

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.311 of 2013

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1.Akhtar Mian s/o Md. Yunus
2.Afzal Mian @ Md. Afzal s/o Md. Yunus.
Both are residents of Mohalla Abarpul Naya Tola, P.S. Ara (Town) District Bhojpur.
3.Masood Alam s/o Md. Yunus.
4.Mahmood Alam s/o Md. Yunus.
Both are resident of Mohalla Bind Toli, P.S. Ara I(Town) District Bhojpur.
5.Rabia Khatoon @ Lachee d/o Md. Yunus w/o Shafiullah r/o Mohalla Abarpul, at present waliganj, P.S. Ara Town, District Bhojpur.
.....Defendant-Appellant/s

Versus

1.Bibi Kulsum w/o Shamsuddin, r/o Milki Mohalla, P.S. Ara (Town), District Bhojpur.
2.Bibi Jubaida w/o Md. Siddique died, legal heirs substituted as
(A) Md. Siddique s/o Abdul Hai Miyan
(B)Anwar Mian All sons of Md. Siddique.
(C)Sanoou Mian @ Sanwar Miya
(D)Nausad Mian
(E)Sarwari Khatoon
(F) Nasima
(G)Lidam
(H)Shahnaj
(I). Israt Khatoon.
All daughters of Md. Siddique, r/o Bin Toli, P.O/P.S. Ara (Town), District Bhojpur Substituted heirs on 15.12.2012
3.Md. Ali s/o Md. Yunus
4.Md. Qaiyum s/o Late Md. Sulamal
5.Md. Saghir s/o Md. Qaiyum
6.Md. Yasin s/o Md. Qaiyum
7.Md. Nasamllah s/o Md. Qaiyum
8.Md. Sanaullah s/o Md. Quaiyum
9.Rahmat s/o Md. Qaiyum
10.Noor Saba minor daughter of M. Qaiyum through her natural guardian, father and mother Md. Qaiyum, All residents of Mohalla Chiktoli, P.S. Ara (Town), District Bhojpur.

.....Plaintiffs-defendants-Respondents

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

6 08-02-2016 Heard Mr. Rama Kant Singh, learned counsel for the

appellants.

2. The defendants are the appellants against the



judgment and decree of affirmance decreeing the suit for eviction. The suit was filed by the plaintiffs seeking eviction of the defendants from the suit premises on the ground of default in payment of rent and personal necessity. The defendants denied the claim of the plaintiffs and asserted their own title over the suit property on the basis of purchase of the suit property in auction sale by defendant no. 2, who is wife of defendant no. 1. At present, this court is not concerned with the history of litigation whereby the matter at one stage had come to this Court for consideration of the claim of the title raised by the defendants.

3. The trial court returned the findings in favour of the plaintiffs and granted the decree as prayed. The appellate court below, on re-appreciation of evidence, has concurred with the findings of the trial court and has dismissed the appeal by the impugned judgment and decree.

4. Mr. Singh, learned counsel for the petitioner, has strenuously submitted that both the courts below have erred in law in not appreciating that the plaintiffs have initially filed a suit for eviction with regard to holding no. 416 and by amendment has added holding no. 417. It has also been canvassed that the defendant no. 2 purchased the suit property in



auction sale and thereby has acquired title and possession over the same and therefore, also the courts below without measurement of the suit premises, in view of the fact that both the plot nos. 1391 and 1392 are contiguous have wrongly granted the decree for eviction. It has also been contended that the courts below have not correctly appreciated the material evidence on behalf of the defendants and the findings therefore are vulnerable. No other submission has been made on behalf of the appellants.

5. After perusal of the judgments of the both the courts below and considering the submissions, it is manifest that the suit has been filed for eviction of the defendants on the ground of default in payment of rent and personal necessity. The defendant no. 1 in his written statement has accepted his status in the suit property as a tenant but has come out with the case that after the purchase of the suit property in auction sale by the defendant no. 2 (his wife), his status as a tenant in the suit property has been extinguished and now there is no relationship of landlord and tenant in between the defendants and the plaintiffs. The courts below have taken into notice the documentary evidence including the documents relating to the auction sale and delivery of possession thereupon in favour of



defendant no. 2, and have concurrently come to the conclusion that the auction sale was with regard to plot no. 1392 whereas the plaintiffs in the present suit have prayed for eviction of the defendants from the suit premises which is situated in plot no. 1391. It is not the case of the appellants that they had made any prayer before the court for measurement/scientific measurement of the suit plot during the course of trial. After the finding on the basis of scrutiny of evidence that defendant no. 2 acquired title only over plot no. 1392 in auction sale, the claim of title by the defendant no. 1 over the suit premises in order to resist the decree of eviction falls apart. The fact also cannot be ignored that the defendant no. 1 has accepted himself to be the tenant in the suit premises of the predecessor in interest of the plaintiffs.

6. Learned counsel for the appellants has emphasized the fact that in the plaint, the two holdings i.e. holding nos. 416 and 417 have been mentioned while describing the suit premises, and on that basis has made endeavour to raise question with regard to the identity of the suit premises. However, from paragraph no. 15 of the judgment of the appellate court, it becomes manifest that the parties have agreed to the identity of the suit premises and only thereafter the courts have proceeded to evaluate the rival claims of the parties on the basis of

evidence on record. The submissions on behalf of the appellants, in fact, centres around re-appreciation of evidence which is not permissible at the stage of second appeal unless the findings are shown or established to be unreasonable or perverse in any manner. This Court has not been persuaded during the course of submission to find perversity or unreasonableness in any manner in the concurrent findings recorded by the courts below.

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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