

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.335 of 2013

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1. Dhurub Narayan Singh @ Dhrup Singh, son of Balmiki Singh
 2. Umesh Singh, son of Daib Dayal Singh
Both residents of Village Mahuli, P.S. Ara Muffasil, District Bhojpur
..... Defendants..... Respondents

.... Appellants

Versus

1. Gauri Nandan Singh, son of Late Shyam Bihari Singh, residents of Village Mahuli, P.S. Ara Muffasil, District BhojpurPlaintiff....Appellant
..... Respondent 1st Set
2. Ram Jhari Kuer, wife of Late Sudershan Singh
3. Binod Singh
4. Hari Krishan Singh
5. Ajay Singh, all sons of Late Sudershan Singh
6. Kalawati Kuer, wife of Jadu Nandan Thakur
7. Bijendra Thakur @ Birendra Thakur
8. Nagendra Thakur, all sons of Yadu Nandan Thakur
9. Gita Kumar, wife of Late Yogendra Thakur
10. Dharmendra Thakur
11. Vikash Thakur, both sons of Late Yogendra Thakur
12. Gayatri Devi, daughter of Baleshwar Singh
13. Arun Kumar Singh, son of Balmiki Singh
14. Sumitra Devi, wife of Daib Dayal Singh
15. Diwaker Singh
16. Prabhakar Singh
17. Sudhaker Singh, all sons of Daib Dayal Singh
18. Kanti Devi
19. Draupati Devi, both daughters of Daib Dayal Singh
20. Shanti Kumar, wife of Anirudh Singh
21. Rinku Singh
22. Dharmendra Singh, both sons of Late Anirudh Singh
23. Bhairo Singh, son of Vim Singh
24. Kumar Sunil Singh, son of Vim Singh
25. Name not known, daughter of Bhim Singh
26. Shiv Rato Kunwar, wife of Ratendra Singh
27. Paduman Singh
28. Rajesh Singh, both sons of Late Rajendra Singh
29. Sri Kishan Singh, son of Rajeshwari Singh
30. Viveka Nand Singh
31. Markandey Singh, both sons of Uma Nath Singh, all residents of Village Mahuli, P.S. Ara Muffasil, District Bhojpur
32. The State of Bihar through the Collector, Bhojpur, Bihar
DefendantsRespondents Respondent 2nd Set

.... Respondents

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Appearance :

For the Appellant/s : Mr. JITENDRA PRASAD SINGH
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-09-2015

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

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of reversal granting decree to the plaintiff.

3. The plaintiff filed the suit for declaration of his title over the suit land as mentioned in the Schedule of the plaint and for declaration that the survey entry in the name of the defendants with regard to the suit land is wrong and illegal.

4. The plaintiff has based his case of title over the suit land on settlement by the ex-landlord in the year Fasli 1340 and in support of the said claim has produced the settlement receipt granted by the ex-landlord (Ext. 7) and other rent receipt by the ex-landlord. The plaintiff has also produced the certified copy of the Register II (Ext. 9) on the basis of which the appellate court below has come to the conclusion that after settlement of the land, return in favour of the plaintiff for the suit land was filed and Register II was prepared. The plaintiff has also filed the rent receipts granted by the State of Bihar to him.

5. The defendants' witnesses including the defendants themselves in their deposition have accepted that the suit land is not in their possession and the appellate court below has also taken into notice and mentioned the paragraphs of the deposition of the defendants' witnesses stating that the suit land is not in physical possession of the



defendants. During the course of submission, learned Counsel for the appellants has accepted that the present appellant No. 1 was examined as D.W. 2 in the suit. The deposition of the said D.W. 2 has also been taken into notice by the appellate court below with reference to the paragraphs wherein he has accepted that the suit land is not in his possession. It appears that after scrutiny of the evidence of the parties the findings have been recorded by the appellate court below that the plaintiff has succeeded in establishing his title over the suit land.

6. Mr. Singh, learned Counsel appearing for the appellants, has submitted that the appellate court below has not considered the pleadings as well as the material evidence on behalf of the defendant-appellants. It has been submitted that the case of the defendants is that the suit land was settled with their ancestors by the ex-landlord and on that basis they have come in possession and the survey entry in their name is there. It has been canvassed that the said fact has not at all been considered by the appellate court below. It has also been submitted that the material evidence of the defendant-appellants has been ignored by the appellate court below while setting aside the judgment of the trial court.

7. After perusal of the judgments of both the courts below and considering the submissions, it is apparent that the defendant-appellant no. 1 in his deposition has accepted that the suit land is not in his physical possession. The same statement has been made by a number of witnesses examined on his behalf. In view of the said fact, even if the case of settlement of the defendants is conceded, in view of the admitted fact that the defendant-appellants are not in possession, it would lead them to

nowhere. The appellate court below has also taken into notice that the different plots have been carved out of C.S. plot No. 1291 and thereafter has come to the conclusion that the plaintiff has got title and possession over the suit land.

8. From the perusal of the memo of appeal as well as the judgments of both the courts below, it does not appear that the appellants have anywhere stated their claim on the suit land on the basis of settlement from the ex-landlord by their predecessor. Neither the trial court or the appellant court nor the grounds taken in the memo of appeal advert to the same. It is, therefore, difficult at the second appellate stage to consider the said submission.

9. During the course of submission, this Court has not been persuaded to find any unreasonableness or perversity in any manner in the impugned judgment of the appellate court below.

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

(V. Nath, J.)

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