

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.262 of 1998

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1(a)Chameli Devi.

1(b) Jamuna Devi

1(c)Raj Kumar @ Satya Nr. Mehta

1(d)Gopal Saran Mehta

1(e)Gajendra Kumar

1(f)Brij Kishore Kumar

1(g)Gayatri Devi

1(h)Girja Devi

1(i) Geeta Devi

1(j)Gajani Devi

1(k)Babita Devi

All sons and daughters of Balgovind Pd Mehta son of Bishnu Paswan resident of Rajgir, P.S. Rajgir, District Nalanda (Defendant and Appellant in the courts below).

.... Appellant/s

Versus

1.Ramji Prasad son of late Laldhari Mahato.

2.Radha Krishna Pd. son of Late Laldhari Mahato both resident of Nahub Rajgir, District Nalanda.

3.Smt. Yasoda Devi, daughter of late Laldhari Mahato wife of Ram Kishun Pd. village Lahuar P.S. Rajgir, District Nalanda.

(Plaintiffs-respondents in the courts below)

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. MALLIKA MAZUMDAR, ADV

For the Respondent/s : MR. ABBAS HAIDER, ADV & MR. RANJAY KR SINGH, ADV

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-10-2016

Heard Ms. Mallika Mazumdar, learned counsel
appearing for the appellant and Mr. Abbas Haider, learned counsel
for the respondents.



The defendant (since deceased through LRs) is the appellant in this appeal against the judgment and decree of affirmance granting the decree as prayed by the plaintiff for recovery of possession over the suit premises on the basis of title.

From the submissions on behalf of the parties and perusal of the judgment of both the courts below, the facts are apparent that originally the plaintiff filed the suit for eviction of the defendant on the ground of default in payment of rent and personal necessity but subsequently after filing of the written statement, the trial court had directed the plaintiff to pay ad valorem court fee after allowing the conversion of the suit into a regular title suit. The fact has not been disputed on behalf of the parties here that the suit was tried as a regular title suit and the decree declaring the title of the plaintiff and declaring the plaintiff to be entitled to recovery of possession was passed by the trial court. The defendant thereafter filed the appeal assailing the judgment and decree passed by the trial court. The appellate court below after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal affirming the judgment and decree of the trial court.

This second appeal has been admitted for hearing on the following substantial question of law:-

"Whether the court below could have decreed the suit



on the ground of permissive possession of the appellant in the suit premises when there was no such pleading to this effect and when there was no pleading that the appellant ever paid rent to the plaintiff."

Criticizing the impugned judgment and decree Ms. Mazumdar learned counsel for the appellant has made the sole submission that the findings recorded by both the courts below are on the basis of wrong appreciation of evidence. No other submission has been made on behalf of the appellant.

Mr. Abbas Haider, learned counsel appearing on behalf of the respondent, however, has supported the findings of the courts below and has further submitted that no substantial question of law, as framed, arises for consideration in this appeal in the facts and circumstances of the present case.

It is admitted case of both the parties that the suit property originally belonged to Jahida Khatoon. The plaintiff claimed title over the suit property on the basis of purchase by registered sale deed from Jahida Khatoon. The defendant, however, came out with the case that Jahida Khatoon had made an oral gift of the suit property in favour of the defendants considering the fact that the defendant had saved her life during communal riot at Biharsharif.



Both the courts below have recorded concurrent finding of fact that the defendant failed to establish the fact of oral gift as asserted in the suit. It has also been concurrently found by both the courts below that the defendant is in permissive possession over the suit premises. The suit was decreed and thereafter the appeal has been also dismissed. It is not the case of the appellant that the courts below have omitted from consideration of any material evidence before recording the conclusion. It is also not the submission on behalf of the appellant that the findings by both the court below suffers from wrong application of settled principles of law. Law in this regard is well settled that even the wrong finding of fact is binding upon the court in the second appellate jurisdiction unless the same is shown to be perverse or unreasonable in any manner.

From the perusal of the findings of both the courts below, it is demonstrably clear that both the courts have elaborately considered the material evidence which were acceptable and could have been relied upon. In fact the submission on behalf of the appellant has centered around reappraisal of evidence which is not permissible at the second appellate stage in the facts and circumstances as above. The possession of the defendant over the suit property has been found to be permissive on the basis of the admission made by the defendant in Exhibit-A. The payment of tax



has also been made in the name of the husband of Jahida Khatoon and both the courts below have come to the finding that the defendant never took any step which could have substantiated his claim of title over the suit premise. The issues arising between the parties in the suit are concluded by concurrent finding of facts which could not be shown or established to be perverse in any manner.

The conclusion is, therefore, inevitable that the substantial question of law as framed does not arise for consideration in the facts and circumstances where the decree has been granted to the plaintiff for recovery of possession on the basis of title.

This appeal, sans merit, is accordingly dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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