

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.280 of 2013

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1. Brij Kishore Bhagat @ Brij Kishore Singh Son of Late Shiv Narayan Bhagat
 2. Ram Narayan Bhagat Son of Late Motilal Bhagat
 3. Satya Narayan Bhagat Son of Late Kanhaiya Bhagat
 4. Vijay Mal Bhagat
 5. Nageshwar Bhagat Both sons of Late Mishrilal Bhagat
 6. Raj Kumar Bhagat Son of Late Bikarma Bhagat
 7. Parsuram Bhagat
 8. Radhelal Bhagat Both sons of Late Babu Lal Bhagat
 9. Hirdya Devi Wife of Birendra Bhagat
 10. Parbati Devi Wife of Sri Bhagwan Bhagat, Both daughters of Late Babulal Bhagat
 11. Ram Ashish Bhagat
 12. Ram Awadhesh Bhagat Both sons of Late Sudama Bhagat
 13. Gayantri Devi wife of Keshwar Bhagat
 14. Sunita Devi wife of Rajesh Bhagat
 15. Krishnawati Devi wife of Manoranjan Bhagat, All daughter of Late Sudama Bhagat
 - 16 (i) Rama Shankar Bhagat
 - 16(ii). Bhola Bhagat
 - 16(iii). Rajesh Bhagat, all sons of Munshi Bhagat
 - 16(iv) Malti Devi, daughter of Munshi Bhagat
 17. Mohan Bhagat
 18. Ram Sidha Bhagat Both sons of Shyam Lal Bhagat
 19. Mt. Mateshwari wife of Late Ram Bilash Bhagat All residents of village - Molanapur, P.O. Mohammadpur, P.S. Siwan Mufassil, District – Siwan

..... Defendants Appellants

.... Appellants

Versus

1. Ashok Kumar Gupta son of Shivjee Sah resident of village - Molanapur, P.O. Mohammadpur, P.S. Siwan Mufassil, District – Siwan ... Plaintiff ... Respondent Respondent 1st Set
2. Dilip Bhagat @ Sukhdeo Bhagat son of Late Kapildeo Bhagat resident of village - Molanapur, P.O. Mohammadpur, P.S. Siwan Mufassil, District – Siwan Defendant Respondent...Respondent 2nd set
3. Sarbdeo Bhagat son of Late Mira Lal Bhagat Both are residents of village - Molanapur, P.O. Mohammadpur, P.S. Siwan Mufassil, District – Siwan Defendant Appellant...Respondent 3rd set
4. Mr. Phool Pati Kuer, wife of Late Sudama Bhagat, resident of Village Molhapur, P.S. Siwan Mufassil, District SiwanDefendant...Appellant

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 30-11-2015

Heard Mr. B. K. N. Tripathi, learned Counsel appearing for the appellants. Learned Counsel for the plaintiff – respondent is present.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance. The suit was filed by the plaintiffs for declaration of their easementary right of *Rasta* over the suit land and further for removing *Naad, Khuta* etc. of the defendants from the suit land. Though the defendants appeared in the suit and filed their written statement, they did not lead any evidence in support of their case as made out in the written statement. It has been noticed by the appellate court below in its judgment that the defendants cross-examined one of the witnesses. In that backdrop the trial proceeded with the hearing of the suit and after scrutiny of the evidence of the plaintiffs decided the issue in favour of the plaintiffs and decreed the suit.

3. The defendants thereafter filed appeal against the aforesaid judgment and decree of the trial court. It has been accepted on behalf of the appellants that no step was taken by the defendants in the appellate court below for adducing evidence and no prayer in that regard was made. The appellate court below reappraised the evidence and concurred with the findings of the trial court. The appeal has been accordingly dismissed by the impugned judgment.

4. In the aforesaid fact situation, the submission has been



made on behalf of the defendant-appellants before this Court to remand the matter back to the court below granting liberty to the defendants to adduce evidence and directing the courts below to hear the matter afresh. It has also been argued by the learned Counsel for the appellants that both the courts below have failed to consider the fact that the plaintiffs had failed to establish their case by leading cogent evidence.

5. After perusal of the judgments of both the courts below and considering the submission, it is manifest that the defendants left the proceeding of the suit in the mid-way and did not lead any evidence on their behalf except cross-examining one of the witnesses of the plaintiffs. Even there was no objection filed against the report of the Survey Knowing Pleader Commissioner appointed by the court for local inspection and measurement of the suit land. From perusal of the judgments of both the courts below it is apparent that the courts below have come to the conclusion on the basis of evidence on record that the plaintiffs have got easementary right over the suit land. In absence of any explanation on behalf of the defendant-appellants for not adducing any evidence in the court below, this Court at the second appellate stage does not find it fit to accept the prayer to remand the matter to the court below for a fresh hearing of the suit after granting liberty to the defendant- appellants to adduce evidence.

6. This Court does not find the findings of the courts below to be perverse or unreasonable in any manner.

7. Ex consequenti, this Court does not find any substantial

question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

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