

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.82 of 2014

Permeshwar Yadav S/O Late Baue Lal Yadav, Resident Of Village- Sripur Gahar Old, P.S.- Warishnagar, Presently- Khanpur, Sub-Division- Samastipur, District- Samastipur Plaintiff Respondent

.... Appellant

Versus

1. Ram Udgay Yadav Son Of Late Deo Narayan Yadav
2. Vijay Kumar Yadav Son Of Late Deo Narayan Yadav Both Are Resident Of Village- Sripur Gahar Tole- Shibnagar, P.S.- Warishnagar (Old), Presently Khanpur, Subdivision- Samastipur District- Samastipur Defendants Appellants
3. Suraj Yadav Son Of Late Baue Lal Yadav Resident Of Village- Sripur Gahar Old, P.S.- Warishnagar, Presently- Khanpur, Sub-Division- Samastipur, District- Samastipur Plaintiff Respondent

.... Respondents

Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-08-2016

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal.

3. The factual expose are that the suit land admittedly belonged to Mostt. Palti Devi. The plaintiffs claimed title over the suit land on the basis of inheritance from Mostt. Palti Devi. The defendants, on the other hand, claimed that their predecessor had purchased the suit land in the year 1909 through an unregistered sale deed for a value of Rs.5/-. The plaintiffs filed the suit for declaration of their title over the suit land and recovery of

possession and also for declaration that the survey entry with regard to the suit land in the name of the defendants is bad.

4. The trial court returned the finding on the issues in favour of the plaintiffs and granted the decree, as prayed, holding that the defendants could not have acquired valid right, title and interest over the suit land on the basis of unregistered sale deed. The appellate court below, however, in appeal by the defendants has reappraised the pleadings and evidence and thereafter has reversed the findings of fact as recorded by the trial court and dismissed the suit of the plaintiffs.

5. The learned Counsel for the appellant has submitted that the trial court has recorded the finding on the basis of appreciation of evidence, but the appellate court below misconstrued the evidence and therefore reversal of the findings of fact by the appellate court below is vulnerable. The learned Counsel has also contended that no right, title and interest could have been acquired by the defendants over the suit land on the basis of unregistered sale deed and the emphasis has also been put on the aspect that the defendants dispossessed the plaintiffs during pendency of the suit on 30.4.2010, which fact was incorporated by the plaintiffs in the plaint by way of amendment. No other submission has been made on behalf of the appellant.

6. After perusal of the judgments of both the courts below and considering the submission, it is manifest that the suit



has been filed for recovery of possession on the basis of title. The plaintiffs have claimed their title over the suit land on the basis of inheritance from the admitted owner Palti Devi, but the defendants contested the said claim asserting that the admitted owner Mostt. Palti Devi transferred her title in favour of the defendants by an unregistered sale deed executed in the year 1909 for a consideration of Rs. 5/-. The appellate court below has taken into notice the fact that the plaintiffs are not possessed with any evidence showing their title or possession over the suit land till the date of filing of the suit, whereas it has further taken into notice that the defendants have produced the rent receipts granted by the ex-landlord in favour of the defendants before vesting and thereafter the rent receipt for the suit land granted by the State of Bihar after vesting recognizing the defendants as *raiya*s of the suit land. Further the appellate court below has also taken into notice that the recent survey khatian for the suit land has been published in the year 1971 and the name of the defendants with a residential house therein has been recorded in the same. The appellate court below has also taken into notice the alleged dispossession as pleaded by the plaintiffs which was said to have occurred just one day before the local inspection by the Pleader Commissioner.

7. The findings by the appellate court below are based upon elaborate scrutiny of evidence as well as reasonings of the

trial court and this Court has not been persuaded to find the same to be perverse or unreasonable in any manner. In fact, the findings by the appellate court below are based upon the evidence, which are acceptable and could have been relied upon. In the second appellate jurisdiction the reappréciation of evidence in order to reverse the legally recorded findings cannot be done.

8. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	25.10.2016
Transmission Date	N/A