

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.246 of 2014**

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Kanti Devi W/o - Mahesh Prasad Resident of Mohalla - Chak Anwar @ Anwarpur  
@ Gandhi Ashram, Town Hajipur, P.S. - Hajipur Town, Anchal & Nagar Parishad -  
Hajipur, Distt. – Vaishali ..... Appellant

Versus

Krishna Mohan Prasad Son of Late Yogendra Prasad Resident of Mohalla - Chak  
Anwar @ Anwarpur @ Gandhi Ashram, Town Hajipur, P.S. - Hajipur, P.S. -  
Hajipur Town, Anchal & Nagar, Parishad- Hajipur, Distt. - Vaishali... Respondent

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**Appearance :**

For the Appellant/s : Mr. Naresh Chandra Verma, Adv.  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 17-11-2016**

Heard Mr.Naresh Chandra Verma, learned counsel  
appearing for the appellant.

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

The suit was filed by the plaintiff for declaration of  
title over the suit plot.

The matrix of fact discloses that an area of 1 katha  
10 dhur land in Plot No.349 was purchased jointly by the mother of  
the plaintiff namely Ambika Devi and the defendant Kanti Devi by  
sale deed dated 27.06.1960. It is also not in dispute between the  
parties that later on in the year 1961 there was partition in which the  
eastern 15 dhur out of purchased land was allotted to the defendant  
Kanti Devi and western 15 dhur of land of the said land was given to  
the plaintiff. It was the case of the plaintiff that the suit land in the



north was left for the purpose of septic tank etc. During the course of municipal survey entry, however, the suit land was recorded as 'Gali Raiyatan'. It was further case of the plaintiff that in view of this entry in the municipal survey records, the defendant has been obstructing the use of the land by the plaintiff. The plaintiff filed the suit for declaration of title stating in the plaint that by the aforesaid recording in the municipal survey khatian a cloud had been caste on the title of the plaintiff. The defendant appeared and contested the suit of the plaintiff by filing written statement claiming that by agreement the suit land was left for the use as passage by the defendant as the road was on the western side.

The trial court returned the findings on the issues against the plaintiff and dismissed the suit. In appeal by the defendant, the appellate court below, however, on reappraisal of evidence, has reversed the findings of the trial court and has granted the decree as prayed by the plaintiff by the impugned judgment and decree.

Mr. Verma, learned counsel appearing for the appellant has firstly submitted that the suit as filed by the plaintiff was not maintainable in view of the fact that no relief was prayed against the survey entry. It has been thus contended that Section 34 of the Specific Relief Act bars even the grant of the relief which has been



prayed by the plaintiff. Elaborating his submissions, it has been contended that the entry in the survey khatian for the suit land as 'Gali Raiyatan' has conferred a right to the defendant for use of the suit land as passage and even that fact that the defendant was permitted to use the suit land as passage has also been accepted by the plaintiff in his deposition. It has been canvassed that the aforesaid admission of the right of user by the defendant has not been considered by the appellate court below and therefore the impugned judgment is vitiated. No other submission has been made on behalf of the appellant.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the suit has been filed by the plaintiff for declaration of title over the suit land which is admittedly lying in the northern side of the land which was allotted in the share of the plaintiff. The appellate court below has mentioned in paragraph-8 of its judgment that the defendant has also accepted in the written statement that the disputed land is the part of the purchased land of the plaintiff wherein the permission has been granted by the plaintiff and his mother to the defendant to use the same as passage. The appellate court below has further also taken into notice the statement made by the defendant in her deposition in para-23 and 24 with regard to the aforesaid fact stating that the suit land is



used as passage by the defendant. In view of the aforesaid admission by the defendant that the suit land belongs to the plaintiff, the appellate court below has committed no error in law in coming to the conclusion that the plaintiff is entitled to get a declaration of title. So far as the submission with regard to bar of the suit under Section 34 of the Specific Relief Act, it is well settled that the entry in the revenue records neither creates nor extinguishes right, title and interest.

In view of the aforesaid well established principles, this Court finds no substance in the submission on behalf of the appellant that the suit filed by the plaintiff was barred by Section 34 of the Specific Relief Act. It is also apparent from the judgments of both the courts below as well as the pleadings, as mentioned therein that no relief for injunction against the defendant has been prayed by the plaintiff in the suit. However, the defendant has also not filed any counter claim, claiming the right of easement of user of the suit land as passage. In that view of the matter, the submission on behalf of the appellant that the judgment of the appellate court is vitiated for non-consideration of the admitted fact by the plaintiff that the defendant has been permitted to use the suit land as passage has got no material effect on the sole relief prayed by the plaintiff for declaration of title over the suit land. The findings of fact have been recorded by the appellate court below on the basis of evidence on record, which were acceptable and could have been relied upon. This Court does not find

any perversity or unreasonableness in the same.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Nitesh/-

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