

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.120 of 2014

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1. Sharda Devi W/o late Rama Nand Yadav@Rama Nand Chaudhary
 2. Hare Ram Chaudhary
 3. Rajiv Kumar Yadav both sons of late Rama Nand Yadav@Rama Nand Chaudhary All R/o Village Pathar Devi, P.O. Ziradei, District Siwan
 4. Madhu Bala Devi W/o Hare Ram Yadav, D/o late Rama Nand Chaudhary @Rama Nand Yadav Resident ofn Village- Ruiya Bangara P.S Ziradei, District Siwan.
 5. Gyanti Devi W/o Yogendra Yadav, D/o late Rama Nand Chaudhary@Rama Nand Yadav Resident of Village+P.O. Ruiya Bangara, P.S Ziradei District Siwan.
 6. Sushma Devi W/o Ram Babu Yadav, D/o late Rama Nand Choudhary@Rama Nand yadav Resident of Village-Mohadipur, P.O Mohadipur, P. S. Siwan, District Siwan.

.... Appellant/s

Versus

1. Vidyarathi Yadav Son of Parma Yadav
2. Mahendra Yadav Son of Parma Yadav
3. Collector Yadav Son of Ram Badayi Yadav
4. Durga Yadav Son of Ram Badayi Yadav All R/o Village Pathar Dei, P.S. Ziradei, District Siwan

.... Respondent/s

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Appearance :

For the Appellant/s : Dr. Umashankar Prasad, Senior Advocate & Mr. Kamala Kant Tiwary, Adv
For the Respondent/s : Mr. Ranjan Kumar Dubey, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-11-2016

Heard learned senior counsel appearing for the appellants.



The plaintiff (now deceased through L.R.) is the appellant in this appeal against the judgment and decree of reversal.

The plaintiff filed the suit for declaration of title and confirmation of possession over the suit land but subsequently by amendment the relief for recovery of possession was incorporated. The plaintiff claimed his title and entitlement to possession over the suit property on the basis of unregistered Patta of the year 1929 said to have been obtained from two persons namely, Mahendra Prasad and Dr. Rajendra Prasad. It was the case of the plaintiff that Mahendra Prasad and Dr. Rajendra Prasad were the ex-landlords and they had settled the suit property with the plaintiff's-predecessor and had also executed the Patta. The plaintiff further claimed to have paid rent to those two ex-landlords and also claimed that the Return at the time of vesting of Zamindari was submitted in the name of the plaintiff for the suit land and thereafter Register no. 2 was also prepared in the name of the plaintiff. The plaintiff thus asserted that his title over the suit property and alleging dispossession by the defendants during the pendency of the suit.

The defendants, however, contested the assertions of the plaintiff and came out with the case that the suit land was settled with the defendants by the ex-landlords in the year 1942 by



execution of Patta in their favour and since then the defendants claimed to have been in possession. The defendants further pleaded that one of the ex-landlords namely Mahendra Prasad died in the year 1924 and on that basis also the Patta of the year 1929 propounded by the plaintiff was assailed.

The trial court returned the findings in favour of the plaintiff and granted the decree as prayed. The appellate court below however on reappraisal of evidence has reversed the finding of the trial court and allowed the appeal filed by the defendants by impugned judgment and decree.

The learned senior counsel for the appellants has submitted that the appellate court below has not properly appreciated the material evidence on behalf of the plaintiff and therefore the findings by the appellate court below are vitiated. It has been contended that the appellate court below has not considered even the deposition of the single witness examined on behalf of the plaintiff and the vulnerability of the impugned judgment is thus writ large. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is evident that the suit of the plaintiff was for recovery of possession on the basis of title. The



defendants have come out with the case of their own title and possession over the suit property. Evidently the basis of the claim of title of the plaintiff was unregistered Patta said to have been executed by the ex-landlords Mahendra Prasad and Dr. Rajendra Prasad. The plaintiff has admitted in the plaint that there were only two landlords namely Mahendra Prasad and Dr. Rajendra Prasad who settled the suit land with the plaintiff by executing the Patta in his favour. The appellate court below, however, on the basis of the scrutiny of evidence has come to the conclusion that the Patta propounded by the plaintiff did not bear the signature of another landlord namely Dr. Rajendra Prasad and it carried the signature of only Mahendra Prasad who had executed the Patta on his behalf and as guardian of Dr. Rajendra Prasad. The appellate Court below after further finding that Dr. Rajendra Prasad was not a minor in the year 1929 when the Patta was executed has held that the title claimed by the plaintiff cannot be legally sustainable. During the course of submission it could not be pointed out on behalf of the appellants before this Court as to how the non-consideration of evidence on possession has vitiated the finding of title in view of the fact that the suit was for recovery of possession on the basis of title and thus in view of the rival claim of title by the defendants, the evidence on the point of possession would not have much bearing on the issue of



title. The finding by the appellate court below on the issue of acquisition of title has been recorded against the plaintiff on the basis of evidence which were acceptable and could have been relied upon. This court has not been persuaded to find perversity or unreasonableness in any manner in the said finding. In this view of the matter, this Court does not find that the submission on behalf of the appellants regarding improper consideration of the evidence has any substance.

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
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