid, but promised to be paid. On the same proposition, Mr. Jha also relied on the decision of Hon'ble Apex Court in the case of *Kaliaperumal v. Rajagopal*, reported in *AIR 2009 SC 2122*. Learned counsel further submits that mere pleading is not proof of facts and law is settled that if sale-deed is a registered document then presumption of genuineness is attached with such document and on this aspect he relied on the decision of this Court in the case of *Uma Shankar Rai v. Kishun Rai*, reported in *(2010) 3 PLJR 46*. Learned counsel also relied on the decision of Supreme Court in *Civil Appeal No.---of 2023 (Arising out of SLP (C) Nos. 2373-2377 of 2020), M/S Trinity Infraventures Ltd. & Ors. Vs. M.S. Murthy & Ors* on the facet that in a partition suit, no question of consideration of sale-deed for declaration can be gone into.

(xi) Mr. Jha further relied on the decision of Hon'ble Supreme Court in the case of *Bharat Singh V. State Of Haryana*, reported in *(1988) 4 SCC 534*, wherein the Hon'ble Apex Court held that in pleadings, i.e., a plaint or written statement, the facts and not evidence are required to be pleaded. If the facts are not pleaded or the evidence in support of such facts is not annexed, the court will not entertain the point. Learned senior counsel further submitted that the findings of facts recorded by the first appellate court, being the last court of facts, normally binds the



High Court in second appellate jurisdiction, unless finding is perverse and on this aspect, he relied on the decision of this Court ***Ram Charitra Mahto v. Satya Narain Sahu***, reported in **(2001) 4 PLJR 627**.

(xii) Mr. Jha further submitted that from the evidence of DW 6 and other witnesses it is very much evident that the plaintiffs failed to bring on record any evidence regarding fraudulent nature of sale deed and they failed to prove their averments made in amended plaint.

(xiii) Learned senior counsel even argued that the learned trial court should have rejected the plaint on the ground of limitation when amendment was sought after filing of written statement. Addressing his argument to the second substantial question of law, Mr. Jha submitted that other relevant portion of oral evidence have been considered by the learned appellate court and when there is preponderance of documentary evidence and the Indian Evidence Act provides that the documentary evidence would exclude the oral evidence and when the documentary evidence was sufficient to decide the issues, there was hardly any need for considering the oral evidence and the learned trial court has failed to consider this aspect.

(xiv) Learned senior counsel thus submitted that no substantial question of law involved in the present appeal and



hence the appeal is liable to be dismissed.

Findings:-

17. The learned first appellate court gave its finding, mainly on the documentary evidence(s) of the defendants. The decision of the learned first appellate court is based on consideration of Exhibit- F/1, Exhibits-H, H/1, H/2 and H/3. From Exhibits H and H/1, the learned first appellate court held that partition had already taken place between the plaintiffs and the defendants and they were not in joint possession of the suit property. Further, the learned first appellate court held Exhibit-F/1 to be without consideration and for this reason declared Exhibit F/1 to be forged, fabricated, void and inoperative document. However, the learned first appellate court relied on Exhibit-H series documents for arriving at a finding that the plaintiffs were having knowledge about the document Exhibit-F/1 but they did not take steps for declaring the said document null and void and for this reason the suit was barred by Law of Limitation. The learned first appellate court further held that Exhibit H/3, which was order-sheet dated 11.07.1990 in Mutation Case No.66/67 of 1990-91, went on to show that wife of plaintiff no. 1 filed mutation to get her name mutated against Holding Nos. 419 and 420, which was rejected with the observation that striking out the name of defendant no. 1



against both the holdings did not appear to be proper, unless the sale deed no. 11293/1967 was set aside by the court of competent jurisdiction. Thus, the learned first appellate court recorded its finding that from 11.07.1990, the plaintiffs ought to have filed the suit within three years. But, the suit was filed on 30.09.2002 and it was after the expiry of three years and hence, the suit was held to be barred by Law of Limitation.

