

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.324 of 2013

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1. Tetari Devi D/O Late Nathuni Ahir W/O Ram Naresh Yadav Resident Of Bishunpur, P.O. Bandhu Chhapra, P.S. Barahara, District Bhojpur.
 2. Shakunti Devi D/O Late Nathuni Ahir W/O Late Mohar Yadav Resident Of Bishunpur, P.O. Bandhu Chhapra, P.S. Barahara, District Bhojpur.
 3. Jamuna Ahir S/O Late Nathuni Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 4. Liladhar Ahir S/O Late Nathuni Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 5. Nirmal Ahir S/O Late Nathuni Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 6. Sheo Bachan Ahir S/O Jamuna Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 7. Hari Kishun Ahir S/O Liladhar Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 8. Bada Ahir S/O Lila Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
-Defendant 1st -Respondents 1st Set.
9. Rama Nand Ahir S/O Nasib Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 10. Basudeo Ahir S/O Nasib Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 11. Ramadhar Ahir S/O Ramanand Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 12. Jonidra Ahir S/O Ramadhar Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 13. Satyendra Ahir S/O Ramadhar Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.
 14. Vijay Kumar S/O Basudeo Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.

.....Defendants 2nd Set-Respondents 2nd Set.

Versus

1. Jai Kishun Yadav S/O Late Raghubir Ahir Resident Of Baghaut, P.S. Ara Town, District Bhojpur.

....Plaintiff/Appellant/Respondent/s

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Appearance :

For the Appellant/s : Mr. ANISH CHANDRA SINHA, Adv & MR.
SANGHA MITRA GHOSH, ADV

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-08-2016

Heard Mr. Anish Chandra Sinha, learned counsel
appearing on behalf of the appellants.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of reversal granting the decree to the plaintiff as prayed. The plaintiff filed the suit mainly for declaration of title over the suit land and for declaration that the entry in the municipal survey khatian with regard to the suit land in the name of the defendant is wrong. The plaintiff claimed the title over the suit land on the basis of the registered sale deed dated 04.10.1890 (Exhibit-5). The defendants on the other hand came out with the case of acquisition of title over the suit land from the Ex-landlord by grant of rent receipt.

3. The trial court returned the findings on the issues against the plaintiff and further also held that the suit was barred by limitation. Accordingly, the suit was dismissed. In appeal preferred by the plaintiff, the appellate court below on re-appreciation of evidence has reversed the findings of the trial court allowed the

appeal and granted the decree to the plaintiff, as prayed.



4. Mr. Anish Chandra Sinha, learned counsel appearing on behalf of the petitioners has vehemently submitted that the appellate court below has committed error of law in not considering the oral evidence adduced on behalf of the appellants and therefore, the judgment is vulnerable. It has also been further submitted that the Return of the suit land has been submitted in the name of the defendants and in support of the same, the copy of the Return (Exhibit-G) has been brought on record by the defendants. It has been further contended by the learned counsel that the appellate court below has also misconstrued the documentary evidence and has wrongly recorded the finding in favour of the plaintiff. The learned counsel at one stage has prayed before the Court for calling for the Lower Court Records in order to enable the learned counsel to find out the real facts from the exhibits made in the learned court below. Lastly learned counsel for the appellants has again emphasized that the appellate court was required to consider the oral evidence on behalf of the defendants.

5. After considering the submissions and perusal of the judgment of both the court below, it is manifest that the plaintiff has claimed the title over the suit land on the basis of registered sale deed dated 04.10.1890 (Exhibit-5). The said sale deed has been



executed by Hiyawal Ram in favour of ancestor of the plaintiff namely Gangjali. The plaintiff has also adduced in evidence the rent receipts granted by the Ex-landlord in favour of the ancestor of the plaintiff which have been marked as Exhibit-3 series. Further the plaintiff has adduced the rent receipts (Exhibit-2 series) granted by the State of Bihar in favour of the plaintiff. The appellate court below has taken into consideration the aforesaid documents before recording the findings. On behalf of the defendants, however, no direct evidence with regard to the settlement of the suit land by the Ex-landlord has been adduced. Though the defendants have come out with the case that the suit land had been settled by the Ex-landlord prior to 1890 by grant of rent receipt (as pleaded in the written statement) but no such rent receipt had been filed as evidence in the suit. The appellate court below has also taken into notice the rent receipts (Ext. E series) adduced by the defendants in evidence and has come to the finding that these rent receipts have been issued by the Ex-landlord after entry in the municipal survey and there was absence of cogent evidence on behalf of the defendants to establish the basis of preparation of municipal khatian. Moreover, the defendants in the suit were demonstrably confronted with a registered document of title over the suit land in favour of the plaintiff and therefore, the burden was upon the defendants to



establish that the said registered sale deed in favour of the plaintiff did not validly and legally convey the title over the suit land in favour of the plaintiff. As the defendants claimed their own title over the suit land through settlement it was legally incumbent upon them to prove this fact in order to displace the title of the plaintiff. There is no explanation on behalf of the defendants as to why no rent receipts prior to Fasali 1339 was produced by the defendants in support of their case of settlement.

6. In view of the documentary evidence adduced by the parties and considered by the courts below, the non consideration of the oral evidence would not carry away much weight unless the findings recorded on the basis of the documentary evidence can be shown or established to be perverse or unreasonable in any manner. During the course of submission, no part of oral evidence has been pointed out which if considered would have turned the table in favour of the defendants and would have diluted the conclusion emanating from the documentary evidence.

7. In the present case, the appellate court below has manifestly recorded its finding on the basis of evidence which are acceptable and could have been relied upon. The appellate court below has further also found that the suit filed by the plaintiff was not barred by limitation and the finding in this regard by the trial

court was not sustained. This Court has not been persuaded to find unreasonableness or perversity in any manner in the conclusions recorded by the appellate court below.

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)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	