

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.237 of 2013

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1. BARMESHWAR PATHAK Son of Late Sarju Pathak Resident of Village-Mahadah, P.S.-Buxar, (Mufasil), District-Buxar.

.... Appellant/s

Versus

1. Sri Niwas Pathak Son of Late Yamuna Pathak Resident Village-Mahadah, P.S.-Buxar, (Mufasil), Distt.-Buxar.
2. Bishwambhar Upadhyay Son of Budhan Upadhyay Resident of Village-Ahirauli, P.S.-Buxar (Industrial), District-Buxar.
3. Santosh Kumar Upadhyay Son of Budhan Upadhyay Resident of Village-Ahirauli, P.S.-Buxar (Industrial), District-Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gopal Swaroop Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 22-04-2015 Heard Mr. Kamal Nayan Choubey, learned senior counsel
appearing on behalf of the appellant.

The appellant in this second appeal is the plaintiff in the suit and assails the judgment and decree of affirmance passed by the Appellate Court below.

In view of the pleadings of the parties, the crucial issue in the suit was as to whether Kamla Devi was the daughter of Ramdasi and Sidhnath Pathak or is daughter of Nathun Pathak. The plaintiff filed the suit for declaration that Kamla Devi was not the daughter of Ramdasi and Sidhnath Pathak and further relief was also prayed for declaring that the order passed by the mutation authorities and consolidation authorities in favour of the

defendants, was illegal.

Both the courts below after scrutiny of the pleadings and evidence of the parties, have come to a concurrent finding of fact that Kamla Devi was the daughter of Ramdasi and Sidhnath Pathak. From perusal of the judgments of the courts below, it is transparent that this finding has been recorded by the Courts below after the scrutiny of evidence on record and this finding appears to be reasonable and not perverse in any manner. During the course of submission also, the learned senior counsel on behalf of the appellant could not persuade this Court to take the view that this finding could not have been recorded on the basis of the evidence on record.

The learned senior counsel, however, has made the submission that both the courts below should have independently considered the second relief with regard to the legalities and validity of the order passed by the mutation authorities. This Court does not find force in this submission inasmuch as the second relief with regard to the legality of the orders passed by the revenue authorities and consolidation authorities was manifestly in the nature of consequential relief and dependant upon the grant of the main relief. Once it has been held that the plaintiff was not entitled to declaration that Kamla Devi was not the daughter of

Ramdasi and Sidhnath Pathak, there was no scope and occasion for the courts below to hold the orders passed by the mutation authorities and consolidation authorities in the name of defendant to be illegal. Moreover, both the courts below have considered the orders passed by the mutation authorities and revenue authorities in detail and thereafter have also come to the finding that the said orders are not illegal.

In view of the aforesaid discussions, this Court does not find any substantial question of law arising in this appeal. This appeal is accordingly dismissed.

(V. Nath, J)

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