18. I have gone through the aforesaid exhibits filed on behalf of the defendants and especially Exhibit-F/1, Exhibits-H, H/1, H/2 and H/3. Both the learned courts below did not believe the genuineness of the sale-deed (Exhibit-F/1), as the defendants failed to prove proper execution of the sale deed and onus lied heavily on the defendants which they failed to discharge. It has been contended by the learned senior counsel appearing on behalf of the respondents that the learned courts below erred in not believing proper execution of the sale deed (Exhibit-F/1) because Exhibits-H and H/1 proved that the plaintiff-Rajendra Ram admitted the sale-deed and on his consent, mutation was made in favour of defendant-Ramji Ram for Holding Nos. 419 and 420. Moreover, there was no denial of plaintiff-Rajendra Ram while deposing as PW-6 about his thumb impression on the said document. Having considered the



existence of sale-deed dated 27.09.1967, the revenue authority did not allow mutation of Holding Nos. 419 and 420 in favour of Balkeshiya Devi, wife of Plaintiff-Rajendra Ram in Mutation Case No. 66/67/90-91 and the said fact gets amply clear by Exhibit-H/3. It has been contended by the learned senior counsel that these facts proved two things that the sale-deed (Exhibit-F/1) is a genuine document and wife of plaintiff-Rajendra Ram filed a case in the year 1990 for mutation in her name, was having knowledge about existence of Exhibit-F/1 and the said knowledge would be imputed to plaintiff-Rajendra Ram. Merely on vague allegation, a document should not be declared fraudulent, void or inoperative.

19. At the outset, I must mention that Exhibit-F/1, which is the sale-deed dated 27.09.1967, admittedly, bears the thumb impression of plaintiff-Rajendra Ram and being an illiterate person, its contents are required to be proved by the person who states it has been properly executed and onus shifts to such person. It has also been submitted by the plaintiff-Rajendra Ram that his brother used to take his thumb impressions on a number of papers and one such paper has been used to create the sale-deed (Exhibit-F/1). Though the defendants have tried to show through Exhibit-H, H/1 and H/3



that the plaintiff-Rajendra Ram was having knowledge of existence of said document and was aware about its content, still he did not choose to challenge the said document. The learned first appellate court believed the knowledge of plaintiff about existence of Exhibit-F/1, but from the Exhibit-H and Exhibit-H/1, it is not possible to say that plaintiff-Rajendra Ram appeared in Municipal proceeding in Case No. 646/1968-69, since it has been mentioned in Exhibit-H and H/1 that *Tamila* of notice was returned unserved and it was said Rajendra Ram has gone somewhere outside. If notice was not served, how can Rajendra Ram had appeared on the next date and gave an application showing his no objection for mutation being made in the name of Ramji Ram on Holding Nos. 419 and 420 when there is no further report of service of notice or any document showing said service of notice upon Rajendra Ram. On this ground, the appearance of Rajendra Ram on next date becomes doubtful and the person who presented himself before the municipal authority was in reality plaintiff-Rajendra Ram or some other persons since nothing has been mentioned about establishment of identity and it is also on record that *Tamila* was returned unserved. So, Exhibit-H and H/1 could not be said to imply about knowledge of Exhibit-F/1 to plaintiff-



Rajendra Ram.

20. Exhibit-H/3, which is order-sheet of Mutation Case No. 1966/67/90-91 shows Balkeshiya Devi wife of Rajendra Ram filed the case for mutation of Holding Nos. 419 and 420. In normal circumstances, notice to wife would be treated as notice to husband, but when the execution of sale-deed (Exhibit-F/1) is itself shrouded in doubts, identity of Balkeshiya Devi was also required to be established with certainty and without any iota of doubt. On these facts, believing knowledge of Exhibit-F/1 to plaintiff-Rajendra Ram is fraught with dangers. On the aforesaid grounds, if knowledge cannot be imputed to the plaintiff-Rajendra Ram, no question of limitation would arise and therefore, the learned first appellate court is not correct in refusing the relief with regard to Exhibit-F/1 on the ground of bar of limitation. However, there is another aspect of the matter which both the courts below did not take into consideration that in Exhibits- H and H/1 two persons intervened and claimed that the property of Holding Nos. 419 and 420 was mortgaged with them and the concerned authority also recorded that the mortgage was subsequent to the sale-deed purportedly executed by Rajendra Ram in favour of Ramji Ram. If Rajendra Ram had already



sold the property to Ramji Ram where was the occasion for him to subsequently mortgaged the same property to any other person. Further, I am unable to comprehend when Rajendra Ram was alive why Balkeshiya Devi would file an application for mutation in her name. It creates doubt in a prudent mind and also creates doubt over identity of the person who appeared in mutation was even wife of Rajendra Ram. Other documents brought on record by the defendants are all the documents of defendants on which the learned first appellate court relied and these were also discussed by the learned first appellate court and based on one such document, the learned first appellate court has quite properly reasoned that even the consideration for sale, Rs. 2,000/-, was quite meager an amount compared to the alleged rent document, which shows the rent amount for the said property when it was let out on monthly rent. As I have already noted that the plaintiff-Rajendra Ram was not having any knowledge about execution of sale-deed dated 27.09.1967 (Exhibit-F/1) prior to the written statement being filed in the title suit as held by the learned first appellate court, the limitation did not start running against Exhibit-F/1 (sale deed dated 27.09.1967), which had already been declared to be forged, fabricated, void and inoperative document by the



learned courts below. Hence, the learned first appellate court committed an error when it held that the relief sought against Exhibit F/1 cannot be granted on the ground of relief being time barred. Clearly such finding is not sustainable. Thus, Substantial Question No.(I) is answered accordingly.

