

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.482 of 2009

Abdul Aziz Ouraishi, son of Late Ainul Hawue, resident of Village Hariharganj, PO & P.S. Nasriganj, District Rohtas

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

.... .... Appellant

Versus

1. Md. Illiyas Quraishi, son of Late Shaukat Ali
2. Md. Vakil Quraishi, son of late Juman Quraishi, Both residents of Village Hariharganj, PO & P.S. Nasriganj, District Rohtas  
..... Plaintiffs ..... Respondents ..... Respondents 1st set
3. The State of Bihar, through the Collector, Rohtas, District Rohtas (Sasaram)
4. The Anchal Adhikari, Anchal and P.S. Nasriganj, District Rohtas  
..... Defendants ..... Respondents ..... Respondents 2nd set

.... .... Respondents

**Appearance :**

For the Appellant/s : Mr. RAJANI KANT SINGH  
Mr. Shamsheer Bahadur Pandey

For the Respondent/s : Mr.

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

**ORAL JUDGMENT**

**Date: 29-07-2015**

Heard learned Counsel for the appellant.

2. The defendant in the suit is the appellant in this appeal against the judgment and decree of affirmance.

3. The suit was filed by the plaintiffs for declaration that the plaintiffs, their vendors and the village community have right to pass and flow the drain water through the public land of R.S. Plot No. 3311/4216.

4. The plaintiffs' case in short is that the aforesaid suit plot is a public land and has been recorded in the survey khatian in the name of State of Bihar. It is the further case of the plaintiffs that the suit plot is the only land through which the plaintiffs approach the public road from their house and there is no other way available to the plaintiffs for ingress and



egress from their house. The plaintiffs have also asserted that they have been flowing the drain water in the suit land. The suit has been filed alleging encroachment over the suit land by the defendants restricting the user of the suit land by the plaintiffs.

5. The defendants in their written statement denied the assertion of the plaintiffs and claimed their own independent, right title and interest over the same on the basis of settlement from the State of Bihar. It was also the case of the defendants that consolidation records of rights for the suit plot has been prepared in their names and therefore the allegation that they had encroached upon the suit plot was clearly not sustainable.

6. Both the courts below, after scrutiny of the pleadings and evidence on record, decided the issues in favour of the plaintiffs and granted the decree as prayed. It has been held by both the courts below that the defendants have failed to establish their case of settlement of the suit plot by the State of Bihar and the right claimed by them on the basis of consolidation records also cannot be sustained.

7. Learned Counsel for the appellant has submitted that both the courts below have failed to consider that Chak Khatian of the suit plot has been prepared in the name of the appellant and the same will be binding on the civil, criminal and revenue courts and the jurisdiction of the Civil Court would be barred under Section 37 of the Consolidation Act. It has also been argued on behalf of the appellant that the courts below have gone beyond the case of the parties and the evidence available on record. Learned Counsel has further canvassed that settlement of the suit plot made in favour of the appellant has not been appreciated by the



courts below and the appellant has wrongly been denied his right on the basis of settlement. Learned Counsel for the appellant has also submitted that defendant no. 4 Ainul Haque died on 25.9.2003 but the judgment and decree in the suit was passed after his death on 12.9.2004 and 1.11.2004 respectively and, therefore, the judgment and decree by the trial court has been passed against a dead person.

8. After perusal of the impugned judgments of both the courts below and considering the submission on behalf of the appellant it is evident that the suit plot has been recorded in the survey khatian as Anabad Bihar Sarkar and the entry has been made in the name of Bihar Sarkar. The defendant has claimed his right, title and interest over the suit land on the basis of settlement by State of Bihar in his favour and on that basis the defendant has tried to repel the allegation of encroachment by him over the suit land. It, however, appears from the judgment of the appellate court below, where in para 11 it has been found, after considering the documentary evidence, that there was no settlement order in favour of the defendant, as claimed, and the order dated 1.10.1982 (Ext. 'C') which has been brought on record on behalf of the defendant was in fact only recommendation by the Deputy Collector. The learned appellate court has further also considered that the Consolidation Officer has passed the order for preparation of the chak khatian in the name of defendant-appellant without there being any settlement order in his favour. It has also been taken into notice by the appellate court below that in Encroachment Case No. 2 of 1992-93 the defendant has been found to be encroacher over the suit land. During course of submission no settlement order could be pointed out on record on behalf of the

appellant. It further appears that defendant No. 4 Ainul Haque was the father of this defendant-appellant and even if he died during pendency of the suit, defendant-appellant being his son was already on record representing his estate. In this view of the matter, the submission that the judgment and decree by the trial court has been passed against a dead person has no force. Moreover, the defendant-appellant, who filed the appeal in the court below, has also not impleaded the heirs of the deceased defendant no. 4 Ainul Haque in the memo of appeal and the issue of abatement was not raised before the appellate court below by the defendant.

9. The issue of fact has been concurrently settled by the findings of both the courts below and no perversity or unreasonableness in those findings could be established on behalf of the appellant.

10. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this Second Appeal, which is accordingly dismissed.

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

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