

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.156 of 2014

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Ramdeo Singh son of Late Sheojee Singh, resident of village Kewatiya, P.S. Krishnagarh (Barhara), P.O. Tola Acharaj Lal, District Bhojpur.

.... Appellant/s

Versus

1.Bikrama Singh, son of late Sheo Kumar Singh.

2.Pawan Singh.

3.Banti Singh.

Both sons of Bikrama Singh,

All residents of village Kewatiya, P.O. Tola Acharaj Lal, P.S. Krishnagarh(Barhara), District Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Uday Singh, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 20-01-2016 Heard Mr. Kumar Uday Singh, learned counsel for the appellants.

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

3. The Plaintiff filed a suit for removal of encroachment over the suit land by the defendants. The admitted facts which have been taken into notice by the appellate court below is that the plot no. 669 had an area of 11 decimals. There was a suit for partition in between the predecessors of the plaintiff and defendants, and the said suit was disposed of in terms of the compromise decree, wherein, the defendants had been allotted approximately 3 decimals of land in plot no. 669.



The plaintiff has alleged encroachment by the defendants over 2 decimals of land out of 11 decimals in plot no. 669 as described in Schedule 1 of the plaint. It appears from the records that a Pleader Commissioner was appointed by the Court at the instance of the plaintiff, who submitted a report that the defendants were in possession of approximately 3 decimals of land in plot no. 669. The report also mentioned the common land between the parties and also the land in possession of the plaintiff which was mentioned approximately 7 decimals. The said Pleader Commissioner report was marked as Exhibit-1, after he was examined in the suit. It does not appear from the judgments of both the Courts below that any objection was filed by the plaintiff to the said report.

4. The trial court came to the finding that though in khatian, the total area of plot no. 669 was mentioned as 11 decimals but according to the map and measurement by the Pleader Commissioner, the total area was found to be 11.63 decimals. After taking notice of the fact that the plaintiff is in possession of approximately 7 decimals as per the report of the Pleader Commissioner and the defendants were found in possession of 3 decimals, the trial court granted the decree for removal of the encroachment against the defendants over the



area of 01.6 decimals. The defendants filed an appeal and the appellate court below on re-appraisal of the evidence has come to the finding that there has been no encroachment as alleged by the plaintiff as the defendants are in possession of approximately 3 decimals of the land, according to the report of the Pleader Commissioner. The appeal was therefore, allowed and the judgment and decree passed by the learned Court below has been set aside by the impugned judgment and decree.

5. Mr. Singh, learned counsel appearing on behalf of the appellant has submitted that the court below has failed to properly appreciate the pleadings and evidences. It has been canvassed as a legal proposition that the appellate court below once after finding the report of the Pleader Commissioner to be not acceptable should have directed for appointment of another Pleader Commissioner as the suit was for removal of encroachment. It has, however, been accepted in course of the submission that the plaintiff has nowhere questioned the compromise decree passed in earlier partition suit between the predecessors of the plaintiff and defendants, wherein, the predecessor of the defendants was allotted 3 decimals of land in plot no. 669.

6. After perusal of the judgments of both the Courts



below and considering the submissions, it is manifest that the suit has been filed for removal of the encroachment alleged to have been made by the defendants over the suit land described in Schedule 1. From the judgments of both the courts below, it does not appear that the plaintiff has anywhere disclosed in his plaint, the fact regarding the area which was in his possession in plot no. 669 and further also the material statement that the defendants had encroached the land out of the said area of the plaintiff is also absent. It is well settled that in the suit for removal of encroachment, the plaintiff is required to establish his entitlement over the land which is said to have been encroached in case of denial by the defendants. In the present case, the admitted facts show that the defendants have been allotted approximately 3 decimals out of 11 decimals in plot no. 669 by the compromise decree in earlier partition suit. The report by the Pleader Commissioner appointed at the instance of the plaintiff also discloses that the defendants are in possession of approximately three decimals of land in plot no. 669. The said report further discloses that an area of 2.924 decimals of land is in joint possession of the plaintiff and the defendants for use as common passage, sahan etc. in the said plot and further the area measuring approximately 7 decimals is in possession of the

plaintiff. These facts coupled with earlier compromise decree singularly lead to inference that the defendants are entitled to 3 decimals in plot no. 669 and they are in possession over the same in their own right. The plaintiff in order to succeed in the case for removal of encroachment was required to establish that the defendants were in possession of over the area in excess of the 3 decimals by way of encroachment. The appellate court below has recorded the findings upon the scrutiny of the evidence and pleadings of the parties and this court is not persuaded to infer perversity of unreasonableness in the same.

7. 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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