

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.21 of 2011

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1. Sanjay Kumar Gupta, son of Late Fagu Sah
2. Sarda Nand Ram, son of Ramdeo Ram
.....Defendant 2nd set ---- Appellants
3. Dinesh Ram, son of Shankar Dayal Ram
All residents of Village & PS Charpokhri, District Bhojpur.
..... Defendants 2nd set Respondent 3rd set.
..... Appellants
- Versus
1. Tetari Devi, wife of Ramayan Sharma, residents of Village & PS Charpokhri, District Bhojpur
..... Defendant 2nd Set Respondent 3rd set
2. Most.Sanmukha Kuer, wife of Late Mangal Kumhar
3. Manik Chand Pandit
4. Nirmal Pandit, both sons of Late Mangal Kumhar
5. Lila Devi
6. Girija Devi, both daughters of Late mangal Kumhar
..... All residents of Village & PS Charpokhri, District Bhojpur
..... Plaintiff Respondent 1st Set
7. Bihar Sarkar, through Samaharta, Bhojpur
8. Anchal Adhikari, Charpokhri, District Bhojpur
..... Defendants 1st set Respondent 2nd set
9. Sri Ram Jee Ram, son of Asharfi Ram
..... Defendant 2nd set Respondent 3rd set
10. Mandodri Devi alias Satyendri Devi, wife of Ujagir Sah
11. Most Mandodari Kuer, wife of Late Fagu Sah
12. Sri Ram Sah, son of Late Fagu Sah
13. Usha Kuer
14. Anju Devi
15. Manju Kumari, all daughters of Late Fagu Sah
16. Raj Kishore Sharma, son of Ram Dayal Sharma
..... Defendant 2nd set Appellants
17. Amrendra Ram, son of jagdeo Ram
18. Rameshear Ram, son of Shankar Dayal Ram
19. Birija Nand Ram, son of Ramanand Ram
20. Tara Muni, wife of manshi Ram
..... Defendant 2nd set Respondent 3rd set
All respondent nos. 8 to 21 are residents of Village & PS Charpokhri, District Bhojpur
..... Respondents
- =====

Appearance :

For the Appellant/s : Mr. SANJAY KUMAR GHOSARVEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-05-2015

Heard Mr. Sanjay Kumar Ghosarvey, learned Counsel appearing for the appellants.

2. The defendants 2nd set in the suit are the appellants in this appeal assailing the judgment and decree of affirmance granting the decree to the plaintiff, as prayed.

3. The plaintiff filed a suit for declaration that the suit land never vested in the State of Bihar, which has not acquired any right, title or interest in the same and for further declaration that the State of Bihar has no right to settle the land in favour of the defendants 2nd set. The plaintiff also prayed for confirmation of his possession and for injunction restraining the defendants from interfering in possession of the plaintiff over the suit land.

4. The plaintiff impleaded the State of Bihar as defendant 1st set and the settlees from the State of Bihar were impleaded as defendants 2nd set. The defendant 1st set – State of Bihar had chosen not to contest the suit and therefore no written statement was filed. However, written statement was filed by the defendants 2nd set, who contested the suit.

5. The plaintiff has claimed the suit land on the basis of settlement from the ex landlord stating that the suit land was **Gairmazarua Malik**, as recorded in the Cadestral Survey and the ex landlord settled the same with the plaintiff in the year 1945. It was also the case of the plaintiff that return was submitted in the name of the plaintiff by the ex landlord at the time of vesting and thereafter the plaintiff's name was also entered in **Register II**. It was also the case of the plaintiff that the State of Bihar has granted rent receipts to the plaintiff after receiving rent. It was further case of the plaintiff that during recent

survey proceeding, the suit plot has been recorded in the name of State of Bihar with remark column entry showing the suit land in possession of the plaintiff. The plaintiff has also claimed that latter on in consolidation record the name of the plaintiff has been entered.

6. The defendants-2nd set, who contested the suit, came out with the case that the story of settlement as set up by the plaintiff was wrong and the land was never settled by the ex-landlord with the plaintiff. It was their further case that after vesting the State of Bihar acquired right, title and interest over the suit land and settled the same with the defendants 2nd set under the provisions of Bihar State Privileged Persons Homestead Tenancy Act, as the defendants 2nd set were landless persons. The defendants claimed possession over the suit land on the basis of purcha granted by the State of Bihar.

7. The trial court after scrutinizing the evidence led by the parties came to the finding that the plaintiff succeeded in establishing his title and possession over the suit land on the basis of settlement by the ex-landlord. The suit was decreed and thereafter the appellate court in appeal by the defendants 2nd set affirmed the finding of the trial court by the impugned judgment.

8. Mr. Ghosarvey, learned Counsel appearing for the appellants, has firstly submitted that both the courts below have not considered the material evidence led on behalf of the parties, which falsifies the case of the plaintiff of settlement. It has been canvassed that the evidence on record does not support the case of the plaintiff regarding settlement of the suit land by the ex-landlord. It has also been submitted that the suit was barred by limitation as survey records of right

was published in the year 1972, but the suit was filed after much delay. Learned Counsel has further also submitted that the suit has been undervalued by the plaintiff and correct valuation has not been paid and therefore also the judgment and decree of the trial court suffers from lack of pecuniary jurisdiction.

9. After considering the submissions and perusal of the judgments of both the court below, it is limpid that the plaintiff's claim has not been contested by the defendant 1st set, inasmuch as no written statement was also filed. The plaintiff's case that the suit land was settled with him by the ex-landlord who submitted the return in favour of the plaintiff, on the basis of which Register II has also been prepared, has been believed by the trial court after considering the report (Ext. A), by which his attempt to obtain the copy of Register II has failed. It has been found by the trial court that the defendant 1st set deliberately withheld Register II, leading to adverse inference under Section 114A of the Evidence Act. The remark column entry in the Revisional Survey Khatian showing the plaintiff to be in possession over the suit land has also been considered by the trial court besides oral evidence led on behalf of the parties. The appellate court has also taken into notice the finding recorded by the trial court on the basis of evidence including the action of the defendant 1st set in withholding Register II leading to adverse inference.

10. During the course of submission no perversity, in any manner, could be established in the findings by the courts below. The submission with regard to limitation also could not be corroborated in view of the specific pleading of the plaintiff that the suit has been filed

within three years when the cause of action arose on 25.4.1988 when the defendants interfered with the possession of the plaintiff. The further submission that the trial court lacked the pecuniary jurisdiction to try the suit also has no merit inasmuch as the trial court has framed an issue in that regard and decided the same after considering the evidence in favour of the plaintiff. Moreover, on behalf of the appellants it could not be established that any prejudice has been caused by the trial of the suit by the court of Munsif.

11. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

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