21. If Exhibit-F/1 is disbelieved, obviously, there would be unity of title and unity of possession between the co-sharers Rajendra Ram and Ramji Ram. Now, the learned trial court held the plaintiffs and defendants were entitled to half share each after death of their father in 1946 whereas the learned first appellate court held that since finding was recorded by the learned trial court that partition between plaintiff no. 1 and defendant no.1 regarding suit house was effected on 25.06.1961 and both the parties came in exclusive possession of their house, the suit house cannot be partitioned afresh and on this ground, the suit was found not maintainable. The contention of the learned counsel for the plaintiffs/appellants is that the learned first appellate court did not consider the oral evidence on the point of partition not taking place between the parties as it was a cooked-up story of the defendants. Defendant no.1 deposing as DW-6 admitted that after death of his father in 1946, a partition had taken place



between the brothers just one and half years later. However, in the pleading, the defendants made out a case that partition took place in the year 1961. Even otherwise oral evidence was not considered on the point of non-partition. In reply to this submission, it has been contended by the learned senior counsel appearing on behalf of the defendants/respondents that the learned first appellate court took into consideration relevant portion of oral evidence and when the documentary evidence is sufficient, there was no need to look into oral evidence. Learned senior counsel further contended that learned trial court committed an error when it did not consider the preponderance of documentary evidence which would exclude the oral evidence.

22. The learned first appellate court, however, has not appreciated the oral evidence of the parties especially, the defendant no. 1 himself, who deposed as DW-6 and the evidence of this defendant is quite damaging to the case of the defendants. Further, none of the witnesses of the defendants were in position to depose about partition taking place in 1961 rather DW-6 has himself stated about partition taking place just one and half years after death of his father in 1946. Same witness has also deposed that plaintiff-Rajendra Ram and



defendant-Ramji Ram were not on talking term since then, i.e., 1946, after partition. Then, it is very surprising that the plaintiff acquiesced to *Yadast Batwara* in 1961. There are contradictory statement of the DW-6 on the point of shop be constructed by him in the suit property and shop being in existence since the time of his father. Further, DW-6 has deposed that he came into possession of the suit shop and plaintiff-Rajendra Ram also got suit shop after partition but that is not his case in written statement. Therefore, I have no hesitation in holding that the learned first appellate court did not properly consider the oral evidence of the plaintiff in a perspective matter and hence, the same vitiated its judgment. Now, coming back to the evidence(s) of the parties, even the story of partition in 1961 could not be believed in the light of two contradictory statements. In his oral evidence, defendant no. 1 deposing as DW-6 in paragraph 48 has stated that his father died in the year 1946 and a partition took place between the brothers one and half years after death of his father. If it was so, what was the need for *Yadast Batwara* of 1961. Moreover, the said *Yadast* document is unregistered and does not inspire confidence. At the same time, plaintiff-Rajendra Ram deposing as PW-5 has denied about any partition taking place in 1961 and further



denied suggestion that he got the property of Holding Nos. 419 and 420 in his share towards western side. This witness also denied selling of these holding numbers to his brother and handing over the possession of the same to him. Other witnesses have either said about partition taking place or not taking place depending on the fact for whom they were deposing. So, the learned first appellate court recorded an erroneous finding about partition taking place on 25.06.1961 as the same is against the oral evidence in this regard and there is no documentary evidence on the point of partition which might prevail over the said oral evidence. As a result, the second substantial question is decided in favour of the appellants/plaintiffs and against the respondents/defendants.

23. In the light of discussions made here-in-above, the decisions relied upon by the learned senior counsel for the defendants/respondents are of no help to the cause of the defendants considering the facts and circumstances of the present case.

24. Hence, in the light of discussion made hereinbefore, I am of the considered opinion that the judgment and decree of the learned first appellate court are not sustainable and the same are set aside and the judgment and the decree of the learned trial court are affirmed in terms of the aforesaid discussion.



25. As a result, the instant second appeal stands
allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	05-01-2024
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