

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.49 of 2014

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Braj Nandan Pawan Son Of Late Nathuni Manjhi Resident Of Village- Mathiya,
Khansama Tola, P.O. Hathuwa, P.S. Mirganj, District- Gopalganj

.... Appellant.

Versus

1. The State Of Bihar, Through The Collector, Gopalganj
2. The Collector, Gopalganj, District: Gopalganj
3. The Circle Officer, Hathuwa, At And P.O. Hathuwa, District: Gopalganj
4. Bigan Rai @ Bijan Rai Son Of Late Rama Rai
5. Birbal Rai Son Of Late Ram Prit Rai Sl. Nos. 4 And 5 Residents Of Village-
Murera, P.O. Hathuwa, P.S. Mirganj, District: Gopalganj

.... Respondents

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Appearance :

For the Appellant/s

:Mr. Nagendra Rai, Adv.

For the Respondent Nos.1,2 and 3

:Mr. Sri Kameshwar Prasad Gupta,
G.P.10.

Mr. Binod Kumar, A.C. to G.P.10.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-07-2016

V.Nath, J.

Heard Mr.Nagendra Rai, learned counsel for the

appellant.

Mr. Binod Kumar, advocate has appeared on behalf

of the respondent nos.1,2 and 3 .

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 title and

confirmation of possession and also for grant of permanent injunction

restraining the defendants for interfering in the possession of the

plaintiff.

The matrix of facts discloses that the plaintiff has traced his title over the suit property upto one Mustafa Khan showing that the suit property was settled with the said Mustafa Khan by the erstwhile landlord Hathwa Raj orally and he had come in possession over the suit property on that basis. After claiming to have acquired the suit property by purchase, the plaintiff has also claimed to have acquired title by adverse possession over the same.

Both the courts below have returned the findings on the material issues against the plaintiff. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

In the backdrop of admitted fact that the suit property was a pond, the point arose during the course of submission as to whether the settlement of a pond recorded in the survey khatian as Gairmajarua Malik could have been settled orally. The hearing of this appeal was earlier adjourned on the prayer of the learned counsel for the appellant for making submission on this point. Mr. Rai, learned counsel for the appellant now has fairly submitted that the settlement of a pond could not have been made orally. Mr. Rai, however, has made a further submission that the plaintiff in any view of the matter acquired title by adverse possession over the suit

property. The reliance in this regard has been placed on the decision in the case of ***Bondar Singh Vs. Nihal Singh, 2003 (4) SCC 161***. No other submission has been made on behalf of the appellant.

After considering the submissions and the perusal of judgments of both the courts below, it is manifest that both the courts below have disbelieved the fact of settlement as pleaded by the plaintiff. The appellate court below after scrutiny of evidence has recorded the specific finding that the plaintiff has not adduced cogent evidence to establish his case of settlement of the suit property (pond) in favour of Mustafa Khan who was admittedly the predecessor-in-interest of the plaintiff. The decision in the case of ***Bondar Singh (Supra)*** was given in a different setting of facts where the execution of the deed of transfer of title was an admitted fact but the transfer was found to be invalidated for technical or other reason. In that backdrop the apex court has come to hold that the claim of acquisition of title by adverse possession can be upheld in such a case. However, in the present case where both the courts below have found that the fact of settlement of the suit property (pond) with Mustafa Khan could not be established by cogent evidence by the plaintiff, the principle of law as laid down by their lordships in the aforesaid decision cannot enure to the benefit of the plaintiff.

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)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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