

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.203 of 2013

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1. Bhagwatia Devi, wife of Late Sitaram Yadav
 2. Ram Jivan Kumar, son of late Sitaram Yadav
 3. Ram Kumar, son of Late Sitaram Yadav
 4. Amlesh Kumar, son of Late Sitaram Yadav
 5. Lailum Devi, wife of Umesh Yadav, daughter of Late Sitaram Yadav

(Defendants Appellants in the court below)

.... Appellants

Versus

1. Manikchand Singh
2. Mithilesh Singh
3. Bundal Singh, sons of late Muni Mahto alias Nonu Mahto
4. Sheo Pukar Singh
5. Bishnu Kumar
6. Suraj Kumar, sons of late Raghuni Mahto @ Raghubar Mahto
7. Parmanand Mahto, son of Chulhan Mahto
8. Ram Niwas Singh
9. Kesho Singh, sons of Late Ramyad Singh @ Ram Dayal Singh
10. Ram Dashi Devi, wife of late Dhuplal Mahto
- 10.(a). Nandlal Singh, son of Late Dhuplal Mahto
- 10.(b). Amit Kumar, son of Late Dhuplal Mahto
- 10.(c). Leela Devi
- 10.(d). Benita Devi
- 10.(e). Sumenthi Devi
- 10.(f). Kunti Devi
- 10.(g). Babu Devi
- 10.(h). Munni Devi, daughters of Late Dhuplal Mahto
11. Kamendra Prasad
- 11.(a). Dharmendra Kumar
- 11.(b). Shekhar Suman, sons of Late Diplal Mahto
- 11.(c). Chanchal Devi
- 11.(d). Rita Devi
- 11.(e). Rupa Kumari, daughters of Late Diplal Mahto
12. Ram Sagar Mahto
13. Dularchand Mahto, sons of Shital Mahto
14. Sheo Kumari Devi, wife of Late Satyadeo Singh
- 14.(a). Kundan Kumar
- 14.(b). Jainendra Kumar
- 14.(c). Madhusudan Kumar
- 14.(d). Bhanu Kumar, sons of Late Satyadeo Singh
- 14.(e). Sarmila Devi, daughter of Satyadeo Singh
15. Surajkant Singh, son of Bilat Mahto
16. Pramod Kumar
17. Indrajeet Kumar
18. Rabindra Kumar, sons of Ram Swarup alias Ramrup Mahto
19. Ram Dhyan Singh
20. Dilip Kumar

21. Ajay Kumar, sons of Ram Chandra Mahto
 22. Ram Krit Mahto, son of Late Kharagdhari Mahto, all residents of Village Dhangawan, PS Jehanabad, District Jehanabad
 23. State of Bihar, through Collector, Jehanabad
 24. Superintendent of Survey Gaya
 25. Kamlesh Yadav, son of Late Yogeshwar Yadav, resident of Village Nejamuddinpur, PS + District Jehanabad
 (Plaintiffs Respondents in the court below)

.... Respondents

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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh
 Mr. Binay Kumar
 For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-04-2015

Heard Mr. Singh, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this Second Appeal against the judgment and decree of affirmance granting the decree to the plaintiffs.

3. The plaintiffs filed the suit for adjudication and declaration that the entry of the name of Ram Sharan Mahto as Sikmi Dakhalkar in respect of the suit land in the municipal survey records is erroneous. It is the case of the plaintiffs that the suit land belonged to the plaintiffs and in the cadestral survey khatian the sikmi right of Jawahar Gope was recorded. It is, however further case of the plaintiffs that the suit land was auction sold in rent execution case and purchased by Kuldeep Mahto in the year 1945. The plaintiffs have claimed to have purchased back the suit land from Kuldeep Mahto in the year 1963. It is the case of the plaintiffs that the entry of the name of Ram Sharan Mahto as Sikmi Dakhalkar in the municipal survey records with regard to the suit land is

wrong. The present appellants, who were defendants in the suit, filed their written statement, but they did not adduce any oral or documentary evidence in support of their case.

4. The trial court after scrutiny of the evidence on record returned the finding that the entry of the name of Ram Sharan Mahto as Sikmi Dakhalkar was erroneous. The suit was decreed. The appellants filed the appeal. As the appeal was barred by limitation, a petition for condonation of delay was also filed. The appellate court after hearing the appellants and considering the materials on record has come to the finding that the appellants have failed to give proper explanation for the delay in filing the appeal. It has also been found by the appellate court that no affidavit in support of the application for condonation of delay has been filed. In result, the appellate court dismissed the condonation petition and refused to admit the appeal.

5. Learned Counsel for the appellants has submitted that the appellate court below has not acted in accordance with the settled principle of law that the technicalities should not come in the way of dispensation of justice. It has been canvassed by the learned Counsel that this Court should take a liberal view of the matter and in view of the facts and circumstances remand the matter back for a fresh decision. Learned Counsel for the appellants has also placed the judgment of the trial court in order to persuade this Court that a valuable right of the appellants has been denied.

6. After perusal of the judgments and orders passed by the courts below and considering the submission it is pellucid that the plaintiffs' claim was that the entry of the name of Ram Sharan Yadav as



Sikmi Dakhalkar with regard to the suit land was erroneous. The plaintiffs have brought on record the order passed in rent execution case to show that the suit land was auction sold in the year 1945 and was purchased by Kuldeep Mahto. Further, the plaintiffs have also brought on record the sale deed dated 25.6.1963 (Ext. 1) to establish that the plaintiffs purchased back the suit land from the said auction purchaser Kuldeep Mahto. Learned Counsel for the appellants has not disputed the fact, as apparent from the judgment of the trial court, that the present appellants as defendants in the suit did not lead oral or documentary evidence in support of their case. In that view of the matter, there is no illegality in the finding by the trial court that Ram Sharan Yadav did not acquire any Sikmi right to the suit land and the entry in the municipal survey records showing him as Sikmi Dakhalkar is not correct. Further, the appellate court below after considering the averments made in the limitation petition has come to the conclusion that no proper explanation for the delay has been furnished by the appellants. It has been categorically recorded that the explanation has been given in a very “casual manner” and no affidavit has been filed in support of the submission made in the application for condonation of delay. In view of the recent pronouncement of law by the Apex Court in the case of Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy & ors., 2014 (1) PLJR 290 (SC) deprecating the casual manner in filing the limitation petition, this Court does not find any error in the order of the learned court below rejecting the prayer for condonation of delay and not admitting the appeal for the said reason as barred by limitation.

7. This Court has not been persuaded to align with the

submission made on behalf of the appellants that a liberal approach should have been taken and the matter be remanded to the court below for fresh hearing.

8. 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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