

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.760 of 2010

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1. Ghanshyam Mandal.
 2. Ram Sevak Mandal.
 3. Ramashish Mandal.
 4. Nityanand Mandal.
 5. Ramchartira Mandal, all sons of Late Mattu Mandal, resident of village-Dighi, P.O. Sahahan, P.S. Nath Nagar, In the District of Bhagalpur.

.... Appellant/s

Versus

The State of Bihar, though Collector.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashutosh Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

7 20-08-2015 Heard Mr. Ashutosh Jha, the learned counsel for the appellants.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit.

The plaintiffs filed the suit for declaration of their title and confirmation of possession with further relief for annulling the entry in the recent survey records of rights with regard to the suit land. The plaintiffs' claim was that the suit land was settled by the ex landlord with their ancestor and since then they have been coming in possession. It is also the case of the plaintiffs that the return was filed by the ex landlord in favour of

the plaintiffs and thereafter the Jamabandi has been created by the State of Bihar in the name of the plaintiffs and the rent receipts have been granted to the plaintiffs after payment of rent. The defendant-State of Bihar did not file written statement in the suit.

The trial court, after scrutiny of the pleadings and evidence on record, returned the finding that the plaintiffs failed to establish their claim of title over the suit land. The suit was, accordingly, dismissed. In appeal, the appellate court below, on reappraisal of evidence, concurred with the findings of the trial court and has dismissed the appeal.

Mr. Jha, the learned counsel for the plaintiff-appellants, at the out set, has accepted that the rent receipts granted by the ex landlord which were direct evidence of the fact of settlement of the suit land with the plaintiffs could not be brought on record in the suit. It has further been accepted by the learned counsel that the return submitted by the ex landlord at the time of vesting of Jamindari and the Jamabandi created by the State of Bihar on that basis also could not be brought on record on behalf of the plaintiffs in the suit as the respondent-District Magistrate/Offices did not supply the certified copies of the same to the plaintiffs. It has, however, been highlighted by the learned counsel that the State of Bihar has accepted the plaintiffs to be



raiyat over the suit land by accepting the rent from the plaintiffs and granting the rent receipts. It has also been canvassed that the plaintiffs have a house over the suit land and they are continuing in peaceful possession over the same. The learned counsel, however, has accepted that no relief with regard to the possession either by way of confirmation of possession or recovery of possession has been prayed.

After perusal of the judgments of both the courts below and considering the submissions, it is lucent that the necessary and relevant documentary evidence to corroborate the case of settlement by the ex landlord of the suit land have not been brought on record by the plaintiffs. Though, the plaintiffs have claimed that the settlement was made by granting rent receipt by the ex landlord but neither the said rent receipt nor any other rent receipt could be brought on record on behalf of the plaintiffs. It also does not appear from the judgments of both the courts below that any prayer was made by the plaintiffs for calling for the relevant records from the government offices relating to the return submitted by the ex landlord or the Jamabandi/register-II created on that basis for the suit, once after the alleged refusal by the District Magistrate/Officers of the State of Bihar to grant the copies of the same to the plaintiffs. It is manifest that the oral

evidence adduced on behalf of the plaintiffs has been elaborately considered by both the courts below and the findings have been recorded after appreciation of evidence. This Court has not been persuaded to hold those findings to be unreasonable or perverse on the basis of the materials on record. Though, Mr. Jha, the learned counsel for the appellants has submitted that a liberal view should be taken as the plaintiffs' house is there over the suit land but the jurisdiction of the Court in second appeal is circumscribed by the provision as contained under Section 100 C.P.C. and there is no scope for interdicting the concurrent findings of the courts below on the basis of equity.

Ex consequenti, it is held that 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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