

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.477 of 2009



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1. Bhanu Mati Devi wife of late Bhubneshwar Yadav.
 2. Bimleshwar Yadav son of late Bhubneshwar yadav, both resident of village-Nonia, P.S. Chandan, District-Banka.
 3. Basanti Devi, daughter of late Bhubneshwar Yadav and wife of Sri Surendra Pd. Yadav of village-Kamdeodih, P.O. Kamdeodih, P.S. Katoriya, District-Banka.
 4. Manju Devi daughter of late Bhubneshwar Yadav and wife of Sri Naresh Yadav of village-Dinojpur (Laraiya), P.O. Maniyarpur, P.S. Devipur, District-deoghar.
 5. Sarita devi daughter of late Bhubneshwar Yadav and wife of Sri Subhash Yadav of village and P.O. Kamdeodih, P.S. Katoriya, District-Banka.

.... Appellant/s

Versus

1. Lalji Mahto son of Lachhu Mahto.
2. Ram Lal Yadav son of late Saini Yadav.
3. Kamdeo Yadav son of late Saini Yadav, all resident of village-Nonia, P.O. Bhairoganj, P.S. Chandan, District-Banka.
4. Chandra Wati Devi daughter of late Saini Yadav, and wife of Chaturbhuj Yadav of village-Biharo P.O. Bhora Badar, P.S. Chandan, District-Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasade Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

7 28-09-2015 Heard the learned counsel for the appellants in support of this appeal.

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

The plaintiffs filed the suit for declaration of their title and confirmation of possession over the suit property described in detail in the plaint. The plaintiffs have claimed their title over the suit land on the basis of two sale deeds dated 26.06.1964 executed by Shashi Mohan Thakur on behalf of his wife Smt. Anand Kishori Devi as her power of attorney holder. The defendants have contested the claim of the plaintiffs by denying the title of Smt. Anand Kishori Devi over the suit land and have claimed their own title over the part of the suit land on the basis of settlement through Hukumnama by the ex landlord. The spinal issue between the parties to the suit was the title of Smt. Anand Kishori Devi over the suit land and acquisition of valid title and possession over the same by the plaintiffs on the basis of the two sale deeds executed by the husband of Smt. Anand Kishori Devi as her power of attorney holder. The trial court returned the findings in favour of the plaintiffs and decreed the suit declaring the title and possession of the plaintiffs over the suit land. In appeal, by the defendants, the appellate court below, on reappraisal of evidence, has reversed the findings of the trial court in favour of the plaintiffs, allowed the appeal and set aside the judgment and decree passed by the trial court by the impugned judgment and decree.



The learned counsel appearing on behalf of the appellants has submitted that the appellate court below while reversing the findings of the trial court has failed to appreciate the reasons assigned by the trial court. It has been canvassed that in view of the cases of the parties, there was, in fact, no dispute with regard to the title of Smt. Anand Kishori Devi over the suit land and the only dispute was with regard to the return submitted in her name with regard to the suit land but the appellate court below has wrongly proceeded to investigate the title of Smt. Anand Kishori Devi and after reaching to a contrary finding has wrongly non-suited the plaintiffs. It has also been argued that the appellate court below has further committed error in law in non-suiting the plaintiffs once after it has disbelieved the case of the defendants regarding acquisition of title over the part of the suit land. It has also been canvassed that the appellate court below has misconceived the entire dispute which has converged only to the point as to whether the return submitted in the name of Smt. Anand Kishori Devi was with regard to the suit land. It has thus been argued that the substantial question of law is arising for consideration in this appeal.

After perusal of the judgments of both the courts below and considering the submissions on behalf of the

appellants, it is pellucid that the suit property was originally recorded in the cadastral survey khatian in khata no. 60 in the name of Gairmazarua Mokarirdar Babu Keshav Mohan Thakur. Smt. Anand Kishori Devi was the daughter-in-law of Babu Keshav Mohan Thakur. There is no pleading by the plaintiffs regarding the manner and mode through which Smt. Anand Kishori Devi acquired the title over the suit land from Babu Keshav Mohan Thakur and the only pleading in this regard by the plaintiffs was that Smt. Anand Kishori Devi was a raiyat of the land of khata no. 60 and so the return was submitted in her name. The submission on behalf of the appellants in this regard, which has also been made before the appellate court below, that the filing of the return in the name of Smt. Anand Kishori Devi would lead to the presumption of settlement of the said land in her favour by Babu Keshav Mohan Thakur has rightly been repelled by the appellate court below as no such presumption can be raised only on the basis of the return and more so in absence of cogent pleadings in this regard. It has also been taken into notice by the appellate court below that Babu Keshav Mohan Thakur had himself made settlement of part of the lands of khata no. 60 to one Jai Prakash Sahu through registered Kabuliyatnama in the year 1947. There is also no evidence on behalf of the plaintiffs that

Smt. Anand Kishori Devi had ever paid rent to the ex landlord after acquiring the raiyati right over the lands of khata no. 60 including the suit land nor there is any evidence that the rent was paid by her to the State of Bihar for the suit land. Though the plaintiffs on the basis of deposition of some of their witnesses have tried to develop the case of settlement of the suit land in favour of Smt. Anand Kishori Devi but the same could not have been looked into evidence in absence of necessary pleadings. Moreover, this case of settlement is also belied by the statement in deposition by P.W.-14 who is son of Smt. Anand Kishori Devi when he has denied such settlement in favour of Smt. Anand Kishori Devi and instead has stated that the suit land was given to his mother Smt. Anand Kishori Devi by her father-in-law Babu Keshav Mohan Thakur by way of oral gift at the time of marriage but no document was prepared for the same. In this backdrop, this Court is not inclined to align with the submission on behalf of the appellants that the title of Smt. Anand Kishori Devi over the suit land can be upheld only on the basis of the return submitted by the ex landlord in her name. A return submitted by the ex landlord cannot be a document or basis of title of a person for the land in absence of the case of acquisition of title over the same by any of the legal modes and corroborated by cogent evidence. The over

emphasis on the return and Jamabandi created on that basis in the name of their vendor will not alone be sufficient to grant the declaration of their title and possession over the suit land. The failure of the defendants in establishing their own title as pleaded will also not enure to the benefit of the plaintiffs for getting the above declarations.

The appellate court below has further also considered and scanned in detail the findings of the trial court and has recorded its disagreement on the basis of cogent reasons. This Court has not been persuaded to find perversity or unreasonableness in any manner in the findings recorded by the appellate court below.

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

(V. Nath, J)

Devendra/-

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