

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.259 of 1986

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- 1.Sk.Israil
- 2.Sk. Ismail Both sons of Raj Mohammad deceased.
- 3.(a) Bibi Anwari
- (b) Sk. Meeru
- (c) Wakil
- (d) Sk. Shafiullah
- (e) Mostt. Bhaku
4. Mostt. Bhakuri daughter of Sk. Bahadur deceased
5. Bibi Rabinisa
- 6.Bibi Noorjehan both daughters of Sk Damari deceased.
- 7.Bibi Nissa minor daughter of Sk. Damari deceased under the guardianship of her mother Bibi Anisa khaton (No. 8)
8. Bibi Anisa Khatoon wife of Sk. Damari deceased
- 9.Bibi Jobaida wife of Sk. Md. Yusuf deceased
- 10.Sk. Kalu
- 11.Sk. Sulatn Both minor sons of Sk. Md. Yusuf deceased under the guardianship of their mother Bibi Jo Baida (no. 9)
- 12.Sk. Mohammad Yakub son of Sk. Mulla
- 13.Sk. Imamullah son of Sk. Khakhanu deceased
- All residents of village Gopalpur, Pargan Bara, P.s. Andar, P.O. Bakerganj, District Siwan

(Plaintiffs-appellants)-----Appellants

Versus

- 1.Syed Sultan
- 2.Syed Sabar
3. Syed Tuna sons of Syed haider Ali @ Syed Haider deceased
- 4.Basaki wife of Madan Hussain
- 5.Hallo wife of Ali Hussain
- 6.Sanjula wife of Hassan
- 7.Sabari @ Sabari, Daughters of Syed haider Ali deceased.
- 8.Tana

9.Guria

10.Nanni

11.Husna

9 to 11 are minor daughters of Syed Haider Ali deceased under the guardianship of Sri Krishna Kumar Singh Advocate, Siwan.G.A.L.

12(a) Mehrunissa

12(b)Syed Rahman Raza

13.Syed Ali Mozafar

14.Syed Ali Safir @ Syed Ali Zafar

15.Syed Ali Gajnafar

Bibi Sadikan widow of Syed Zair Hussain deceased, All residents of village Gopalpur, Pargana Bara, P.S. Andar, P.O. Bakarganj, District Siwan

(Defendants-Respondents)... Respondent/s
with

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Appearance :

(In SA No. 259 of 1986) & (In SA No. 258 of 1986)

For the Appellant/s : Mr. Abbas Haider, Adv, Mr. Syed Hussain Majeed, Adv, Mr. Ranjay Kumar Singh, Adv & Mr. Ravish Chandra, Adv.

For the Respondent/s : Mr. Ratan Kr.Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-02-2016

Heard Mr. Abbas Haider, learned counsel appearing for the appellants in both these cases.

2. The plaintiffs are the appellants in both these appeals against the judgment and decree of affirmance. The two suits i.e Title Suit No. 34 of 1966 and Title Suit No. 187 of 1970 were filed by the plaintiffs for declaration of the title and confirmation of their possession over the lands mentioned in the Schedule of the plaint of the respective suits. The defendants appeared and contested the claim of the plaintiffs.

3. The core issue in both the suits pertained to the claim of the plaintiffs to have inherited the property of Sk. Bhagel as his heirs in view of the case of the defendants that Sk. Bhagel died issueless and the ex-landlord took possession of the suit land as the same was abandoned and thereafter settled to the defendant no. 7.

4. Both the courts below have arrived at the concurrent finding of fact that the plaintiffs have failed to establish by cogent evidence their claim as heirs of Sk. Bhagel. After recording the findings in favour of the defendant no. 7, the suit was dismissed and thereafter the appeal was also dismissed.

5. Both the Second Appeal Nos. 258 of 1986 and 259 of 1986, have been admitted for hearing on 14.04.1987 on the substantial question of law as follows:-



"The only substantial question of law arising for consideration in both these appeals i.e S.A. No. 258 of 1986 and 259 of 1986 (analogous) is whether the courts below were right in accepting the defendants title on the basis of the statement by the landlord after the death of Sk. Bhagel without finding whether he had left any heir or not and under what legal right could the landlord make the settlement claimed by the defendants."

6. The plaintiffs have come out with the genealogy as mentioned in the plaint which discloses that Sk. Bhagel died leaving behind his two close relatives (uncles) namely Sk. Ahmad and Sk. Hayatan. Sk. Ahmad had only two daughters who were married with the sons of the Sk. Hayatan and the plaintiffs are the descendants of the branch of Sk. Hayatan. In this manner the plaintiffs have claimed that after the death of Sk. Bhagel, his estate including the suit land was inherited by their predecessors and have come in possession of the plaintiffs as owners.

7. The defendants contested the genealogy set-up by the plaintiffs and have stated that Sk. Bhagel died issueless and therefore the ex-landlord took over the suit property as it was lying abandoned and thereafter settled the lands. Mr. Abbas Haider, learned counsel appearing for the appellants while assailing the judgment of both the courts below has submitted that the findings have been recorded by the courts below on misappreciation and mis-



reading of the documentary and oral evidence on record. It has been contended that in survey khatian (Exhibit-6/a) the name of Sk. Bhagel was recorded along with the predecessor of the plaintiff. Further the written statement (Exhibit-f) filed by plaintiff no. 1 in earlier redemption suit between the ex-landlord with the documents which support the claim of the plaintiffs regarding their relationship with Sk. Bhagal. The learned counsel has also placed in detail the aforesaid documentary evidence as well as findings by both the courts below to support the conclusion that the plaintiffs' predecessors were related with Sk. Bhagel. It has also been submitted by Mr. Abbas Haider that the defendants have squarely failed to establish the legality of the taking over of the suit land by the ex-landlord in view of the provisions of Section 87(2) of the Bihar Tenancy Act. It has also been submitted that once after the finding on the main issue regarding the relationship of the plaintiffs predecessors with Sk. Bhagel is established, the defendants claim would automatically be extinguished.

8. No body has appeared on behalf of the defendants when this appeal has been called out for hearing.

9. From the perusal of the judgments of both the courts below and after considering submissions, it is manifest that the findings of fact by both the courts below have been recorded on the



basis of the scrutiny of evidence adduced by the parties. It is also transparent that Exhibit-6a and Exhibit-f, which have been strongly relied upon on behalf of the appellants to assail the findings of the courts below have also been evaluated and analyzed by the courts below. In fact the entire submission on behalf of the appellants has revolved around re-appreciation of evidence in order to up-set the concurrent findings of fact. It is well settled that even if there is possibility of another view on the basis of appreciation of evidence, the said course is not permissible at second appeal stage unless the findings are un-reasonable or perverse in any manner. In a recent decision by the Apex Court in the case of **Damodar Lal vs Sohan Devi & Ors**, reported in **AIR 2016 SC 262**, their lordships have laid down the dictum as follows:-

"Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity."

10. Testing the submissions on behalf of the appellant on the anvil of the aforesaid dictum, it is demonstrable that in absence of any case on behalf of the appellants that the findings of

fact are based upon non consideration or complete misreading of evidence or on conjectures and surmises, the substantial question of law for consideration does not arise.

11. In view of the aforesaid principles, this Court does not find any substantial question of law arising for consideration in both these appeals which are accordingly, dismissed.

(V. Nath, J)

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