

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.486 of 2012

1. i. Mostt. Jhaksi Devi, Wife of Late Badari Kamat.

ii. Tiro Kamat.

iii. Niko Kumar.

iv. Patrani Devi.

v. Chotki Devi.

Sl.Nos. ii to v are sons and daughter of Late Badari Kamat.

At R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

2. Jawahar Kamat S/O Major Son Of Late Lakhan Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

3. Karma Kamat S/O Major Son Of Late Lakhan Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

4. Ganga Kamat S/O Major Son Of Late Lakhan Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

5. Raj Kishore Kamat S/O Major Son Of Late Bilat Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

6. Neero Kamat S/O Major Son Of Late Bilat Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

7. Babloo Kamat S/O Major Son Of Late Bilat Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

8. Pappu Kamat S/O Major Son Of Late Bilat Kamat R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

.... Appellant/s

Versus

1. i. Buneshwari Devi, Wife of Late Yogeshwar Sah.

ii. Surendra Sah.

iii. Suresh Sah.

iv. Ramesh Sah.

Sons of late Yogeshwar Sah.

v. Aruna Devi.

vi. Baruna Devi.

vii. Meena Devi.

viii. Veena Devi.

ix. Buchani Devi.

Daughters of Late Yogeshwar Sah.

All resident of Suropatti Tola, Laxminia , P.O.- Lalpur, Suropatti, P.S.- Singheshwar, District-Madhepura.

2. Fuleshwar Sah S/O Late Munilal Sah R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

3. Guneshwar Sah S/O Late Munilal Sah R/O Village - Saropatt Tola Laxminia, P.O. Lalpur Saropatti, P.S. Singheshwar, District - Madhepura

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shanti Kumar, Adv.
Mr.Dhananjay Kumar Tiwary, Adv.
Mr.Baban Kumar, Adv.

For the Respondent/s : Mr. S.S.Dwivedi, Sr.Adv with Mr. Rakesh Chandra, Adv.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-08-2016

V.Nath, J.

The learned counsel for the appellants is permitted to make correction in the memo of appeal relating to the description of the party position.

Heard Mr. Tiwary, learned counsel appearing for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance.

The plaintiffs filed the suit for declaration of title and confirmation of possession over the suit land and further for



declaration that the order passed by the survey authority and order passed under Section 145 Cr.P.C be declared illegal. According to the learned counsel for the appellants the prayer was subsequently also made for recovery of possession alleging dispossession during the pendency of the suit. The plaintiffs claim their title over the suit land on the basis of sale deed of the year 1951 and the rectification deed subsequently executed by the vendor as the plot number was wrongly mentioned in the sale deed. The defendants appeared in the suit and contested the claim of the plaintiff and asserted their title and possession over the suit land.

Both the courts below have concurrently held that the plaintiffs have got their title over the suit land and have been dispossessed by the defendants during the pendency of the suit. Accordingly, the direction was issued to the defendants to hand over vacant possession of the suit land to the plaintiffs. The suit was decreed and thereafter the appeal filed by the defendants has been dismissed by the impugned judgment and decree.

The learned counsel for the appellants has made the sole submission that the question of possession has not been considered by both the courts below. It has been canvassed that in the proceeding under Section 145 Cr.P.C. the possession of the defendants over the suit land was declared and the plaintiffs have

wrongly alleged that the defendants had dispossessed them during the pendency of the suit. It has also been submitted that the question of possession was a material issue in the suit to be considered by both the courts below and non-consideration of the same has vitiated the judgment and decree of both the courts below. 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 manifest that the plaintiff has filed the suit for declaration of title and recovery of possession. It is well settled that in such a suit unless the defendants come out with a case of adverse possession over the suit land, it is only the question of title of the rival parties over the suit land which is germane. Moreover, the plaintiff has also prayed for the relief against the order passed under Section 145 Cr.P.C. In this view of the matter even if the defendant is in possession over the suit land and even if the case of the plaintiff of dispossession by the defendants during the pendency of the suit may be wrong, the consideration of this issue would not have material impact over the judgment and decree with the finding of title in favour of the plaintiff. From the perusal of judgments of both the courts below, it appears that an elaborate scrutiny of oral and documentary evidence of both the parties have been undertaken by both the courts below and thereafter the findings

of fact have been recorded. This Court does not find any perversity or unreasonableness in any manner in the findings of facts recorded by both the courts below. The entire submission on behalf of the appellants, in fact, has centered around reappreciation of evidence and that too only on the issue of possession and the finding on the issue of title in favour of the plaintiff has not been questioned on behalf of the appellants before this Court during the course of submission.

In this view of the matter, this Court does not find that any substantial question of law is arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2016
Transmission Date	