

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.71 of 2011

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Anant Bihari Jha, son of Late Hare Kant Jha, resident of village Pachahi Machhaita,
P.S. Sakatpur, District Darbhanga

..... Defendant Appellant

.... Appellant

Versus

1. Ram Bihari Jha, son of Late Hare Kant Jha, resident of Village Pachahi
Machhaita, P.S. Sakatpur, District Darbhanga

2(a) Smt. Bimula Saraswati, wife of Dr. Dharendra Narayan Saraswati

2(b). Pankaj Saraswati, son of Dr. Dharendra Narayan Saraswati

2(c). Pawan Saraswati, son of Dr. Dharendra Narayan Saraswati

2(d). Rani Devi, daughter of Dr. Dharendra Narayan Saraswati

2(e). Anju Devi, daughter of Dr. Dharendra Narayan Saraswati

3. Arun Kumar Jha

4. Sudhir kumar Jha

Both sons of Anant Bihari Jha, all resident of Village Pachahi Machhaita, P.S.
Sakatpur, District Darbhanga

..... Defendants Respondents

.... Respondents

Appearance :

For the Appellant/s : Mr. MADHURA NAND JHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-06-2015

Heard learned Counsel for the appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of affirmance, whereby the suit filed by the plaintiff
has been decreed in part with regard to 3 Katha of land of C.S. Plot No.
188.

3. The plaintiff filed the suit for declaration of his title over the
suit land and for declaration that the order passed by the survey authority
for the suit land against the plaintiff was wrong. In the plaint the total area
of the suit land is 9 Katha of C.S. Plot no. 188 and according to the case
of the plaintiff 6 Katha land out of that as recorded in R.S. Plot no. 201
was agricultural land which was settled with the plaintiff by the ex-

landlord. The remaining 3 Katha of the suit land which is residential area as recorded in R.S. Plot Nos. 196 and 197 has been claimed by the plaintiff on the basis of his possession after partition with the defendant no. 1 with the case that the total 6 Katha residential area was settled with their father by the ex-landlord.

4. The defendant-appellant contested the claim of the plaintiff and has come out with the case of his own title and possession over the suit land on the basis of the case of adoption as karta putra by the ex-landlord and the Ataynama said to have been executed by the ex-landlady in his favour for suit land.

5. The intervener-defendant has also come out with the case of his own title over the suit land and denied the claim of both the plaintiff and defendant-appellant.

6. The trial court after considering the pleadings and evidence returned the finding that the plaintiff failed to establish his claim over 6 Katha of agricultural land by settlement. However, it further reached to the finding that the plaintiff had succeeded in substantiating his title and possession over 3 Katha of residential plot. The judgment and decree of the trial court was assailed in appeal by the defendant-appellant, wherein a cross objection was also filed by the plaintiff with regard to the dismissal of the suit for the 6 Katha of agricultural land. The intervener-defendant also filed his own appeal.

7. The appellate court, on reappraisal of the evidence on record, has concurred with the findings of the trial court and dismissed both the appeals as well as the cross objection by the impugned judgment and decree.

8. It would be pertinent to mention here that on the earlier



date of hearing of this appeal, the learned Counsel for the appellant had submitted that S.A. No. 64 of 2011 had been filed by the plaintiff against the same judgment and decree and was still pending. Accordingly this appeal was directed to be placed with the said S.A. No. 64 of 2011. However, the office has reported that the S.A. No. 64 of 2011 had already been dismissed for default on 19.3.2012. Accordingly this appeal has been placed for hearing under Order 41 Rule 11 CPC.

9. Learned Counsel for the appellant in his submission has canvassed that the plaintiff has admitted the title of the appellant on the basis of 'Ataynama' and has made averments in this regard in the plaint but both the courts below have not considered the admission of the plaintiff in correct perspective and therefore their judgments have become vulnerable. It has also been submitted by the learned Counsel that the courts below have not properly considered the material evidence on record particularly the 'Ataynama' (Ext. M) which is in favour of the defendant-appellant.

10. After perusal of the judgments of both the court below and consideration of the submissions on behalf of the appellants, it is pellucid that the plaintiff's suit has been decreed in part only with regard to 3 Katha of the residential area. From the judgments of both the courts below it is manifest that the courts have taken into notice the deposition of the witnesses examined on behalf of the defendant-appellant as well as the other parties and has further also taken into notice the documentary evidence brought on record as evidence on behalf of the parties. The finding of exclusive possession of the plaintiff continuously over 3 Katha of land has been recorded after analysis of those evidence. It is manifest that the suit plot i.e. 3 Katha of R.S. Plot No. 196 and 197

(residential area) and 6 Katha of R.S. Plot no. 201 (agricultural area) have been carved out of C.S. Plot No. 188. The defendant – appellant in his written statement has stated that the ex-landlord had executed Samarpannama dated 5.1.1940 (Ext. L) in favour of deity for her right and interest in Tauji No. 8583 and a deed of gift (Ataynama) in his favour. Both the Courts have found that the C.S. Plot no. 188 (out of which the suit plots have been carved out) is not mentioned in Ataynama (Ext. M). It has been categorically found by the appellate court below that C.S. Plot no. 188 is included in Tauji No. 8583 and by filing additional written statement, the defendant-appellant has given a go by to his claim on the basis of Kartaputra and has confined his claim over the suit land only as shebait. Moreover, both the courts have also found that the witnesses of the defendant – appellant have accepted the possession of the plaintiff over his house over 3 Katha land and the same has also been corroborated by the report of the Pleader Commissioner (Ext. 3) as well as information petition (Ext. 2). This Court has not been persuaded, during the course of submission that the finding of title and possession of the plaintiff over the 3 Katha (residential area) is perverse or unreasonable in any manner. In fact, the submission on behalf of the appellant has centered around reappraisal of evidence on the basis that another view is possible but the said course is not available to the appellant at the second appellate stage.

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

Snkumar/-

(V. Nath, J)

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