

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.212 of 2005

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Sunil Kumar son of late Doman Sah, resident of Janaki Sah Lane, Mundichak,
Police station-Kotwali, District-Bhagalpur.

.... Appellant/s

Versus

The State of Bihar through Collector, Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar Bhaskar

Mr. Sanjay Kumar Jha

Mr. Abhay Kumar Roy

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-07-2015

Heard Mr. Ram Suresh Roy, the learned senior
counsel appearing on behalf of the appellant and Mr. Kundan Bahadur
Singh, the learned counsel appearing on behalf of the respondent no.
5-The State of Bihar. It will be seemly to notice here that the names of
respondent nos. 1 to 4 were expunged from the memo of appeal by
earlier order dated 22.07.2015.

This appeal has been admitted for hearing on the
substantial question of law as to whether the judgment and decree
passed by the appellate court below can be sustained when even after



taking into notice that the order in C.W.J.C. No. 2237/1985 was passed on 08.07.1985 by this Court, the appellate court below has proceeded to uphold the order of cancellation of the settlement in favour of the plaintiff passed on 08.06.1985 on the ground that the cancellation had been done on the basis of the direction of this Court in C.W.J.C. No. 2237/1985?

The plaintiff is the appellant in this second appeal against the judgment and decree of reversal.

The suit was filed by the plaintiff for declaration that the memo no. 176 dated 20.02.1986 issued by the Secretary Bazar Sameeti was void, illegal and ultra vires and also for a decree in favour of the plaintiff for compensation for the amount of Rs. 30,000/- and alternatively adjustment of the above amount in the settlement of Dhandhanian Patti, Bazar in the name of the plaintiff for the year 1986-87.

The fact is not in dispute between the parties that the plaintiff was a settler (Bazar Shulk Sankalan Avikarta) of Dhandhanian patti, Bazar Sabour, Bhagalpur which was settled with him for the year 1985-86 as he was the highest bidder. Subsequently, however, by office order dated 08.06.1985 (Ext. 12), the said settlement with the plaintiff was cancelled. After cancellation the defendant/market committee came out with the notice for fresh

settlement of the said hat on 20.02.1986. According to the plaintiff, the entire action of the defendant in cancelling the settlement of the plaintiff was illegal and unjustified. The plaintiff filed the suit for the aforesaid relief on these basic facts.

The defendants appeared and contested the case and assertions of the plaintiff.

The trial court, after scrutiny of the pleadings and evidence of the parties, returned the finding that the cancellation of the settlement of the hat in question was illegal and unjustified. The suit was decreed holding that the defendant are liable to pay the compensation to the plaintiff for the whole settlement period of 1985/86 as per the claim of the plaintiff. The defendants/market committee filed appeal questioning the judgment and decree passed by the trial court in favour of the plaintiff. The appellate court allowed the defendant to lead additional evidence by way of Ext. B which was the order dated 08.07.1985 passed by this Court in C.W.J.C. No. 2237 of 1985. Thereafter on reappraisal of the evidence on record the appellate court below came to the finding that the cancellation of the settlement of the plaintiff by the office order dated 08.06.1985 (Ext. 12) was done upon the direction of the High Court in C.W.J.C. No. 2237 of 1985. Accordingly, the appeal was allowed and the judgment and decree passed in favour of the plaintiff by the trial court was set

aside. The present second appeal has been filed by the plaintiff and has been admitted for hearing on the above mentioned substantial question of law.

It would be pertinent to mention here that upon the request by the learned counsel for both the parties, the records of the C.W.J.C. No. 2237 of 1985 was earlier called for and had been also perused by the learned counsel for the parties as mentioned in the order dated 22.07.2015. Mr. Ram Suresh Rao, the learned senior counsel for the appellant has submitted on the basis of the record of the C.W.J.C. No. 2237 of 1985 that the said writ application was finally disposed of on 08.07.1985 and therefore the finding by the appellate court below that the order dated 08.06.1985 (Ext. 12) cancelling the settlement of the plaintiff purporting to be on the basis of the order passed in C.W.J.C. No. 2237 of 1985 is perverse and cannot be sustained. It has, therefore, been canvassed that the judgment and decree passed by the appellate court below is fit to be set aside and that of the trial court be upheld.

Mr. Kundan Bahadur Singh, the learned counsel for the respondent-State of Bihar has not disputed the said position as appearing for the records of the C.W.J.C. No. 2237 of 1985 and the order dated 08.07.1985 passed therein which has also been marked as Ext. B by way of additional evidence in the appellate court below. It

has been the stand of the learned counsel that the finding by the appellate court below that the order of cancellation of settlement of Hat with the plaintiff was passed on the basis of the order of the High Court is indefensible.

After considering the submissions, the judgments of both the courts below as well as the materials on record, it is evident that the plaintiff was the settllee of the hat in question for the purpose of collection of rent for the year 1985/86 on the basis of being the highest bidder. The order of cancellation of settlement (Ext. 12) was passed on 08.06.1985. The writ application i.e. C.W.J.C. No. 2235 of 1985 has admittedly been disposed of by order dated 08.07.1985, evidently after a month of the passing of the order dated 08.06.1985. In this view of the matter, the conclusion by the appellate court that the order of cancellation dated 08.06.1985 (Ext. 12) was passed on the basis of the order passed in C.W.J.C. No. 2237 of 1985 is clearly perverse and cannot be sustained. As the appellate court below has proceeded to allow the appeal on the basis of this finding alone, the judgment and decree passed by the trial court in favour of the plaintiff is fit to be upheld. No other submission has been made either by the leaned senior counsel for the appellant or the learned counsel for the respondent.

For the aforesaid reasons and discussions, the

substantial question of law as framed in this appeal is decided in favour of the plaintiff-appellant. This appeal is accordingly allowed. The impugned judgment and decree passed by the appellate court below is set aside and the decree passed in favour of the plaintiff by the trial court is upheld. In the facts and circumstances of the case there shall be no order as to costs.

Devendra/-

(V. Nath, J)

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