

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.226 of 2013

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Gupteshwar Singh Alias Guput Singh, Son Of Late Ram Janam Singh, Resident of
Village- Poswan, P.S.- Sahar, At Present Agiaon (Garahani), District- Bhojpur

.... **Appellant.**

Versus

1. The State of Bihar, through Collector, Bhojpur, Ara.
2. Anchal Adhikari, Agiaon, District-Bhojpur.
3. Gram Panchayat, Agiaon through Panchayat Sewak, Gram Panchayat, Agiaon,
P.S.- Agiaon (Garahani), District- Bhojpur

.... **Respondents.**

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-03-2015

Heard Mr. Anish Chandra Sinha, the learned counsel for
the appellant.

The plaintiff is the appellant in this appeal against the
judgment of affirmance dismissing the suit of the plaintiff.

The suit has been filed by the plaintiff firstly for
declaration that the suit land measuring 2 decimal is part of the
purchased land of the plaintiff and for confirmation of his possession
over the same. Further reliefs are for declaration that the survey entry
as 'Anabad-Sarvasadharn' with regard to the suit land has been
wrongly made and for grant of injunction against the defendants.



The factual expose' are that C.S. plot no. 1300 area 1.77 acres belonged to Kewal Mahto and Jadunandan Mahto and adjacent C.S. plot no. 1298 area 6 decimals was recorded as Garimazarua Malik land in the name of ex-landlord Gorakh Nath Singh. It is the case of the plaintiff that the ex landlord on the one hand and Kewal Mahto and Jadunandan Mahto on the other hand entered into an oral exchange whereby 3 decimals of plot no. 1298 was given by the ex landlord to Kewal Mahto and Jadunandan Mahto and in lieu thereof 3 decimals of C.S. plot no. 1300 was given to the ex landlord by the said two persons. It is further case of the plaintiff that after the vesting of Zamindari the ex landlord by registered sale deed dated 28.06.1957 sold the total 6 decimals of land to the plaintiff. The plaintiff has come before the court with the case that an area of two decimals out of his purchased land has been wrongly recorded as 'Anabad-Sarvasadharn' and has prayed for declaration that the said two decimals land is the part of his purchased land alongwith consequential reliefs.

The defendants contested the claim of the plaintiff denying the case of oral exchange as pleaded by the plaintiff. It was the case of the defendants that the suit land was in use of general public and had never been in possession of the plaintiff. The purchase by the plaintiff was also assailed as forged and fraudulent action.

Both the courts below have reached to the concurrent finding of fact that the plaintiff has failed to establish the fact as pleaded in the plaint by cogent and sufficient evidence. The suit was, therefore, dismissed and the appeal thereafter has also been dismissed by the impugned judgment and decree.

Mr. Sinha, the learned counsel for the appellant has submitted that both the courts below have erred in law in not appreciating the evidence on record particularly the deposition by the plaintiff. It has been canvassed by the learned counsel that the plaintiff in his deposition has fully supported the case as pleaded in the plaint and non-consideration of the same has vitiated the judgment of the appellate court below. No other submission has been made on behalf of the appellant.

After perusing the judgments of both the courts below and considering the submissions, it is limpid that the main issue in the suit was the case of exchange as pleaded by the plaintiff between the ex-landlord on one hand and Kewal Mahto and Jadunandan Mahto on the other for 3 decimals land of Plot No. 1298 and 1300 respectively. It has been found by both the courts below that the plaintiff has not examined Kewal Mahto and Jadunandan Mahto or their descendants in support of the case of exchange as pleaded and has also not examined his vendor to corroborate the said case. The deposition of

the three witnesses have been considered by both the courts below but found to be not trustworthy. There is also no pleading or evidence aliunde to disclose the facts mentioned in the return for the suit plot by the ex-landlord at the time of vesting. The plaintiff has also not brought on record the relevant material evidence to establish that the R.S.Plot No. 1684 (in dispute) has been carved out of C.S.Plot No. 1298 and further also that R.S. Plot No. 1684 (in dispute) has included the suit land area 2 decimals which the plaintiff has claimed to have purchased. The plaintiff in his deposition might have supported his case entirely but that alone cannot be the basis for the grant of the decree as prayed. Both the courts below have recorded the findings after the appreciation of evidence on record including the deposition of the plaintiff. This court has not been persuaded to hold the findings recorded by both the courts below to be unreasonable and perverse in any manner.

Ex consequenti, 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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