

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.368 of 2013

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1 Dr. Jay Singh Son Of Sheo Jatan Singh (Deceased) Resident Of Village Gundi
(Baisya Tola) P.S. Krishna Garha, Anchal Barahara, District- Bhojpur
..... Defendant Appellant

.... Appellant

Versus

1. Nand Kishor Singh Kushwaha Son Of Ramdeo Singh Kushwaha Resident Of
Village- Gundi (Baisya Tola) Anchal Barahara, P.S.- Krishna Garh, District-
Bhojpur
2. Surendra Kumar Singh Kushwaha Son Of Ramdeo Singh Kushwaha Resident Of
Village- Gundi (Baisya Tola) Anchal Barahara, P.S.- Krishna Garh, District-
Bhojpur Plaintiffs Respondent 1st Set
3. Bihar Sarkar Through District Collector, Bhojpur ..Defendant 2nd Set
..Respondent 2nd Set
4. Bijay Singh Son Of Sheo Jatan Singh Resident Of Village- Gundi (Baisya Tola)
Anchal Barahara, P.S.- Krishna Garh, District- Bhojpur
5. Ajit Singh Son Of Sheo Jatan Singh Resident Of Village- Gundi (Baisya Tola)
Anchal Barahara, P.S.- Krishna Garh, District- Bhojpur
6. Ajay Singh Son Of Sheo Jatan Singh Resident Of Village- Gundi (Baisya Tola)
Anchal Barahara, P.S.- Krishna Garh, District- Bhojpur
7. Most. Prema Kuer Wife Of Sumeshwar Mahto Resident Of Village- Gundi
(Baisya Tola) Anchal Barahara, P.S.- Krishna Garh, District- Bhojpur ...
Defendant 3rd Set Respondent 3rd Set

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARUN KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-09-2015

Heard learned Counsel for the appellant.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance. The plaintiffs filed the suit for declaration of their title and confirmation of possession or in the alternative for recovery of possession over the land described in Schedule I of the plaint. It was the case of the plaintiffs that the suit land is part of C.S. Plot No. 2021, which was in possession of the plaintiffs,

but has been wrongly included in the different plots of the defendants. The defendants resisted the claim of the plaintiffs and denied the grant of relief, as prayed.

3. Both the courts below have granted the decree, as prayed.

4. Learned Counsel appearing for the appellant has submitted that the defendant –appellant is concerned only with Plot Nos. 5604, 5605 and 5608 and has further submitted that in view of the nature of the relief sought for by the plaintiffs the matter essentially related to measurement. It has been pointed out by the learned Counsel that a Pleader Commissioner was appointed on the prayer of the plaintiffs by the Court and the said Pleader Commissioner had submitted his report. It has been further submitted that another Pleader Commissioner was taken to the spot by the defendant for scientific measurement and the report of the said Pleader Commissioner has been adduced in evidence on behalf of the defendant and the said Pleader Commissioner has been examined in support of the report. It has been submitted by the learned Counsel for the appellant that the Pleader Commissioner appointed by the Court was not examined and no opportunity to cross-examine him has been provided to the defendant and, therefore, his report should not have been relied upon. It has further been submitted that when there are two conflicting reports by the two Pleader Commissioners in the case, the Court should have appointed a third Commissioner. Learned Counsel has further canvassed that both the courts below have not appropriately appreciated the report of the Pleader Commissioners and have wrongly relied upon the report submitted by the Pleader Commissioner appointed by the Court. It has also been argued that the appellant has got his

house over the suit land and, therefore, it was all the more important for the court to appoint a third Commissioner in order to get the measurement.

5. After considering the judgments of both the courts below and the submissions, it is manifest that the plaintiffs have filed the suit claiming certain portions of the plots mentioned in the Schedule of the plaint on the basis that those portions were part of the plaintiffs' Plot No. 2021. As the matter related to encroachment, a Pleader Commissioner was appointed by the Court on the prayer of the plaintiffs. The said Pleader Commissioner submitted his report. It does not appear from the judgments of both the courts below nor is there any statement or material on record to show that any objection to the said report was made by the defendants. It also does not appear that any prayer was made on behalf of the defendants to examine/cross-examine the said Pleader Commissioner appointed by the Court. In view of the provisions of Order 26 Rule 10(2) CPC, such a report submitted by the Commissioner per se becomes the part of the record as evidence. The examination of the said Pleader Commissioner by a party or by the Court has not been made mandatory. It is true that the defendant-appellant has also got the land measured by his own Pleader Commissioner and his report has been adduced in evidence after examining him in the suit. But it appears from the judgments of both the courts below that both the reports have been considered and the Courts have preferred to rely on the report submitted by the Pleader Commissioner appointed by the Court. The submission on behalf of the appellant that in such a circumstance the Court should have appointed a

third Commissioner, does not appeal to this Court, as there is no objection filed by the appellant to the report submitted by the Pleader Commissioner appointed by the Court and there also does not appear that any such prayer was made either before the trial court or before the appellate court below. This Court finds it difficult to entertain such a submission as a question of law at the second appellate stage.

6. The further submission on behalf of the appellant that both the courts below have not properly considered the evidence of the parties and materials on record before granting the decree to the plaintiffs, is also devoid of merit as perusal of the judgments of both the courts below demonstrate that the findings of fact has been recorded on the basis of scrutiny of evidence on record. Those findings could not be established, during the course of submission in this appeal, to be perverse or unreasonable in any manner. The issues arising between the parties are now concluded by concurrent findings of fact on the basis of evidence.

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

(V. Nath, J.)

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