

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.27 of 2014

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Raghunath Mallah son of late Chandra Mallah, resident of village Bairagi sonbarsa,
P.O. Chiutaha, P.S. Semra, District West Champaran.

.... Plaintiff NO. 2.....Respondent NO. 2 Appellant/s

Versus

1.(a) Sawariya widow of deceased respondent no. 1 Jangi Yadav, resident of village
Biaragi Sonbarsa, P.O. Chiutaha, P.s. Semra, District West Champaran.

(b) Birendra Yadav s/o deceased respondent no. 1 Jangi Yadav resident of village
Biaragi Sonbarsa, P.O. Chiutaha, P.s. Semra, District West Champaran.

.... Defendant No. 1.....Appellant..... Respondent/s

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Appearance :

For the Appellant/s : Mr. GANPATI TRIVEDI, Sr. Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-05-2016

Heard Mr. Ganpati Trivedi, learned senior counsel
appearing for the appellant.

2. The plaintiff no. 2 in the suit is the appellant in this
appeal against the judgment and decree of reversal dismissing the
suit.

3. The Plaintiffs filed the suit for declaration of their
title and confirmation of possession over the suit land. It was the
case of the plaintiffs that they had acquired title over the suit
property on the basis of inheritance as heirs of one Surjee Devi who
was the daughter of Jawahar Mallah having a brother also by the

name of Munni Mallah. The defendants contested the claim of the plaintiffs disputing the genealogy set up by the plaintiffs and claiming their own independent right, title and interest over the suit land.

4. The trial court returned the findings on the issues in favour of the plaintiffs and granted the decree as prayed. The appellate court below, however, after the reappraisal of evidence and the pleadings of the parties, has reversed the findings of the trial court and allowed the appeal by the impugned judgment and decree.

5. Mr. Trivedi, learned senior counsel appearing for the appellant has submitted that the appellate court below has not properly considered the evidence on record adduced on behalf of the plaintiffs rather there are apparent misconstructions of the evidence by the appellate court below. It has been canvassed that the defendants have themselves admitted the part genealogy as set up by the plaintiffs but the said fact was overlooked by the appellate court below. It has also been submitted that the reasonings assigned by the trial court have not been taken into notice by the appellate court below and therefore also the impugned judgment is vulnerable. Learned senior counsel has placed the findings of the appellate court below in detail in order to bolster his

submissions.

6. After perusal of the judgment of both the courts below and considering the submissions, it is manifest that the spinal issue between the parties in the suit was the genealogy over which the parties were substantially at variance. The appellate court below has elaborately taken into notice the deposition made by the plaintiff no. 1 examined as PW-7 in the suit and also the statement made by the said plaintiff in his written statement filed under Section 145 Cr.P.C proceeding (Exhibit-C/2). The appellate court below has further also scrutinized the material documentary evidence as well as oral evidence on record and thereafter has come to the finding that the plaintiffs have failed to establish the genealogy given by them in the plaint. It has also been found that PW-7 has partly accepted the genealogy as given by the defendants in the written statement.

7. After perusal of the judgment of the appellate court below, it does not appear that the findings recorded by it on the basis of scrutiny of evidence on record are unreasonable or perverse in any manner. The possibility of another view on the same set of evidence after its reappreciation cannot be a substantial question of law at the second appellate stage. In fact the entire submission on behalf of the appellant has centered around reappreciation of



evidence. This Court holds that the findings of fact on material issues have been recorded by the appellate court below on the basis of the evidence on record which are acceptable and therefore the same cannot be interfered at the second appellate stage.

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)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	16.6.16
Transmission Date	N.A