

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.294 of 2013

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1. Jhulan Singh, Son of Late Keshari Singh
2. Ram Nath Singh alias Khobhari Singh Son of Jhulan Singh Both
Resident of Village Chalta Tola, Kholpur P.S. Sandesh, P.O. - Pratapur,
District Bhojpur **Appellants.**

Versus

1. Ram Swaroop Singh, Son of Late Ram Deyal Singh
2. Deo Nandan Singh Son of Harihar Singh Both Resident of Village
Kholpur, P.O. Pandura, Rampur, P.S. Sandesh, District Bhojpur

.... **Respondents.**

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Appearance :

For the Appellant/s : Mr. Sunil Srivastava

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

4 26-11-2015

Heard Mr.T.N.Maitin, the learned senior

counsel for the appellants. The learned counsel for the other side is present.

The defendants in the suit are the appellants before this Court against the judgment and decree of affirmance.

The plaintiffs filed the suit for declaration of title and confirmation of their possession over the suit land. The plaintiffs' case, in brief, was that the suit land originally belonged to Ramawtar and others who sold the same to the predecessor of the plaintiff by registered sale deed in the year 1935 but the said land was subsequently auction sold and purchased by the ex-landlord. It was further case of the plaintiffs that they had re-purchased the suit land from the ex-landlord by registered sale

deed executed in the year 1959 and on this basis the plaintiffs claimed their title and possession over the suit land. On the other hand, the defendants denied the assertions of the plaintiff and claimed that the suit land in fact belonged to their vendor from whom the defendant purchased the same in the year 2001 and acquired valid title and possession.

Both the courts below after considering the evidence on record have come to the concurrent finding that the plaintiffs have been able to establish their case of title and possession over the suit land, and thus the suit was decreed and thereafter the appeal by the defendants has been dismissed by the impugned judgment and decree.

Mr.Maitin, the learned senior counsel appearing for the appellants has raised two submissions for consideration before this Court. It has been firstly contended that the courts below have wrongly taken into consideration the sale deed of the year 1935 for recording the finding of title in favour of the plaintiffs when admittedly the land subject matter of the sale deed of the year 1935 was auction sold and purchased by the ex-landlord. It has been contended, therefore, that the continuity of title has snapped and the same could not have been considered as the basis of title of the plaintiffs. It has been next contended that

even the sale deed of the year 1959 said to have been executed for the suit land by the ex-landlord in favour of the plaintiffs was not a valid conveyance in absence of the case of the plaintiff that the land was the Bakast land of the ex-landlord who continued to have title over the same after the vesting of Zamindari in the year 1955-56 in the State of Bihar. It has thus been argued that the two aspects go to the root of the matter and raise substantial questions of law for consideration.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiffs have come out with the case that the suit land originally belonged to Ramawtar and others who sold the same to the predecessor of the plaintiff in the year 1935. It is, however, further case of the plaintiff that the said land was subsequently auction sold and purchased by the ex-landlord, and thereafter again re-purchased by the plaintiffs in the year 1959. There has been thus a break in the continuity of the title of the plaintiff but that will not erode the existence of the sale deed of the year 1935 which could have been looked into in support of the case of the plaintiff that the land belonged to Ramawtar and others and subsequently purchased by the plaintiffs' predecessor by the sale deed in the year 1935. This becomes further relevant in view of



the fact that no material evidence has been brought on record on behalf of the defendant to establish that the suit land belonged to their vendors. The learned courts below have taken into notice the certified copy of C.S.Khatian (Ext.5) in the name of the vendor of the plaintiffs, the certified copy of the Chakbandi Khatian (Ext.2) in the name of the plaintiffs alongwith the sale deed (Ext.4/A) of the year 1935 and the sale deed (Ext.4) of the year 1959 and have also considered the deposition of the defendant as D.W.4 before disbelieving the case of the defendants which was based mainly on the entry in R.S. Khatian (Ext.F) in the name of their vendors. This Court does not find it persuaded to hold the finding in favour of the plaintiff to be unreasonable or perverse in any manner. Further, the learned senior counsel for the appellants, could not point out the necessary averment by the defendant in the written statement denying the right, title and interest of the ex-landlord who had executed the sale deed for the suit land in the year 1959 in favour of the plaintiffs.

The issue of nature of the suit land being Bakast or otherwise is necessarily an issue of fact which was required to be specifically pleaded. The absence of this pleading in the written statement by the defendant would preclude them from raising this for the first time in second appeal.

For the aforesaid reasons and discussions, this Court does not find substance in the two submissions raised on behalf of the appellants. The issues arising between the parties are now concluded by concurrent findings of fact by the courts below on the basis of scrutiny of the pleadings and evidence on record and there is no illegality in the same.

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

(V. Nath, J)

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