

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.370 of 2013

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1. Devendra Prasad Narayan Singh S/O Late Surya Mani Prasad Narayan Singh Resident Of Village- Guthani, P.S. Guthani, District- Siwan

2. Kabindra Narayan Singh @ Kabindra Prasad Narayan Singh S/O Late Surya Mani Prasad Narayan Singh Resident Of Village- Guthani, P.S. Guthani, District- Siwan

3. Smt. Pushpa Devi D/O Late Surya Mani Prasad Narayan Singh Resident Of Village- Guthani, P.S. Guthani, District- Siwan.

.... Appellant/s

Versus

1. Dr. Nawal Kishre Prasad S/O Late Mahabir Prasad Resident Of Village- Guthani, P.S. Guthani, District- Siwan

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Lochan and Mr. W. Rahman,
Advocates

For the Respondent/s : Mr. Arbind Kumar Singh, Adv and Mr. Dipak Kumar No. 1, Advocates

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 15-03-2016 Heard Mr. W. Rahman, learned counsel appearing for
the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal granting the decree to the plaintiffs, as prayed.

3. The plaintiffs filed the suit for decree of removal of encroachment against the defendants directing them to remove the Chajja constructed by them over the land of the plaintiffs and further for consequential relief of injunction. The defendants filed the written statement contesting the claim of the plaintiff and denied the allegation of encroachment.



4. The trial court after scrutiny of the oral and documentary evidence adduced by the parties returned the finding that the defendants had encroached over the land of the plaintiff by constructing Chajja over the same. The suit was accordingly decreed directing the defendants to remove the encroachment by removing the Chajja over the suit land. In appeal by the defendants, the appellate court below, on reappraisal of evidence, has concurred with the findings of the trial court and has dismissed the appeal by the impugned judgment and decree.

5. Mr. Rahman, learned counsel appearing for the appellants has, submitted that both the courts below have wrongly relied upon the report of the survey knowing Pleader Commissioner ignoring that the same was not scientific and accurate. It has been pointed out that the Pleader Commissioner has not mentioned the area of the plot of the defendants and therefore the report submitted by the Pleader Commissioner cannot be relied upon and that too in view of the case of the appellants that the plaintiff himself has encroached over their land. It has been propounded that in such a situation the courts below ought to have appointed another Pleader Commissioner for taking measurement in order to determine the crucial issue of

encroachment as alleged. No other submission has been made on behalf of the appellants.

6. From perusal of the judgments of the both the courts below and considering the submissions, it transpires that the report of the survey knowing Pleader Commissioner (Exhibit-2) along with the Field Book (Exhibit-3) and Map (Exhibit-4) have been considered by both the courts below. Further, in order to substantiate their objection to the report of the survey knowing Pleader Commissioner, the defendants have cross-examined the said Pleader Commissioner in the suit as P.W. 5. Both the courts below have considered the objection raised by the defendants on the report of the Pleader Commissioner along with other evidence as well and have come to the conclusion that there was no infirmity in the process of measurement which was done in presence of both the parties. In that view of the matter, this Court does not find substance in the submission on behalf of the appellants that another survey knowing Pleader Commissioner should have been appointed by the courts below. The issues arising between the parties in the suit have been determined by both the courts below recording concurrent findings of facts against the defendants.

7. During the course of submission no

unreasonableness or perversity in any manner has been established on behalf of the appellants.

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)

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