

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.18 of 2014

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Ram Brikha Pawan son of late Babulal Paswan, resident of village-Mirzapur, P.O. and P.S. Bahadurpur, District-Darbhangha.

.... Appellant/s

Versus

1. Asha Devi wife of late Ram Sewak Jha.
2. Updesh Jha.
3. Chandra Bhushan Jha.
4. Ajit Kumar Jha, all are sons of late Ram Sewak Jha, all residents of village-Deokali, P.S. Bahadurpur, District-Darbhangha.
5. Brij Bala Devi wife of Krishna Ballabh Thakur, daughter of late Ram Sewak Jha, resident of village-Deoram, P.S. Bahera, P.O. Bahera, District-Darbhangha.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.S. Dwivedi, Sr. Adv. with
Mr. Ranjan Kumar Dubey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-08-2016

Heard Mr. S.S. Dwivedi, learned senior counsel for the appellant.

The defendant is the appellant in this appeal against the judgment and decree of reversal granting the decree to the plaintiff.

The plaintiff filed the suit for declaration of title and recovery of possession over the suit property. The plaintiff claimed the title over the suit property on the basis of the compromise decree dated 27.04.1993 passed in partition suit no. 42 of 1990 whereby the suit property had been allotted in the share of the plaintiff. It was the



case of the plaintiff that the defendant initially intended to purchase the suit land but after refusal by the plaintiff he dispossessed the plaintiff. The defendant, on the other hand, admitted the fact that the suit land belonged to the plaintiff but came out with the assertion that the plaintiff had entered into an agreement for sale of the suit land with the defendant and after receiving the consideration money of Rs. 20000/- put the defendant in possession over the said suit land. It was, however, the case of the defendant that later on the plaintiff executed the sale deed on 03.08.1996 but cunningly mentioned another land instead of suit land which did not belong to the plaintiff. The defendant also claimed to be in possession over the suit land for several 12 years.

The trial court returned the finding on the issue of title against the plaintiff and simultaneously also held that the defendant had failed to establish adverse possession over the suit land against the plaintiff. On the basis of these material findings, the suit was dismissed. In appeal by the plaintiff, the appellate court below, on reappraisal of the materials on record, has reversed the findings of the trial court and decreed the suit by the impugned judgment and decree.

The main thrust of the submissions by the learned senior counsel for the appellant is that the appellate court has erred in law in not considering the finding by the trial court that the plaintiff



has failed to adduce cogent evidence to establish his title over the suit property. It has been propounded that the burden of proof in a suit is always upon the plaintiff to establish his case and for the said purpose the plaintiff is not entitled to take the benefit of the weakness in the case of the defendant. The reliance has been placed on the decision by the Apex Court in **Union of India Vs. Vasavi Cooperative Housing Society Ltd. 2014 (2) SCC 269**. Elaborating the submission, it has been contended that a decree passed in a suit much less a compromise decree cannot be a document of title. It has been submitted that the trial court in its judgment has correctly reached to the conclusion that the plaintiff has failed to establish his title over the suit land by cogent evidence. It has been submitted that the title cannot be created on the basis of the admission in view of the settled principles in this regard which has been ignored by the appellate court below. No other submission has been made on behalf of the appellant.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the suit has been filed by the plaintiff for declaration of title and recovery of possession. In the written statement, the defendant has accepted that the plaintiff has the title over the suit land. The appellate court below in this regard has taken notice of the averments made in paragraph nos. 7 and 13 of the written statement filed by the defendant. During the



course of submission before this Court also, the averment made in paragraph nos. 7 and 13 have been placed from which it transpires that the title of the plaintiff over the suit property has not been disputed by the defendant, though on behalf of the appellant, it has also been submitted that a statement in order to qualify as admission must be read as a whole. However, the attention of this Court has not been drawn to the other statements made in the written statement which would have diluted the effect of statements made in paragraph nos. 7 and 13 of the written statement by the defendant.

The Apex Court in the case of **Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram, A.I.R. 1974 S.C. 471** has laid down the principle that the admission made in the pleading, also known as judicial admission, stands on a higher footing than evidentiary admission and constitute a waiver of proof. It has also been held that such judicial admissions can be made the foundation of the right of the parties. In view of this dictum and also in view of section 58 of the Evidence Act, this Court has not been persuaded to hold that in the present facts and circumstances the plaintiff could have been non-suited for want of cogent evidence to establish his title. In *Vasavi Cooperative Housing Society Ltd. (supra)* the effect of judicial admission on the burden of proof has not fallen for consideration before their lordships and as such the reliance on this



decision does not support the contention on behalf of the appellant in the facts of the present case. Even otherwise also, it cannot be ignored that the compromise decree, relied upon by the plaintiff has been passed in a suit for partition and there is no scope for accepting the contention that the title of the plaintiff was created for the first time by the said compromise decree. To the contrary, it is at least a corroborative evidence of title of the plaintiff over the suit property. However, as the fact of compromise decree as raised by the plaintiff has also not been disputed by the defendant, this Court has not been impressed with the submission made on behalf of the appellant that the said compromise decree will have no probative value at all while considering the issue of title of the plaintiff over the suit land. The principle pertaining to non-creation of title by admission as ardently argued on behalf of the appellant is also not attracted in the facts of this case as it is not a case of creation of title by admission but a case of judicial admission of title of the plaintiff by the defendant.

Further from the pleadings of the parties as mentioned in the judgment of both the courts below, it does not appear that the specific plea of being in adverse possession over the suit land has been raised by the defendant. However, the issue in that regard was framed by the trial court and decided against the defendant. The appellate court below has also formulated the point relating to the

adverse possession of the defendant over the suit land and has determined the said point against the defendant. During the course of submission before this Court also no part of the pleading on behalf of the defendant could be shown disclosing as to against whom the defendant-appellant has claimed to be in adverse possession. From the case of the defendant-appellant, it is evident that he has claimed to have been put in possession over the suit land by the plaintiff after payment of the consideration money for purchase of the suit land. In this background, this Court does not find that the learned courts below have committed any illegality in disbelieving the case of adverse possession as alleged by the defendant-appellant.

For the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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