

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.194 of 2013

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1. Om Namo Narain Jha, Son of Mahesh Kant Jha.
 2. Ram Naresh Prasad Singh, Son of Devanandan Prasad Singh.
 3. Lalan Singh, Son of Late Rajeshwar Prasad Singh.

All residents of village-Jogiara, P.S.-Bahadurpur, District-Darbhangha.

-----**Plaintiffs-Appellants-Appellants.**

Versus

1. Mosst. Paramsnehi Devi, Widow of Ramakant Singh, Resident of Village-Jogiara, P.S.-Bahadur Pur, District-Darbhangha now resident of Village-Godaipatti, P.S.-Bishanpur, P.O.-Kanojar, District-Darbhangha.
2. Ramasahaya Singh, Son of Late Ram Kirpal Singh, resident of village-Jogiara, P.S.-Bahadur Pur, District-Darbhangha at present through Commandant B.M.P.2 Dehri-on-Sone, District-Rohtas.
3. Mostt. Radha Devi, Wife of Ram Bilas Singh, resident of village-Jogiara, P.S.-Bahadur Pur, District-Darbhangha.

---**Defendants-Respondents 3rd party.**

4. Mahendra Narain Singh, Son of Lakashman Prasad Singh, resident of village-Jogiara, P.S.-Bahadur Pur, District-Darbhangha.

---**Defendant -Respondent 4th party.**

5. Pradeep Kumar Jha, Son of Diwakar Jha, resident of village-Jogiara, P.S.-Bahadur Pur, District-Darbhangha.

---**Plaintiff-Respondent 4th party.**

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Appearance :

For the Appellant/s : Mr. Uma Kant Shukla, Sr. Adv.
Mr. Rajesh Ranjan, Adv.
Mr.Pankaj Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 19-03-2015

Heard Mr Uma Kant Shukla, the learned senior

counsel appearing for the appellants.

The plaintiffs are the appellants in this appeal

against the judgment and decree of affirmance.

The suit has been filed for declaration of title and confirmation of possession over the suit land and in the alternative for recovery of possession. The relief has also been sought for declaring the sale deeds executed by the defendant no.1 in favour of the remaining defendants as void and ineffective document not binding on the plaintiff. The further prayer has also been made to declare the gift deed dated 22.06.1978 as forged and fabricated document not executed by Ram Dahin Singh.

The plaintiffs have admitted that the suit property belonged to Ram Dahin Singh. It is also not in dispute that Ram Dahin Singh died leaving behind the defendant no.1 (his daughter-in-law) as his sole heir who inherited the suit property. However, the case of the plaintiffs is that they have been using the suit property right from 1934 up-till-now for worship of the idols installed in the temple built over the suit property. It is noteworthy here that the plaintiffs claim to be the members of Hindu community and the suit has been filed in representative capacity under Order 1 Rule 8 C.P.C.

The defendants, in their written statement, have contested the claim of the plaintiffs and have asserted their

own right and possession over the suit property.

The trial court after scrutiny of the pleadings and evidence, returned the findings in favour of the plaintiffs, holding that they had acquired title by adverse possession over the suit properties but dismissed the suit on the ground that the plaintiffs had failed to prove the dispossession, and therefore, they were not entitled to grant of the decree as prayed. It was also held that the suit was barred by limitation for the relief against the deed of gift dated 22.06.1978.

The plaintiffs filed appeal against the decree dismissing the suit. The defendants filed cross objection in the said appeal against the findings recorded in favour of the plaintiffs. The appellate court on reappraisal of the pleadings and evidence has come to the conclusion that the plaintiffs have failed to establish the case of acquisition of title over the suit properties by adverse possession as pleaded by them. It has been further held by the appellate court below that the plaintiffs have been in permissive possession over the suit property, and therefore, the said possession could not have been converted into adverse possession unless the exercise of hostile possession is pleaded and established over the suit property. It has also been held that since the Ekrarnama (Ext.4) was not a registered



document it was not admissible in evidence to prove the extinction of the title of the original owner Ram Dahin Singh over the suit property. The appellate court has further also found that the defendants are in possession over the suit land. The appeal, therefore, was dismissed reversing the findings recorded by the trial court in favour of the plaintiffs in view of the cross objection by the appellants.

Mr Shukla, the learned senior counsel for the appellants has submitted that in view of the categorical finding of acquisition of title by adverse possession by the plaintiffs as recorded by the trial court, the appellate court below ought to have affirmed the same as the possession of the plaintiffs over the suit property for the prescribed period has been established. It has been canvassed that the plaintiffs are the members of Hindu community and their intention is for utilizing the suit property for the purpose of worship of the idol in the temple over the suit land and in that view of the matter both the courts below should have appreciated the right and interest of the plaintiffs in that perspective instead of taking too technical view of the matter.

After perusal of the impugned judgments and consideration of the submissions on behalf of the appellants, it

is limpid that the suit has been filed for declaration of title and confirmation of possession and in the alternative for recovery of possession. The plaintiffs have claimed to have acquired the right over the suit property on the basis of remaining in possession for more than 12 years continuously and openly. However, from the evidence on record the appellate court has come to the conclusion that the possession of the plaintiffs over the suit properties was never hostile to the admitted owner Ram Dahin Singh rather the said possession was permissive only. The appellate court below has considered the depositions of the witnesses of the plaintiff which show that the temple over the suit land was built by Ram Dahin Singh who allowed the villagers to perform Puja in the temple as evidenced by Ekranama (Ext.-4.). It has also been found that the villagers never asserted their exclusive hostile title over the suit property rather the owner Ram Dahin Singh continued to participate in Puja and rituals in the temple. After analyzing the documentary as well as oral evidence, the appellate court below has further found the defendants to be in possession over the suit property. All the findings by the appellate court below are based upon consideration of evidence on record and could not be established, on behalf of the appellants to be unreasonable or perverse.



It has also been contended by the learned senior counsel that once the trial court has come to the conclusion that it has no pecuniary jurisdiction to entertain the suit, the dismissal of the suit thereafter recording the findings was neither legal nor proper. This aspect has been raised before the appellate court below and has not found favour in view of the fact that it was the plaintiffs themselves who approached the trial court and the findings have also been recorded by the said court in their favour. It has not been the case of the plaintiff-appellants before the appellate court below that the findings recorded in their favour have been recorded by a court without jurisdiction. Even before this Court the plaintiffs-appellants have strongly relied upon the findings recorded by the trial court in their favour in order to bolster their case. The law is well settled by the apex court in the case of **Kiran Singh Vs Chaman , 1954 SC 340** that a judgment on merits in a case is not liable to be reversed purely on technical objection to jurisdiction both territorial and pecuniary unless it is established that it has resulted in failure of justice. The appellate court has reached to the correct finding in this regard and no interference is required.

For the aforesaid reasons and discussions, this

Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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