

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.676 of 2011

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1. The State Of Bihar Through Collector, Kaimur At P.O. And P.S. Bhabhua,
District Kaimur (Bhabhua)
2.The Anchal Adhikhari , Mohania at P.O and PS. Mohania District Kaimur ,
Bhabhua. Appellants

Versus

1. i. Radhey Shyam Gupta S/o late Sheojee Prasad Gupta.
ii.Laxman Prasad Gupta S/o late Sheojee Prasad Gupta both R/V Katra Kola,
P.S.- Mohania, District-Kaimur (Bhabhua).
2. Ram Brikshapal Mukhia Gram Panchayat Katra Kala at Karamahari, Police
station Mohania District Kaimur.
3. Lallan Rai S/O Late Kishun Rai At Katra Kala, Police Station Mohania, District
- Kaimur

.... Respondents

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Appearance :

For the Appellant/s : Mr. AJAY KUMAR

For the Respondent/s : Mr. null

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-09-2016

Heard Mr.Binod Kumar, learned counsel appearing
for the appellants.

The defendants are the appellants in this appeal
against the judgment and decree of reversal granting the decree to the
plaintiff as prayed.

The suit was filed by the plaintiffs for declaration
that the suit plot denoted in the map attached with the plaint is the part
of the Plot No.882 of the plaintiff and is also part of the house of the
plaintiff. The plaintiff filed the suit when the defendants started
proceeding under Bihar Public Land Encroachment Act for removal
of the construction of the plaintiff over the suit land. The plaintiff

claimed that the suit land as denoted in red colour and by A, B, C and D in the sketch was the part of the house situated over R.S.Plot No.882 Area 5 decimal which was carved out of C.S.Plot No.665 Area 5 decimal. The defendant contested the claim of the plaintiff asserting that the suit land was the part of the Gali in use of the general public.

The trial court returned the findings on the issues against the plaintiff and also held that the suit was barred by limitation. The appellate court below on reappraisal of evidence has reversed the findings of the trial court, allowed the appeal and granted the decree as prayed by the plaintiff.

Mr. Binod Kumar, learned counsel appearing for the appellants has firstly submitted that the appellate court below has failed to consider that the suit was barred by limitation as the survey khatian was published long back in the year 1970 itself whereas the suit has been filed in the year 2007. It has been submitted that in view of the provision as contained in Section 3 of the Limitation Act the appellate court below ought to have decided the issue of limitation in favour of the defendants. It has been further submitted that the survey map prepared during the recent survey operation clearly shows the suit land to be the part of the public well and it carries with it the presumption of correctness but the appellate court below has wrongly

discarded the said aspect. The learned counsel has further propounded that the findings by the trial court were correct findings based upon the evidence. The appellate court below has not met the reasonings assigned by the trial court before reversing the findings. 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 manifest that the plaintiff has filed the suit for declaration that the suit land as described in the plaint is part of his land as recorded in Survey Plot No.882 and is part of his house. The suit was filed when the defendants served the notice under the provisions of Bihar Public Land Encroachment Act upon the plaintiff for removal of the construction over the suit land. The law is well settled by the apex court in the case of **Daya Singh Vs. Gurdev Singh, (2010) 2 SCC 194** that the entries in the survey khatian will not be the starting point of limitation of a suit for declaration of title and possession. The entire submission as well as the finding by the trial court is based upon the view that the suit must have been filed by the plaintiffs within a period of three years after the publication of recent survey khatian. As such, this Court finds that the submission as well as the findings by the trial court with regard to the bar of the suit by limitation is not sustainable in law and the appellate court below has rightly overturned the finding of the trial

court with regard to limitation and rightly held that the suit filed by the plaintiff was not barred by law of limitation. The findings by the appellate court below is demonstrably based upon the scrutiny of evidence on record including the report submitted by the pleader commissioner against which no objection was filed by any of the parties much less the defendant-appellants. Those findings are based upon the evidence which are acceptable and could have been relied upon. This Court, therefore, finds that there is no perversity or unreasonableness as the view taken by the appellate court below on the basis of the evidence discussed by it can be a possible view. The reappreciation of evidence at the second appellate stage after reversing a finding of fact in such circumstance is not possible.

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)

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