

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.434 of 2012

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1. Balmiki Prasad Singh S/O Late Krishna Chandra Singh Resident Of Village- Matihani, P.S- Matihani And District-.....
 2. Amrita Singh @ Amrita Devi W/O Late Shailendra Prasad Singh Resident Of Village- Matihani, P.S- Matihani And District-.....
 3. Dharmendra Kumar S/O Late Shailendra Prasad Singh Resident Of Village- Matihani, P.S- Matihani And District-.....
 4. Chandan Kumar S/O Late Shailendra Prasad Singh Resident Of Village- Matihani, P.S- Matihani And District-.....
 5. Gajendra Prasad Singh S/O Balmiki Prasad Singh Resident Of Village- Matihani, P.S- Matihani And District-.....

.... Appellant/s

Versus

1. Sagar Dhobi S/O Late Achchelal Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
2. Somar Dhobi S/O Late Tilo Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
3. Chalho Dhobi S/O Tilo Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
4. Ramji Bhobi S/O Tilo Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
5. Most. Janki Devi W/O Late Ramrup Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
6. Sukan Dhobi S/O Late Ramrup Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
7. Lolu Dhobi S/O Late Ramrup Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
8. Sundri Devi D/O Late Ramrup Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
9. Most. Fekni Devi W/O Late Baleshwar Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
10. Prakash Dhobi S/O Late Baleshwar Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
11. Shail Devi D/O Late Baleshwar Dhobi Resident Of Village Mouza- Saranjua, P.S- Birpur And District- Begusarai.
12. Arun Dhobi Minor S/O Late Buttu Dhobi Under The Guardianship Of His Mother Manki Devi Resident Of Village- Saranjua, P.O- Saranjua And District- Begusarai.
13. Manki Devi W/O Late Bhuttu Dhobi Resident Of Village- Saranjua, P.O- Saranjua And District- Begusarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Partha Sarthy
Mr. Utsav Kumar

For the Respondent/s : Mr. Ravindra Kumar

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

11 02-11-2015 Heard Mr. Partha Sarthy, learned Counsel for the appellants.

2. The plaintiffs are appellants in this appeal against the judgment and decree of reversal. The plaintiffs had filed the suit for declaration of title and recovery of possession over the suit property. The plaintiffs are claiming themselves to be the decedents of the ex-landlord and it is their case that predecessor of the defendants, who were the raiyat of the suit land, abandoned the suit land in view of the threat of flood rendering the same as non productive. The plaintiffs further case is that the ex-landlord resumed the possession of the suit land and later on in partition in the family, the suit land has fallen in the share of the plaintiffs.

3. The defendants, in turn, have denied the case of abandonment and asserted their right and possession over the suit land. The defendants have categorically come out with the case that they have other lands also in the village and they are continuing in possession over the suit land.

4. The trial court returned the findings in favour of the plaintiff. The appellate court, however, on reappraisal of evidence has overturned the findings of the trial court, allowed the appeal and dismissed the suit holding that the plaintiffs have failed to establish their case of abandonment of the suit land by the predecessor of the defendants and resumption of possession by the ex-landlord over the suit land.

5. Mr. Partha Sarthy, learned Counsel appearing for the



appellants, has submitted that the appellate court below has not considered the evidence on record and, therefore, has come to a wrong finding. It has been canvassed by the learned Counsel that there are number of documentary evidence including the Jamabandi and rent receipts which are in favour of the appellants to establish their title and possession, but the same has been ignored by the appellate court below. It has also been argued that since the State has accepted the plaintiff-appellants as the raiyats over the suit land, the appellate court below should have given due weightage to those documentary evidence before reversing the findings of the trial court.

6. After perusal of the judgments of both the courts below and considering the submission it is pellucid that the plaintiffs have accepted that the defendants' predecessors were the raiyats of the suit land, but they have further come out with the case of abandonment of the suit land by them and resumption of possession by the ex-landlord (predecessor of the plaintiffs). The appellate court below has taken into notice that the plaintiffs have not cross-examined the defendant no. 1 or other witnesses of this defendant on the issue of abandonment or surrender when they have specifically deposed that the defendants or their predecessor had never abandoned the suit land and left the village. The appellate court below has also taken into notice entries in the Khatian (Ext. 'E') in the name of the defendants. The provisions of Section 87(1) of the B.T. Act require that a raiyat must abandon the residence and leave the land in his possession and it is only in that case the landlord has been made entitled to resume possession of the suit. In the present

case, the fact has been found on the basis of evidence that the defendants have never abandoned their residence in the village and have also got other lands in the village. The inevitable conclusion, therefore, is that the landlord was not entitled to resume possession of the suit land.

7. The appellate court below has reached to the findings of fact upon consideration of the evidence on record and this Court has not been persuaded to figure out any illegality or perversity in any manner in those findings.

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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