

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.168 of 2013

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1. Shri Ganesh Prasad Chaurasia Son Of Late Mahavir Modi Resident Of Village- Khas Bazar, Haveli Kharagpur, P.O. And P.S. Haveli Kharagpur, District- Munger

2. Sri Amreshwar Kumar Son Of Shri Ganesh Prasad Chaurasia Resident Of Village- Khas Bazar, Haveli Kharagpur, P.O. And P.S. Haveli Kharagpur, District- Munger

3. Shri Prashant Kumar Son Of Shri Ganesh Prasad Chaurasia Resident Of Village- Khas Bazar, Haveli Kharagpur, P.O. And P.S. Haveli Kharagpur, District- Munger

.... Appellant/s

Versus

1. The State Of Bihar Through Collector, Munger

2. Collector, Munger

3. A.D.M., Munger

4. C.O. Kharagpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Irshad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-02-2015

Heard learned Counsel for the appellants.

2. The plaintiffs are the appellants in this appeal assailing the judgment and decree of affirmance.

3. The plaintiffs claimed title over the suit land on the basis of a settlement of the ex-landlord and on that basis the suit was filed for sole relief of declaration of title. No relief either sequential or consequential with regard to possession has been prayed.

4. It is the case of the plaintiffs that Mostt. Jitanwanti Devi had taken the land in settlement from the ex-landlord. The said Mostt. Jitanwanti Devi was the predecessor in interest of the plaintiffs. The plaintiffs, in support of the acquisition of title by Mostt. Jitanwanti Devi by

settlement, have further pleaded that the ex-landlord granted the rent receipts and thereafter the State of Bihar had also granted the rent receipts.

5. The defendant State of Bihar did not appear in the suit and did not file written statement and the suit proceeded ex parte against the defendants.

6. The trial court after scrutinizing the evidence led on behalf of the plaintiffs returned the finding that the plaintiffs failed to establish the acquisition of title through settlement from the ex-landlord and dismissed the suit. In appeal, the appellate court on reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal.

7. Learned Counsel appearing for the appellants, at the outset, has submitted that as the suit proceeded under Order 8 Rule 10 CPC and there was no written statement or evidence adduced on behalf of the defendants contradicting the claim of the plaintiffs, the courts below ought to have decreed the suit. It has been further submitted that both the courts below have not considered the material evidence led on behalf of the plaintiffs and have wrongly non-suited the plaintiffs.

8. After considering the submissions and perusal of the judgments of both the courts below, it is apparent that the plaintiffs' suit for sole relief of declaration of title over the suit land was based on the settlement which their predecessor in interest, Mostt. Jitanwanti Devi, was said to have taken from the ex-landlord. Admittedly the ex-landlord did not file any return for the suit land in the name of Mostt. Jitanwanti Devi or the plaintiffs at the time of vesting of the Zamindari in accordance with the provisions of Bihar Land Reforms Act, 1950. The Register II

prepared on the basis of the return submitted by the ex-landlord has also not been brought in evidence by the plaintiffs in support of their claim that the State of Bihar legally recognized them as raiyats of the suit land. To the contrary, evidence on record has been considered by both the courts below to come to the finding that by order dated 23.12.1986 the Additional Collector cancelled the jamabandi said to have been created earlier. It has also been found that Mostt. Jitanwanti Devi had been issued notice before the order of cancellation of Jamabandi and the notice was accepted to have been validly served on her refusal.

9. The submission on the basis of the provisions of Order 8 Rule 10 CPC has also no substance as the said provision does not warrant the grant of decree to a plaintiff straightaway If the defendant fails to file written statement. The findings by both the courts below have been recorded on the basis of appreciation of the evidence on record and during the course of submission it could not be pointed out that any material evidence has been ignored. It has also not been established that the findings are unreasonable or perverse in any manner. The emphasis on reappraisal of evidence at the second appellate stage is clearly misconceived.

10. In view of the aforesaid reasons and discussions this Court does not find any substantial question of law involved in this appeal. It is accordingly dismissed.

(V. Nath, J.)

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