

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.43 of 2014

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1. Ram Lakhan Mahto
 2. Ram Chandra Mahto
 3. Hare Ram Mahto
 4. Raja Ram Mahto
 5. All sons of Late Lakhi Chand Mahto, and residents of Village And P.O.- Rebra, P.S.- Khanpur, Distt.- Samastipur

Defendants Appellants .

.... Appellants

Versus

1. Most. Nirsi @ Nirsi Devi. Wife of Late Gopi Mahto R/O Village And P.O. Rebra, P.S.- Khanpur, Anchal Warishnagar, Distt.- Samastipur
2. Ram Sakal Mahto
3. Bishwanath Mahto, both sons of Late Gopi Mahto, and residents of Vill.- Milki, P.O. And P.S.- Khanpur, Distt.- Samastipur
4. Smt. Rekha Devi @ Rekha Devi, wife of Rama Shankar Mahto R/O Vill.- Hariabad Chaka, P.S. Khanpur, Distt.- Samastipur
5. Geeta Devi, wife of Naresh Mahto R/O Vill.- Hariabad Chaka, P.S. Khanpur, Distt.- Samastipur
6. Smt. Sushila Devi @ Sushila Kumari, wife of Ram Kumar Mahto R/O Village- Korbaddha Pataili, P.S. Ujarpur, Distt.- Samastipur
7. Brahmdeo Mahto, son of Rampratap Mahto R/O Village And P.O. Rebra, P.S.- Khanpur, Anchal- Warishnagar, Distt.- Samastipur

..... Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. ADITYA PRAKASH SAHAY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-09-2016

Heard Mr. Dronacharya, learned Counsel appearing for the appellants.

2. The defendants in the suit for eviction are the appellants in this appeal against the judgment and decree of affirmance granting the decree of eviction to the plaintiffs as prayed.

3. The plaintiffs filed the suit praying for a decree of eviction of the defendants from the suit premises on the ground of default in



payment of rent and personal necessity. The defendants appeared and resisted the prayer for decree of eviction on the ground that there did not exist relationship of landlord and tenant in between the plaintiffs and the defendants and in order to substantiate this plea the defendants asserted to have acquired title over a part of the suit premises by adverse possession and also on the basis of *Basgit Parcha* granted in their favour with regard to suit premises.

4. The trial court returned the finding on the material issues against the defendants and granted the decree. The appellate court below in appeal by the defendants has concurred with the findings of the trial court after reappraisal of pleadings and evidence. It would be apt to mention here that at one stage this matter came up before this Court in S.A. No. 72 of 2010 filed by the plaintiffs and after hearing the parties, the matter was remanded back to the appellate court below for hearing the appeal afresh and disposal in accordance with law. The judgment and decree impugned in this appeal has been passed by the appellate court below after remand.

5. Mr. Dronacharya, learned Counsel appearing for the appellants, has made the sole submission that both the courts below have erred in law in embarking upon the full fledged enquiry on the issue of title, whereas the same is not permissible in the limited jurisdiction under the Bihar Building (Lease Control and Eviction) Act in a suit for eviction. It has been propounded that the law is well settled in this regard that full fledged enquiry on the issue of title can be done in accordance with law only when the relief for title has been prayed by the plaintiffs, but the courts below have recorded the finding in the manner as

if the issue of title has to be determined.

6. After perusal of the judgments of both the courts below and considering the submission, it is manifest that in the suit for eviction on the ground of default in payment of rent as filed by the plaintiffs, the denial of relationship of landlord and tenant has been set up as the main ground of defence by the defendants. While determining the said issue of relationship of landlord and tenant the courts below definitely have the jurisdiction to incidentally look into the title as claimed by the parties over the suit premises. But this determination is only for the purpose of deciding the issue of relationship of landlord and tenant as per the recent Apex Court judgment in the case of ***Tribhuvanshankar Vs. Amrutlal (2014) 2 SCC 788.***

7. In view of the aforesaid dictum by the Apex Court, this Court does not find that the courts below have committed any error in determining the issue of title of the parties. No submission has been made on behalf of the appellants with regard to the findings of fact as recorded by both the courts below.

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
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