

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.212 of 2013

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Dr. Narsingh Prasad Singh, son of Shobhu Singh, resident of Village Bairdiha, pS
Chainpur, District Kaimur (Bhabua)

..... Plaintiff Appellant

.... Appellant

Versus

1. Wasim Gaddi
2. Samim Gaddi
3. Guddu Gaddi
4. Jattan Gaddi
5. Pappu Gaddi, all sons of Late Munna Gaddi
6. Rashin Gaddi, son of Late Buchun Gaddi
7. Sohrab Gaddi, son of Hassan Gaddi
8. Ijhar Gaddi
9. Bhajahar Gaddi
10. Ajahar Gaddi
11. Sajahar Gaddi, son of Hassan Gaddi
12. Rahman Gaddi
13. Suleman Gaddi
14. Gullu Gaddi
15. Musa Gaddi
16. Rustam Gaddi, all sons of Late Bavakat Gaddi
17. Sidhari Gaddi, son of Late Nabbi all sons of Late Bavakat Gaddi
Residents of Village Bhabhua Ward No. 11 (old), Ward no. 3 (new), PS
Bhabhua, District Kaimur (Bhabhua)
..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. T. N. Maitin, Sr. Advocate
Mr. ARABIND NATH PANDEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-04-2015

Heard Mr. T. N. Maitin, learned Senior Counsel appearing for
the appellant.

2. The plaintiff is the appellant in this Second Appeal against
the judgment and decree of affirmance dismissing the suit.

3. The suit has been filed by the plaintiff for grant of
permanent injunction restraining the defendants from interfering with the



possession of the plaintiff over Schedule Kha land. The case of the plaintiff is that the lands described in Schedule Ka was purchased by him and after construction of his house the lands described in Schedule Kha of the plaint has been left vacant by the plaintiff. It has been alleged by the plaintiff that the defendants are wrongly claiming right of user over the lands described in Schedule Kha.

4. The defendants denied the assertion of the plaintiff and prayed for dismissal of the suit.

5. The trial court after considering the pleadings and evidence of the parties returned the finding against the plaintiff and dismissed the suit. In appeal by the plaintiff, the appellate court below on reappraisal of the evidence has concurred with the finding of the trial court, affirmed the judgment and decree and dismissed the appeal.

6. Mr. Maitin, learned Senior Counsel appearing for the appellant has raised the sole submission that once the courts below have disbelieved the report of the Pleader Commissioner, a new Pleader Commissioner should have been appointed and a fresh report should have been called for. It has been canvassed by the learned Senior Counsel that the impugned judgments has become vulnerable as the courts below have ignored the settled position in law and for the said reason a substantial question of law arises for consideration in this appeal.

7. After considering the submission and perusal of the judgments of both the courts below it is pellucid that the plaintiff has filed the suit praying for decree for permanent injunction against the defendants with regard to the lands mentioned in Schedule Kha of the



plaint. It has been submitted on behalf of the appellant that during pendency of the suit there was an amendment and the description of the land, as had been originally mentioned in Schedule Kha, was deleted and a sketch map was added with the plaint. It has also been pointed out on behalf of the appellant that the said sketch map fully describes the suit land.

8. From the judgments of both the courts below it appears that one Pleader Commissioner was appointed by the court on the prayer of the plaintiff, whose report has been taken in evidence as Ext. 3. Thereafter another Pleader Commissioner (non survey knowing) has also been appointed whose report is Ext. C. There is also a report of the Government Amin (Ext. 'G') submitted in Land Measurement Case No. 44/2000-01 between the parties with regard to the same property. It is manifest from the judgments of both the courts below that the two reports of the Pleader Commissioner as well as the report of Amin along with the oral and documentary evidences have been elaborately analysed and thereafter the finding has been recorded that the plaintiff has failed to establish the actual area in his possession. It would be pertinent to mention, at this juncture, that the courts below have also noticed that the plaintiff has not mentioned the exact area of the suit land in the plaint. In view of the presence of the three local inspection reports on record, this Court does not find substance in the submission on behalf of the appellant that the courts below should have appointed another Pleader Commissioner after disbelieving the earlier reports. The fact cannot be ignored that the plaintiff has filed the suit for grant of permanent injunction and it is for him to lead cogent evidence to establish his case.

The Court is not required to gather evidence for the plaintiff.

9. Learned Senior Counsel has placed the judgments of both the courts below in extenso in order to substantiate his stand regarding misappreciation of evidence. However, this Court is not persuaded to conclude that the findings recorded by the courts below on the basis of appreciation of evidence are unreasonable or perverse in any manner. Civil litigations are decided on the parameter of preponderance of probability and it appears from the judgments of the courts below that they have acted accordingly.

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

(V. Nath, J.)

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