

IN THE HIGH COURT OF JUDICATURE AT PATNA

SA No.128 of 2004

ASH MOHAMMAD AZAD & ANR

Versus

KUNTI DEVI & ANR

07. 24.04.2008

Heard learned counsel for the appellants.

This second appeal has been filed by the defendants-appellants-appellants challenging judgment and decree dated 28.02.2004 by which the learned Ist Additional District Judge, Muzaffarpur, dismissed Title Eviction Appeal No.03 of 2002 and affirmed the judgment and decree dated 08.02.2002 passed by the learned Subordinate Judge, 4, Muzaffarpur, decreeing Eviction Suit No.01 of 1997.

The aforesaid suit was filed by the plaintiffs-respondents for declaration that the sale deed dated 08.03.1995 was illegal, void, inoperative, fraudulent and without consideration and defendant no.2 had no right to execute the aforesaid sale deed in favour of defendant no.1 and on the basis of that sale deed, defendant no.1 did not acquire any title. Another relief was also sought by the plaintiffs for eviction of defendant no.1 from Schedule I premises on the grounds of default in payment of rent etc and also for realization of arrears of rent detailed in Schedule II of the plaint and for other ancillary reliefs. The defendants contested the suit and finally the learned trial court found that the sale deed dated 08.03.1995 executed by defendant no.2 in favour of defendant no.1 was illegal, void, inoperative, fraudulent and without consideration and defendant had no right to execute the same. The learned trial court also found that the plaintiffs were owners

of the suit premises and defendant no.1 had defaulted in payment of rent since June, 1995 and the plaintiffs were entitled to get a decree of eviction and arrears of rent. Against the said judgment and decree of the trial court, the plaintiffs filed title eviction appeal which was dismissed by the learned lower appellate court by its impugned judgment and decree affirming the judgment and findings of the trial court.

It is quite apparent from the materials on record that the plaintiffs proved their title by registered sale deed, Ext.-1 and Government rent receipts, Ext.-2 series and also proved that defendants were tenants by Kiryanama, Ext-3 and rent receipts, Ext.-4 series as well as other documents, namely Ext.-5, Ext.-6, Ext.-7 series and also proved the said pleadings by oral evidence adduced on their behalf. It is also apparent from the impugned judgments that in the lower courts no document was filed and marked exhibit on behalf of the defendants and the learned courts below had specifically come to the conclusion that the plaintiffs had been able to prove their right and title over the suit premises and the defendants failed to prove that they were not the tenants of the plaintiffs. The judgments of the learned courts below are covered by concurrent findings of facts and hence there is no substantial question of law involved in the instant second appeal which is accordingly dismissed.

However, it transpires that in the trial court, the defendants could not produce their documentary evidence within the time allowed by law, whereafter the learned trial court refused to entertain their

subsequent application for allowing them to produce documentary evidence. It is also apparent that during pendency of the title appeal, the defendants- appellant filed a petition under Order XLI Rule 27 of the Code of Civil Procedure for producing evidence before the appellate court, but the learned appellate court rejected the said petition. In the said circumstances, the defendants-appellants will be at liberty to take recourse to any other forum with regard to any of their grievance if it is legally available to them.

(S.N.Hussain,J.)

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