

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.188 of 2014

1. Ragho Mahto @ Ragho Sharan Mahto, Son of Late Ram Bhajan Mahto.

2. Birda Nand Mahto, Son of Ragho Sharan Mahto.

Both residents of village- Dharnai, P.S.- Makhdumpur, District-Jehanabad.

.... Appellants

Versus

1. Uma Kant Tiwary.

2. Sobha Kant Tiwary.

3. Sashi Kant Tiwary.

All sons of Late Badri Tiwary.

4. Girzamani Devi Wife of Late Badri Tiwary.

All residents of village-Dharnai, P.S.-Makhdumpur, District-Jehanabad..

.... Respondents

Appearance :

For the Appellant/s : Mr. Yogendra Prasad Singh, Adv.

For the Respondent/s : MrGajanan Arun, Adv.

Mr. Gajendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-07-2016

V.Nath, J.

Heard Mr. Yogendra Prasad Singh, learned counsel

appearing for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of reversal.

The plaintiffs filed the suit for declaration of title and recovery of possession over the suit land described in Schedule-I of the plaint. The plaintiffs based their claim of title on Hukumnama

granted by the ex-landlord in the year 1944 and 1947. The defendants contested the claim of the plaintiff, asserted their own right, title and interest over the suit land on the basis of the prior Hukumnama of the year 1938 executed by the ex-landlord.

The trial court returned the findings on the issues against the plaintiff and dismissed the suit. In appeal, however, the appellate court below on reappraisal of evidence has reversed the findings of the trial court and granted the decree to the plaintiff as prayed, by the impugned judgment and decree.

The learned counsel for the appellants while criticizing the impugned judgment has submitted that the appellate court below has not taken into consideration the material evidence on record and the findings are therefore vitiated. It has been canvassed that the trial court has come to the finding that the defendant has got the title on the basis of Hukumnama for the suit land executed in their favour prior to the alleged Hukumnama of the plaintiffs and the said aspect has not been considered by the appellate court below. It has also been submitted that the Khatian for the suit land has been prepared in the name of the defendant-appellants but the trial court has wrongly discarded the same on the ground that it is only draft khatian. The learned counsel has also prayed that the records of the suit may be called for in order to ascertain the correct position as to

whether the Hukumnama (Ext.D) in favour of defendant said to have been executed by the ex-landlord bears the signature of the ex-landlord. No other submission has been made on behalf of the appellants.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the suit has been filed for recovery of possession over the suit land on the basis of title through Hukumnama. The plaintiffs have claimed their title on the basis of Hukumnama granted by the ex-landlord and in support of the same the rent receipts granted by the ex-landlord have also been adduced in evidence. The defendants, on the other hand, have claimed their title over the suit land on the basis of prior Hukumnama of the plaintiff. However, the appellate court below on scrutiny of evidence has recorded a finding of fact that the said Hukumnama (Ext.D) of the defendant was not signed by the ex-landlord rather it had been signed by Baban Singh and Udit Narayan Singh who were not the ex-landlords. The appellate court below has further also scrutinized legality and validity of the Hukumnama (Ext.D) and has come to the finding that the said document is not a reliable document to hold valid title over the suit land in favour of the defendants. The appellate court below has also taken into notice that the Khatian produced by the defendants was only a draft khatian and not the final khatian raising

presumption of correctness and therefore the appellate court below has refused to rely upon the same.

The learned counsel for the appellants has put emphasis on the aspect that the Jamabandi return has not been produced on behalf of the plaintiff although there is statement in the plaint that the Jamabandi return for the suit land was submitted by the ex-landlord in the name of the plaintiff. However, on behalf of the appellants nothing could be shown or established to nullify the Hukumnama for the suit land in favour of the plaintiff which has been followed by the grant of rent receipts by the ex-landlord in favour of the plaintiffs. This Court finds that the conclusion on issues of fact has been recorded by the appellate court below on the basis of evidence which are acceptable and could have been relied upon, and therefore finds no perversity or unreasonableness in those findings. The prayer on behalf of the appellants for calling for the lower court records for examining the validity of the Hukumnama (Ext.D) cannot be sustained in view of the limited nature of the jurisdiction in second appeal where the finding of fact can be reappreciated only when the same are shown or established to be perverse or unreasonable in any manner.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal,

which is, accordingly, dismissed.

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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(V. Nath, J)

