

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.513 of 2012**

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1. Babli Thakur @ Babali Thakur W/O Late Brahmdeo Thakur.
  2. Santosh Kumar Thakur S/O Late Brahmdeo Thakur.
  3. Asha Devi D/O Late Brahmdeo Thakur.
  4. Usha Devi D/O Late Brahmdeo Thakur.
  5. Anusa Devi D/O Late Brahmdeo Thakur.
  6. Manju Devi D/O Late Brahmdeo Thakur.
  7. Sulekha Devi D/O Late Brahmdeo Thakur all Residents of Village- Balua, Deorhi, Police Station- Palashi, District- Araria.
  8. Ashok Kumar Thakur S/O Late Maheshwar Pd. Thakur.
  9. Lalita Kumari D/O Late Maheshwar Pd. Thakur.
  10. Neera Kumari D/O Late Maheshwar Pd. Thakur.
  11. Bibha Kumari D/O Late Maheshwar Pd. Thakur.
  12. Lata Kumari D/O Late Maheshwar Pd. Thakur all Residents of Balua Deorhi, Police Station- Palasi, District- Araria.

.... .... Appellant/s

Versus

1. Chandeshwar Pd. Thakur S/O Late Tarni Thakur.
2. Jugeshwar Prasad Thakur S/O Late Tarni Thakur.
3. Hardeshwar Pd. Thakur S/O Late Tarni Thakur.
4. Parmeshwar Prasad Thakur S/O Late Tarni Thakur.
5. Gorachni Devi D/O Late Tarni Thakur.
6. Gita Devi D/O Late Tarni Thakur all Residents of Balua Deorhi, Police Station- Palasi, District- Araria.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 18-03-2015**

Heard Mr. S.S. Dwivedi, the learned senior counsel

appearing on behalf of the appellants.

The defendants are the appellants in this second appeal against the judgment and decree of affirmance.

The suit has been filed by the plaintiffs for declaration of their title over the suit land and for confirmation of possession with further relief for declaration that the survey entry for the suit land in the name of the defendants is wrong and without any basis.

The plaintiffs have claimed the suit land to be their ancestral land and have asserted their exclusive possession over the same. It is the case of the plaintiffs that the defendants have wrongly and in collusion with the survey authority got the suit land recorded in their names. The defendants have contested the claim of the plaintiffs denying the assertions of the plaintiffs that the suit land is their ancestral land. It is the case of the defendants that the suit land is their 'kaimi' land and has been rightly recorded in their names by the survey authorities in view of their physical possession over the same.

The trial court, in view of the pleadings of the parties, framed issues out of which the material issues related to the title and possession of the plaintiffs over the suit land and the correctness of the recent survey khatian of the suit land prepared in the names of the defendants. After scrutinizing the evidence of the parties, the trial court returned the findings on the issues in favour of the plaintiffs and

decreed the suit. In appeal, the appellate court, after reappraisal of the evidence, affirmed the findings of the trial court and dismissed the appeal.

Assailing the judgment and decree of the courts below, the learned senior counsel for the appellants has submitted that both the courts below have erred in concluding that the plaintiffs have got title and possession over the land as their ancestral land. It has been canvassed that the plaintiffs have not disclosed the crucial fact showing the suit land to be their ancestral land and have also not adduced cogent evidence to establish the said fact. It has further been submitted that the suit was barred by limitation which started running from the date of publication of the survey khatiyān. The learned senior counsel has further also argued that both the courts below have not recorded the finding whether the suit was barred by the provisions of the Consolidation Act though specific issues in that regard was framed.

From the perusal of the judgments of both the courts below and after considering the submissions on behalf of the appellants, it is pellucid that the plaintiffs have claimed the title and possession over the suit land with specific pleading that the suit land is their ancestral land which has been coming in their continuous possession. It is admitted case of the parties that the suit land initially belonged to Most. Darso Thakurain in whose name the cadastral survey khatiyān



(Ext. 2) was prepared. It has been further also admitted that Most. Darso Thakurain died issueless and after her death her 'Dewar' Ram Prasad Thakur came in possession over the suit land by succession. Both the courts below, on the basis of the evidence (Exts. 4, 5 and 6), have recorded the finding that the father of the plaintiffs was the co sharer of Ram Prasad Thakur by decree of partition in T.S. No. 773 of 1959 wherein the suit land was allotted in favour of the father of the plaintiffs. The defendants, on the other hand, have not led any evidence to support the entry of the suit land in their names in the recent survey khatian. Both the court below have further also found after scrutiny of evidence that the plaintiffs are in possession over the suit property. The findings recorded by the courts below are reasonable and based on evidence and this Court has not been persuaded to find perversity in any manner in the same. The re-appreciation of evidence cannot be done at the second appellate stage in order to interdict the concurrent finding of facts unless the findings are shown to be perverse.

So far as the submission with regard to the bar of the suit land by limitation is concerned, it is well settled that the entry in the survey khatian cannot be the starting point of limitation as the same does not create or extinguish the title over the suit land. The principle in this regard has been well laid by the Apex Court in the case

of **Daya Singh Vs. Gurdev Singh 2010 (2) SCC 194**. Further it is manifest from the judgment of the trial court that the issue no. 3 with regard to the bar of the suit under Section 4 (C) of the Bihar Consolidation of Holdings and Prevention of Fragmentation, Act has not been pressed and therefore there was no determination by the court of that issue. From the judgments of both the courts below also it does not transpires that any evidence in this regard has been led on behalf of the appellants to support their contention that the provisions of Section 4 of the said Act was attracted. No evidence in this regard has been pointed out to support the contention that the suit was barred or ought to have been abated under the provision of Section 4 of the said Act.

For the aforesaid premised reasons and discussions, this Court does not find any substantial questions of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Devendra/-

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