

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.470 of 2012

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1. Vishwanath Kejriwal, son of late Jagannath Pd. Kejriwal.
 2. Kiran Devi Kejriwal, wife of late Premnath Kejriwal.
 3. Sheshnath Kejriwal, son of Vishwanath Kejriwal, all are resident of Mohalla-Shivajee Colony, P.S. Khaganchihat, District-Purnia.

.... Appellant/s

Versus

Deo Narain Bhagat son of late Jamuna Prasad Bhagat, resident of Garhbaily, P.S. Kasha, District-Purnia, at present living at line Bajar, P.S. Khaganchihat, District-Purnia.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 10-11-2015 Heard Mr. Ajit Kumar Singh, the learned counsel for the appellants.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance.

The plaintiffs filed the suit for declaration of their right, title and interest over the suit land and further for recovery of possession over the part of the suit land on the allegation that the defendant had encroached upon the same. The defendant denied the assertions of the plaintiffs and came out with the case that he was in possession over the suit land on the basis of the purchase by him from the plaintiffs through the sale deed dated

02.02.1985.

The trial court, on scrutiny of the evidence, returned the findings against the plaintiffs and dismissed the suit. In appeal, the appellate court below, on reappraisal of the evidence, concurred with the findings of the trial court and has dismissed the appeal.

Mr. Singh, the learned counsel for the appellants has submitted that the learned courts below have not been correctly appreciated the evidence of the parties and the conclusions thereupon are vulnerable. It has also been submitted that the appellate court below has wrongly noticed the issues ignoring the crucial issues between the parties.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiffs have admitted to have sold the land to the defendant by registered sale deed dated 02.02.1985. It is, however, the case of the plaintiffs that the defendant is in possession of more land than what has been sold to him, by taking forcible possession and encroaching upon the land as mentioned in the schedule of the plaint. Both the courts below, after appreciation of the evidence of the parties, have come to the conclusion that the defendant is in possession over the land (suit land) which was purchased by him

through the sale deed dated 02.02.1985. The courts below have also noticed that the survey knowing pleader commissioner appointed by the court and examined as P.W.-4 in the suit has also found in his report that there was no encroachment of the land by the defendant as alleged. The appellate court below has taken into consideration the crucial issue arising between the parties and this Court has not been persuaded to find any illegality in the same.

This Court, therefore, comes to the conclusion that both the courts below have recorded the findings on the basis of the appreciation of the evidence and there is no unreasonableness or perversity in any manner in the same.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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