

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.59 of 2003

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| 1. Ashok Kumar Chaurasia, son of Gaya Prasad Chaurasia
2. Smt. Punam Chaurasia, wife of Ashok Kumar Chaurasia, Both resident of Mohalla Gat Kharik, P.S. Kharik, District Bhagalpur at present resident of Mohalla P.S. East Colony, Jamalpur, District Munger
..... Defendants | Appellants

..... Appellants

Versus
1. Jugal Kishore Mandal, son of Late Narain Mandal, resident of Mohalla Nayagaon, P.S. East Colony Jamalpur, District Munger Plaintiff Respondent
2. Ahilaya Devi, wife of Santosh Kumar Mandal
3. Santosh Kumar Mandal
4. Indradeo Mandal
5. Brahamdeo Mandal, all sons of Late Narain Mandal, residents of resident of Mohalla Nayagaon, P.S. East Colony Jamalpur, District Munger
6. Adyanand Mandal, son of Harilal Mandal, resident of Jhanjhara, P.S. Parwatta, District Munger
..... Defendants Respondents

..... Respondents |
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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Rao Kundan Kumar Karmvir
Mr. Md. Faiz Ahmad

For the Respondent/s : Mr. Dharendra Nath Jhqa
Mr. Rajiv Shankar Dwivedi
Mr. Sangeeta Sharma
Mr. Harshwardhan Sahay
Mr. Abhay Kumar

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-12-2016

Heard Mr. Chitranjan Sinha, learned Senior Counsel
appearing for the appellants.

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

3. The plaintiff filed the suit for declaration of title and



confirmation of possession and in the alternative for recovery of possession. The plaintiff claimed his title over the suit land through Tulsi Mandal who according to the case of the plaintiff was the predecessor in interest of the property. The defendant, appellant, however, claimed that the property originally belonged to one Mahabuir Mandal who was the ex-landlord and he settled the same to Krishna Kumar Goswami through whom the appellants claimed their title and possession over the suit land.

4. There is another set of defendants also in the suit, who claimed the suit property to be their self acquired property and who also filed another suit. Both the suits were heard analogously. The trial court decreed the suit filed by the plaintiff who is respondent of the present appeal. In appeal by the defendant-appellant, the appellate court below considered the evidence on record and has affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

5. Mr. Sinha, learned Senior Counsel appearing for the appellants after narrating the relevant facts of the case has submitted that the appellate court below has failed to consider that Tulsi Mandal who was predecessor in interest of the plaintiff had no title over the suit property. It has been contended that the admitted original title holder was Mahabir Mandal who was also the ex-landlord and the appellate court below has not taken into notice the fact that the said ex-landlord Mahabir Mandal through an *arpannama* dedicated the property including the suit property in favour of the deity and therefore any right which might have been acquired by Tulsi Mandal was wiped out after the said *arpannama*. It has also been submitted that the return submitted by the ex-landlord at



the time of vesting and Register II were prepared in the name of predecessor in interest of the defendant-appellant but the affect of the said two documents i.e. the return as well as Register II have not been considered by the appellate court below and, therefore, the judgment and decree passed by it are vulnerable. It has also been submitted that the plaintiff has to succeed on the strength of his own case and not on the weakness of the case of the defendants but the appellate court has also failed to consider the said aspect. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below, it is pellucid that the plaintiff came out with the case of acquisition of right, title and interest over the suit land through Tulsi Mandal with the case that Tulsi Mandal acquired the right, title and interest in the suit land from Mahabir Mandal who was the admitted ex-landlord. Finding has been recorded by both the courts below that Tulsi Mandal was recognized as raiyat by the ex-landlord by grant of rent receipt at least from the year 1924 onwards. The dedication of the property has been found to have been made by Mahabir Mandal in the year 1931 and therefore the defendants cannot claim any right over the suit property nor there any such evidence or pleading by the defendants. The defendants, however, came out with the case of oral gift by Mahabir Mandal of the suit land in favour of Krishna Kumar Goswami, but both the courts below have come to the conclusion that the said oral gift is not recognized in law and cannot confer title over the suit land upon the predecessor in interest of the defendant.

7. The findings of fact have been recorded by the appellate



court below on the basis of appreciation of evidence. It is not the case on behalf of the appellants that any material evidence has been ignored or not considered by the courts below. The law is well settled that even if the finding of fact is wrong but is not alleged to be based on non consideration of evidence, the same shall be binding on the second appellate jurisdiction. It is only the perversity or unreasonableness in the finding of fact which may give arise to substantial question of law arising in the appeal. In this regard the principles laid down by the Apex Court in the case of **Damoder Lal vs. Sohan Devi, (2016) 3 SCC 78** is noticeable.

8. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.01.2017
Transmission Date	N/A

