

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.322 of 2012

=====

Chhabilal Rawat S/O Late Ramashish Rawat Resident of Village Reotith, P.S.
Baikunthpur, District Gopalganj.

.... Appellant/s

Versus

1. Chandra Shekhar Singh.
2. Pappu Singh S/O Balmukund Prasad Singh.
3. Rani Devi W/O Raju Singh
4. D/O Balmukund Pd. Singh.
5. Umesh Prakash S/O Laxuman Singh.
6. Chuni Devi W/O Shambhu Singh D/O Laxuman Singh.
7. Dipani Devi W/O Mukesh Singh D/O Laxuman Singh.
8. Shashi Bhushan Singh S/O Banwari Singh all Resident of Village Reotith, P.S.
Baikunthpur, District Gopalganj.
9. Binda Sah S/O Late Mahendra Sah.
10. Mahesh Sah S/O Nathuni Sah.
11. Shambhunath Sah S/O Late Ramnath Sah.
12. Bhirgun Sah S/O Late Pukar Sah.
13. Kedar Sah.
14. Bhagwan Sah.
15. Yogindra Sah all S/O Deonandan Sah.
16. Mohan Sah S/O Late Suraj Sah all Resident of Village Reotith, P.S.
Baikunthpur, District Gopalganj.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Nagendra Rai, Adv.

Mr. Mritunjay Prasad Singh, Adv.

For the Respondent/s : Mr. Navin Nikunj, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-01-2015

Heard Mr. Nagendra Rai, the learned counsel appearing on behalf of the appellant.

The defendant no. 9 in the suit is the appellant in this second appeal against the judgment and decree of affirmance.

The factual expose' which require to be posited for appreciation of the submissions made on behalf of the appellant is that the suit was filed by the plaintiffs for declaration of title and confirmation of possession over the part of the suit land and also for recovery of possession over other part. The suit land had been described in the plaint in schedule-I and schedule-II of the plaint. The plaintiff has claimed himself to be the ex landlord of all the four plots i.e. plot no. 1705, plot no. 1706, plot no. 1723 and plot no. 1725. By amendment the another relief was added by the plaintiff regarding the declaration that the parcha under Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred as Act) obtained by the defendants was illegal, void and inoperative. In the suit there were two sets of defendants and the present appellant was impleaded as defendant no. 9 and he claimed his title and possession only over the suit plot nos. 1723 and 1725. The remaining defendants did not file appeal against the judgment and decree of the trial court granting the decree in favour of the plaintiff and, therefore, it is not necessary to refer to their case. The case of the defendant no. 9 was that the

recorded tenants of the aforesaid two plots namely Sukai Turha and Sujan Jolaha made oral sale of the suit land transferring title and possession to him. Further the defendant no. 9 also claimed that he had perfected his title over the two plots on the basis of adverse possession. The third basis of the claim of the defendant no. 9 was the Basgit Parcha granted to him during the pendency of the suit.

The trial court returned the finding that the Basgit Parcha granted to the defendant no. 9 was fraudulent and without jurisdiction. It has also been found that the defendant no. 9 could not establish his claim of the two plots on the basis of oral sale as well as adverse possession. In appeal by the defendant no. 9 the appellate court affirmed the findings of the trial court on reappraisal of evidence.

Mr. Rai, the learned counsel for the appellant has strenuously submitted that the finding by the courts below that the defendant no. 9 was not a privileged tenant cannot be sustained in law. By placing the definition of the 'privileged person' and 'privileged tenant' as contained in the Bihar Privileged Persons Homestead Tenancy Act, 1947 as well as noticed in the decision of this Court in the case of **Om Prakash Singh Vs. The State of Bihar 2004 (2) P.L.J.R. 621**, it has been argued that both the courts below have wrongly held that the defendant no. 9 was not a privileged person and the said finding is perverse. The learned counsel has

further also canvassed that the appellate court below has not followed the provision of Order 41 Rule 31 C.P.C. and has not formulated the points for determination while disposing of the appeal. It has also been propounded that both the courts below have not correctly appreciated the evidence of the parties in correct perspective.

After perusal of the judgments of both the courts below and consideration of the submissions on behalf of the appellant, it is limpid that the status of the plaintiff as ex landlord has not been disputed. Rather during course of his submissions, the learned counsel for the appellant has accepted the said fact. The fact has also not been disputed that the Basgit Parcha under the aforesaid Act has been granted to the defendant no. 9 (appellant) during the pendency of the suit. This fact is also apparent from paragraph-10 of the appellate court judgment that the proceeding for granting of Basgit Parcha was initiated in the year 1991-92 whereas the suit has been filed in the year 1990. It has been found by the appellate court below that the circle officer (collector under the Act) had earlier rejected the prayer for grant of Parcha as made by the defendant no. 9 on the ground that the civil suit was pending. However, subsequently the circle officer passed the order granting the parcha even when the civil suit was still pending. The appellate court below has therefore held that the circle officer has not acted legally as the position had not changed at the

time of passing the later order granting the parcha and on that basis has come to the conclusion that the order granting the parcha is without jurisdiction.

Mr. Rai, the learned counsel for the appellant, however, has tried to explain the said position by submitting that as there was no order of stay of the proceeding, therefore, the later order including the resumption of the proceeding by the circle officer could not have been without jurisdiction. This Court, however, is not persuaded to align with this proponent. The learned counsel for the appellant has not disputed the fact that the parcha had been issued without notice to the plaintiff-respondents who were the admitted landlord of the suit land. In fact, both the courts below have also taken into notice the fact that there was no evidence on record to show that any notice was issued to the plaintiff-respondents or there was any report by the Amin in the proceeding for grant of the parcha. In view of there facts, this Court is not persuaded to take the view that the finding with regard to the invalidity of the parcha as recorded by the courts below suffers from perversity in any manner. The claim of title by the appellant as borne out from his pleading is firstly on the basis of oral sale then on the basis of Basgit Parcha granted during the pendency of the suit and thereafter also on the basis of adverse possession.

Both the courts below have scrutinized the evidence and recorded the finding that there was no evidence to substantiate the case of oral sale. Further in view of this pleading of oral sale, the defendant no. 9 could not have pursued his claim on the basis of adverse possession also. The findings have been recorded on the basis of appreciation of evidence, and the submission that the judgment of the appellate court is vitiated for not formulating the points for consideration cannot be sustained in view of the decision by the Apex Court in the case of **M/s United Engineers & Contractors Vs. Secretary to Government, A.P. A.I.R. 2013 S.C. 2239** as well as in the case of **H. Siddiqui Vs. A. Ramalingam A.I.R. 2011 S.C. 1492**. This Court finds that there is substantial compliance of the said provision and it could not be established that any prejudice has been caused to the appellant by non-formulation of the points for determination by the appellate court. The submission in this regard appears to have been made out of desperation.

For the aforesaid reasons and discussion, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Devendra/-

U			
---	--	--	--