

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.55 of 2012**

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Parsan Mistry, son of Late Panna Mistry, resident of Corner of Mainy Sangat Lane and Pandit Ramdhani Tiwary Lane, P.S. Chowk Patna City, District Patna

..... Defendant ..... Appellant

.... .... Appellant

Versus

1. Umesha Nand Tiwary, son of Late Pandit Nand Kishore Lal Tiwary, resident of Corner of Mainy Sangat Lane and Pandit Ramdhani Tiwary Lane, P.S. Chowk Patna City, District Patna ..... Plaintiff ..... Respondent ..... Respondent
2. Chief Executive Officer, Patna Municipal Corporation, having its Head Office at Budh Marg, Patna, P.S. Kotwali, District Patna
3. Patna Regional Development Authority, through its Vice Chairman, Maurya Lok, Dak Bunglow Road, P.S. Kotwali, District Patna .... Defendants ..... Respondents

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**  
**ORAL ORDER**

12    06-11-2015                      Heard Mr. Naresh Chandra Verma, learned Counsel appearing for the appellant. Learned Counsel for the respondents is present.

2. The defendant is the appellant in this appeal against the judgment and decree of affirmance. The suit has been filed by the plaintiff for declaration of the right to affix the stone slab with the name of Pandit Ramdhani Tiwary, father of the plaintiff, engraved thereupon on the southern side of the municipal lane and also for permanent injunction restraining the defendant from interfering with the same.

3. The case of the plaintiff, in short, is that in the year 1944 name of the old lane was changed from Jungi Lane to Pandit

Ramdhani Tiwary lane by a resolution of the Municipal Corporation. The plaintiff, accordingly, affixed a stone slab on the direction by the municipal authorities in that regard. It was, however, the case of the plaintiff that the stone slab so affixed was later on demolished by the defendant and, therefore, the present suit was filed.

4. The defendant contested the claim of the plaintiff to affix the said stone slab by the side of his house.

5. Both the courts below have returned finding on the issue in favour of the plaintiff and granted the decree as prayed for.

6. Mr. Naresh Chandra Verma, learned Counsel appearing for the appellant, has submitted that both the courts below have failed to consider that affixing of stone slab at the place, as desired by the plaintiff, will obstruct the right of way of the defendant in his house. By placing the impugned judgment of the appellate court below, Mr. Verma has tried to elaborate his submission that the findings recorded by the courts below are vulnerable.

7. After perusal of the judgments of both the courts below and considering the submission, it is apparent that the suit has been filed by the plaintiff for affixing the stone slab with the engraving of the name of his predecessor in the municipal lane in pursuance of the resolution and upon the direction of the Municipal authorities. It further transpires from para 14 of the appellate court judgment that earlier the plaintiff had affixed the stone slab which was found to be in place on 26.4.1989 by the Pleader Commissioner, appointed for local inspection by the Court and thereafter the finding has been recorded that the said stone slab with the engravings had been demolished by

the defendant in the name of reconstruction of the front portion of his building. It has further been held by the appellate court below that the plaintiff is entitled to lay his stone with the engraving of Pandit Ramdhani Tiwary Lane towards southern side just on the flank of the municipal lane. The submission on behalf of the appellant that the affixing of the said stone will obstruct the defendant's ingress and egress to the house has no substance in absence of any pleading in this regard by the defendant. There is also no evidence aliunde on record by the defendant in this regard.

8. The right of the parties and the issues arising between them have been determined by the concurrent findings of facts by the courts below and this Court does not find any illegality or perversity with the same in any manner.

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

**(V. Nath, J.)**

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