

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.295 of 2013

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1. Upendra Paswan @ Upindra Paswan, Son of Baleshwar Paswan
2. Lalita Devi Wife of Upendra Paswan @ Upindra Paswan Both R/o
Village Mohammedpur, Deopar, P.O. P.S. Pusa, District Samastipur
..... Defendants Respondents
..... Appellants

Versus

Parichhan Rai Son of Late Shivaji Rai R/o Village Mohammedpur, Deopar,
P.O. P.S. Pusa, District Samastipur
..... Plaintriff Appellant

..... Respondent

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 01-12-2015 Heard learned Counsel for the appellants. Learned Counsel
for the respondent is also present.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of reversal. The suit has been filed by the plaintiff for removal of encroachment. The plaintiff's case is that he is owner of the Plot Nos. 1440 and 1441 and the adjacent Plot No. 1442 belongs to the contesting defendants. The allegation of the plaintiff is that the contesting defendants have encroached upon the lands described in Schedule III of the plaint and, therefore, the suit has been filed for removal of the said encroachment.

3. Initially the area of the encroachment as mentioned in Schedule III was lesser but the plaintiff sought for amendment after submission of the report by the Survey Knowing Pleader Commissioner and the said amendment was allowed and the area of

the suit land as mentioned in Schedule III was allowed to be amended and after amendment it became 9 dhurs. The defendants filed their additional written statement after amendment.

4. The trial court returned the finding on the issues against the plaintiff and dismissed the suit. The appellate court below after reappraisal of evidence set aside the judgment and decree of the trial court.

5. Learned Counsel for the appellants has submitted that the area alleged to have been encroached was less than 5 Kari and therefore the suit for removal of encroachment was not maintainable. It has also been submitted by the learned Counsel that the trial court has rightly dismissed the suit on that basis. The learned Counsel has also submitted that the plaintiff cannot claim any area more than the purchased land in Plot Nos. 1440 and 1441 and therefore his claim which extends to the land in Plot No. 1442 belonging to the defendants was not legally tenable. It has also been submitted that the appellate court below has not properly considered the evidence on record and has wrongly passed the impugned judgment and decree.

6. After perusal of the judgments of both the courts below and consideration of the submission it is manifest that the plaintiff has filed the suit for removal of encroachment against the defendants and the allegation is that the defendants have encroached 9 dhurs of land in Plot No. 1440. The defendants have clearly stated in their pleading as well as deposition that they do not claim any area purchased by the plaintiff in Plot Nos. 1440 and 1441 and have asserted their title

and possession over the land in plot No. 1442 which according to them have been settled to them as privileged persons as well as under Indira Awas Yojana. However the appellate court below has taken into consideration that no evidence has been adduced by the defendants to establish their claim as privileged persons or for allotment of land under Indira Awas Yojana. The contention on behalf of the appellants that the suit has been filed for encroachment over the lands less than 5 Kari is also not supported by facts from the record whereby the amendment in Schedule III of the plaint was allowed by the Court and the area mentioned in Schedule III was modified to 9 dhurs. From the judgment of the appellate court below it also transpires that the defendants had filed additional written statement after amendment, which shows that they are aware of the amendment in the plaint relating to the area of the suit land.

7. The appellate court below has based its findings on consideration of evidence and this Court has not been persuaded to find any illegality or perversity in the same in any manner.

8. 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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