

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.58 of 2014

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1. Shah Mohammad Mian Son Of Late Ajim Mian Resident Of Village- Ramnagar Bankat Tola Ghorath, P.O.- Ramnagar Bankat, P.S.- Majhauria, District- West Champaran

2. Ram Narayan Sah Son Of Late Raghunath Sah Resident Of Village- Ramnagar Bankat P.O. Ramnagar Bankat, P.S.- Majhauria, District- West Champaran

..... Defendants Appellants

.... Appellants

Versus

1. Paras Sah S/O Late Jageshwar Sah Resident Of Village- Ram Nagar Bankat Tola Sheikh Toli, P.S.- Majhauria, District- West Champaran

2. Krishna Sah S/O Late Sheo-Nandan Sah @ Ramnagar Sah Resident Of Village- Ramnagar Bankat Tola Nanosati, P.O. Ramnagar Bankat, P.S.- Majhauria, District- West Champaran

.....Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. LALAN KUMAR VERMA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-06-2016

Heard Mr. Bishwanath Choudhary, learned Counsel for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of affirmance. The suit was filed by the plaintiffs for declaration of their title, conformation of possession over the suit land and further for declaration that the sale deed dated 11.6.2001 executed by defendant No. 2 in favour of defendant No. 1 is void, in effective and illegal.

3. Mr. Choudhary, learned Counsel for the appellants, has at the outset submitted that the defendants have not filed written statement in the suit and their right to file written statement has been forfeited. However, it has been strongly submitted by the learned Counsel that



even thereafter the defendants had cross-examined the witnesses of the plaintiffs but both the courts below have not considered the statements made in the cross-examination by the witnesses which go to support the case of the defendant of their possession over the suit property. The learned Counsel has also placed the part of the deposition of PW 6 and PW 8 in order to elaborate his submission that those witnesses have supported the possession of the defendant-appellants over the suit property.

4. After considering the submission and from perusal of the judgments of both the courts below, it is manifest that the suit has been filed by the plaintiffs for declaration of title and confirmation of possession and further for declaration against the sale deed of the defendants. It is also apparent that the defendants did not file their written statement. However, it is also further apparent that the defendants did not question the order of the learned court below passed in the suit whereby their right to file written statement has been forfeited. Even before the appellate court below the defendants did not raise the question of legality and validity of the order passed in the suit denying them the opportunity to file written statement, which fact has also been accepted by the learned Counsel for the appellants. It is thus evident that the defendants' version of the case or the facts entitling them to be in possession over the suit land as title holder were not brought before the court below. However, the learned court below in the suit has proceeded to examine the plaintiffs' witnesses and considered the documentary evidence adduced by the plaintiffs and at that stage the defendants were allowed opportunity to cross-examine the witnesses. It is on this basis that it has



been contended by the learned Counsel for the appellants that the statements have come in the deposition of some of the witnesses examined on behalf of the plaintiffs in the cross-examination which support the possession of the defendants over the suit property. It has, however, been also accepted that there is no statement by these witnesses with regard to title of the defendants over the suit property. Moreover, it is also conceivable that the plaintiffs have neither prayed nor have been granted any relief for recovery of possession over the suit property and both the courts below have also after considering the evidence on record come to the conclusion that the plaintiffs have got title and possession over the suit property.

5. The learned Counsel for the appellants has also relied upon the decision of the Apex Court in the case of ***C.N.Ramappa Gowda vs. C.C.Chandra Gowda, 2012(3) PLJR 22***, in support of the submission that an opportunity be granted to the defendants to contest the suit. However, it is manifest that the defendants never raised such a question and made any objection in this regard in the appellate court below in view of the provisions under Section 105 CPC and the appellate court below therefore did not consider the said aspect. At the second appellate stage this Court cannot given opportunity to the defendants to file the written statement and contest the suit denovo. This Court, therefore, does not find substance in the submission in this regard on behalf of the appellants. Further the stray words or sentence in the deposition of the witnesses cannot be sufficient for discarding the tenor of the deposition and it appears from the judgments of both the courts below that the depositions of the witnesses have been considered and thereafter the

finding has been recorded.

6. This Court, therefore, does not find that the findings by the courts below are perverse or unreasonable in any manner as they are based upon the evidence which are acceptable. As such, this Court does not find any substantial question of law arising for consideration in this appeal. This appeal is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	
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