

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.159 of 2013

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1.Ram Briksh Pandit, Son of Late Jai Ram Prasad.
2.Vijay Prasad, son of Late Jai Narain Prasad. Both are residents of village & P.O. Bara Kharauni, P.S. Behea, District- Bhojpur (Bihar).
....Plaintiffs-Appellants.....Appellants

Versus

1.Ram Nath Ray, son of Khashi Nath Ray, resident of village & P.O. Bara Kharauni, P.S. Behea, District-Bhojpur (Bihar)
.....Defendants- Respondents- Respondents 1st set
2. Surendra Prasad, son of Late Jai Ram Prasad.
3.Birendra Prasad, son of Late Jai Ram Prasad
4. Gauri Shankar Prasad, son of Late Jai Narain Prasad
5. Lal Mohar Prasad, son of Ramashray Prasad
Sl. No. 2 to 5 are resident of village & P.O. Bara Kharauni, P.S. Behea, District-Bhojpur (Bihar)
.Plaintiffs- Appellants- Pro Forma respondents 2nd set.
6. The State of Bihar through the Collector, Bhojpur, Arrah, district-Bhojpur (Bihar)
.....Defendants – Respondents- Respondents 3rd set.

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Appearance :

For the Appellant/s : Mr. Ashok Kumar, Adv.
For the Respondent No.1 : Mr. Ramadhar Singh, Adv.
For the Respondent Nos. 5 & 6 : Mr. Anish Chandra Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-03-2015

Heard Mr. Ashok Kumar, learned counsel for the appellants. The learned counsel for the respondents are also present.

The plaintiffs are the appellants in this appeal against the judgment and decree dismissing the suit.

The plaintiffs filed the suit for declaration of their customary right, prescriptive right and the right of easement by necessity for cutting the soil over the suit land. It is the case of the plaintiffs that they have been exercising their right of cutting the soil



from the suit land for the use in their traditional profession of making earthen pots and tiles. The defendant no. 1 has restrained them from cutting the soil and, therefore, they have filed the suit. The defendant no. 1 resisted the claim of the plaintiffs and has asserted that by the decree passed in the title suit against the State of Bihar in whose name the suit land has been recorded, the defendant no. 1's title and possession on the suit land has been affirmed.

The trial court after, considering the pleading and evidence of the parties, returned the findings on the issues against the plaintiffs. The appellate court, on reappraisal of evidence, concurred with the findings of the trial court and dismissed the appeal.

Mr. Kumar, the learned counsel appearing for the appellants has submitted that both the courts below have wrongly discarded the oral evidence on behalf of the plaintiffs and thereafter non suited the plaintiffs. It has been contended that the plaintiffs' case of acquisition of the rights by custom, prescription and easement of necessity has been well established, but both the courts below have overlooked the same by giving undue emphasis on the decree obtained by the defendant no. 1 in the title suit.

After perusing the impugned judgments of both the courts below and considering the submissions, it is limpid that the plaintiffs have filed the suit claiming their customary right, prescriptive right and the right of easement by necessity over the suit

land for cutting the soil for use for their traditional business. Except the oral evidence of the plaintiffs themselves no other evidence has been adduced on behalf of the plaintiffs. In their deposition, the plaintiffs have accepted that they have discontinued cutting the soil from the suit land for the last 10-15 years as the defendant restrained them from doing so. The courts below have taken into notice the decree obtained by the defendant no. 1 against the State of Bihar for the suit land Title Appeal No. 82 of 1993 but no relief has been claimed by the plaintiffs against the aforesaid judgment and decree in favour of the defendant no. 1 even when admittedly, the suit land had been recorded in the name of State of Bihar. The findings recorded by both the courts below are on the basis of appraisal of evidence and this Court has not been persuaded to find any perversity or unreasonableness in the same in any manner.

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

(V. Nath, J.)

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