

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.133 of 2014

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Kameshwar Pandit s/o Late Chholo Pandit, resident of Mohalla Daharia, Jhulania
chowk, Ward No. 29, Katihar, District Katihar.

....Plaintiffs.....Appellant Appellant

Versus

1.The National Jute Manufacturer Corporation Ltd Unit R.B.M.H. Jute Mill,
Katihar, through its Managing Director of Charters Bank, Netaji Subhash Road,
Kolkata, WB.

2.The Manager, R.B.M.H. Jute Mill Unit of N.J.M.C. at R.B.M.H. Jute Mill,
Katihar, PS & Dt. Katihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P.K. Jaipuriyar, Adv & Mr. Anshuman
Jaipuriyar, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-10-2016

Heard Mr. P.K. Jaipuriyar, learned counsel for the
appellant.

The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit. The plaintiff
filed the suit for declaration of his title over the suit land on the
basis of settlement taken by his father from the Ex-landlord and also
on the basis of adverse possession. The case of the plaintiff in short
was that his father Chholo Pandit took the settlement of the suit land



from the Ex-landlord in the year 1945-46 and since thereafter his father and after his death the plaintiff had been coming in possession over the same. It was also the case of the plaintiff that subsequently the father of the plaintiff also constructed a thatched house on the suit land and also planted trees therein. It has, however, been accepted by the plaintiff that the return was not submitted by the Ex-landlord in the name of the plaintiff or his father for the suit land. It was the case of the plaintiff that during the municipal survey the suit land was wrongly recorded in the name of the Defendant No. 1 and after threat of dispossession by Defendant No. 1 the suit has been filed. The defendants contested the claim of the plaintiff denying the case of settlement as pleaded or possession of the plaintiff over the suit land. The defendants alleged that the plaintiff had put a thatched hut over the vacant portion of the suit land during the encroachment drive by the local administration of the State of Bihar in the month of February/March 2001 and thereafter he has filed the suit with dishonest motive. The defendants claimed their exclusive title and possession over the suit land.

Both the courts below have concurrently come to the finding that the plaintiff has failed to establish the claim of settlement of the suit land with his father. Both the courts below have further found that the defendants have got valid title over the

suit property and the plaintiff was only a trespasser over the suit land. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

Learned counsel for the appellant has submitted that both the courts below misconstrued the evidence on record and the findings are therefore, vitiated. The learned counsel during the course of submission has accepted that the plaintiff has put forward the claim of possession over the suit land on the basis of title and the claim on the basis of adverse possession also. No other submission has been made on behalf of the appellant.

After considering the submissions and perusal of judgment of both the courts below, it is transparent that both the courts below have elaborately considered the evidence on record and thereafter have reached to the conclusion that the plaintiff has failed to establish his title over the suit land on the basis of settlement as pleaded. The appellate court below has also rightly come to the conclusion that the claim of adverse possession cannot go together with the claim of title over the suit property unless the later is renounced. It has also been found on the basis of scrutiny of evidence that the plaintiff came in possession of the suit land during the encroachment in the year 2001. The findings of both the courts below have been recorded on the basis of evidence which were

acceptable and could have been relied upon.

This court has not been persuaded to find any perversity or unreasonableness in those findings. In fact the entire submission on behalf of the appellant has centered around reappreciation of evidence in order to overturn the concurrent findings of fact which cannot be done at the second appellate stage.

This Court, therefore, 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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