

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.19 of 2012

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Ramji Prasad Sah S/O Mohan Prasad Sah R/O Village - Chandanpura,
Police Station - Tilauthu, District – Rohtas

..... Plaintiff Appellant

.... Appellant

Versus

1(i). Bhagwati Kunwar, wife of Prayag Kanu

1(ii). Sunil Kanu

1(iii). Rakesh Kanu

1(iv). Rajesh Kanu, all sons of Prayag Kanu

1(v). Gita Devi

1(vi). Punam Devi, both daughters of Prayag Kanu

2. Triveni Kanu S/O Late Raghubar Kanu R/O Village - Chandanpura,
Police Station - Tilauthu, District - Rohtas

3. Sitaram Kanu S/O Late Raghubar Kanu R/O Village - Chandanpura,
Police Station - Tilauthu, District - Rohtas

4. Shiv Narain Kanu S/O Late Raghubar Kanu R/O Village - Chandanpura,
Police Station - Tilauthu, District - Rohtas

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sanjay Sinha

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

22 24-02-2016 Heard Mr. Alam, learned Counsel appearing for the
appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit of the plaintiff.

3. The plaintiff filed the suit for declaration of title and for
permanent injunction restraining the defendants from interfering with
the peaceful possession of the plaintiff over Schedule 'A' property of
the plaint. The defendants entered appearance and contested the
claim of the plaintiff.

4. Both the courts below have come to the concurrent finding
that the claim of the plaintiff to be entitled to the suit land on the basis



of settlement from the State of Bihar cannot be allowed in view of the earlier judgment and decree passed in T.S. No. 55 of 1993 between the defendants and the State of Bihar, wherein it has been held that the suit land belongs to the defendants and the State of Bihar has no right, title or interest over the same. It has, therefore, been found by both the courts below that as the plaintiff has claimed right, title and interest over the suit land through the State of Bihar he cannot be granted the relief for declaration of title over the suit land.

5. Mr. Alam, learned Counsel appearing for the appellant, has assailed the judgments of both the courts below by submitting that the judgment of T.S. No. 55 of 1993 was never brought before the Court as evidence in the suit. It has been further contended that against the judgment and decree passed in T.S. No. 55 of 1993 the appeal was filed by the State of Bihar and the same was pending before the appellate court, where the judgment and decree under appeal has been passed but the said court did not pass an order for analogous hearing of both the appeals. It has, therefore, been submitted that the findings by both the courts below that the plaintiff did not acquire valid title over the suit land on the basis of settlement from the State of Bihar is vulnerable and the substantial question of law arises for consideration in this appeal.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the fact of filing of T.S. No. 55 of 1993 was an admitted fact between the parties and further the filing of appeal by the State of Bihar was also an admitted fact. It was also the case of the plaintiff that his prayer to be impleaded as party in the T.S. No. 55 of 1993 was rejected upto the

High Court. From perusal of para 12 of the judgment of the appellate court below it further transpires that the appeal filed by the State of Bihar against the judgment and decree in T.S. No. 55 of 1993 has also been dismissed. In view of the fact which has been admitted, the submission on behalf of the appellant that the fact of filing of the said Title Suit and its decision were required to be proved in accordance with law, is misconceived in view of the provisions of Section 58 of the Evidence Act. Further the plaintiff-appellant has also accepted that the settlement of the suit land was made with him on 20.10.1994 by the State of Bihar much after the filing of the T.S. No. 55 of 1993 by the defendants. It also does not appear from the memo of the present appeal or from the judgment of the appellate court below that the appellant though aware of the pendency of the said title appeal, had ever made prayer for analogous hearing of both the appeals. In this view of the matter, both the courts below have rightly concluded that after the State of Bihar has lost its title over the suit property in the suit filed by the defendants, no legally valid right, title and interest in the suit land can be conferred by transfer of the same in favour of the plaintiff. The submissions on behalf of the appellants are not legally tenable and appear to have been made in desperation.

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

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(V. Nath, J.)