

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.46 of 2014

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1. Mahendra Kahar Son Of Late Bihari Kahar
2. Badan Kahar Son Of Bihari Kahar
3. Budhu Kahar Son Of Late Chunni Kahar
All Resident Of Village- Gajrajganj Tola, Police Station- Gajrajganj, District-
Bhojpur, Ara

....Defendants.....Respondents Appellant/s

Versus

1. Ramkailash Singh
2. Suresh Singh
3. Sriman Singh
4. Rajendra Singh
5. Satendra Singh
6. Om Prakash Singh All Sons Of Late Bali Ram Singh
7. Most. Kusum Kuer Widow Of Late Narendra Singh
8. Most. Sunaina Devi Widow Of Late Baleshwar Singh
9. Radhe Shyam Singh Son Of Late Baleshwar Singh
10. Harendra Singh Son Of Late Baleshwar Singh
11. Most. Daulato Kuer Widow Of Late Hareram Singh
12. Upendra Singh Son Of Late Hareram Singh
13. Krishna Singh Son Of Late Hareram Singh All Resident Of Village-
Nawanagar, P.S.- Gajrajganj, District- Bhojpur
14. Rajiv Ranjan Son Of Late Narendra Singh
15. Aasish Ranjan Son Of Late Narendra Singh
16. Soni Kumari Daughter Of Late Narendra Singh
17. Moni Kumari Daughter Of Narendra Singh All Resident Of Village-
Nawanagar, P.S.- Gajrajganj, District- Bhojpur

....Defendatns...Respondents..... Respondents IInd Party
with

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Second Appeal No. 47 of 2014

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1. Mahendra Kahar Son Of Late Bihari Kahar
 2. Madan Kahar Son Of Bihari Kahar
 3. Budhu Kahar Son Of Late Chunni Kahar
 All Resident Of Village- Gajrajganj Tola, Police Station- Udwanthnagar, Circle
 Udwanthnagar, District- Bhojpur, Ara

.... Appellant/s

Versus

1. Ramkailash Singh
 2. Suresh Singh
 3. Sriman Narayan Singh
 4. Rajendra Singh
 5. Satendra Singh
 6. Om Prakash Singh
 All Sons Of Late Sri Baliram Singh
 7. Most. Kusum Kuer Widow Of Late Narendra Singh
 8. Most. Sunaina Devi Widow Of Late Baleshwar Singh
 9. Radhe Shyam Singh Son Of Late Baleshwar Singh
 10. Harendra Singh Son Of Late Baleshwar Singh
 11. Most. Daulato Kuer Widow Of Late Hareram Singh
 12. Upendra Singh Son Of Late Hareram Singh
 13. Krishna Singh Son Of Late Hareram Singh All Resident Of Village-
 Nawanagar, P.S.- Gajrajganj, District- Bhojpur
 14. Rajiv Ranjan Son Of Late Narendra Singh
 15. Aasish Ranjan Son Of Late Narendra Singh
 16. Soni Kumari Daughter Of Late Narendra Singh
 17. Moni Kumari Daughter Of Late Narendra Kumar Singh All Resident Of
 Village- Nawanagar, P.S.- Gajrajganj, District- Bhojpur

.... Respondent/s

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Appearance :

(In SA No.46 of 2014)

For the Appellant/s : MR, T.N. MAITIN, Sr. ADV & Mr. RAJEEV KUMAR SINHA, Adv

For the Respondent/s : Mr.

(In SA No.47 of 2014)

For the Appellant/s : MR, T.N. MAITIN, Sr. ADV & MR. RAJEEV KUMAR SINHA, ADV

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-10-2016

Heard Mr. T.N. Maitin, learned senior counsel appearing for the appellants in both the appeals. On the prayer on behalf of the appellants both these appeals have been heard together.

For better appreciation of submissions on behalf of the appellants, it would be condign here to notice the background facts leading to the present two second appeals. The T.S. No. 15 of 2001/ 81 of 2003 was filed by the respondents in both the appeals against the present appellants as defendants for declaration of their title and confirmation of possession over the suit land measuring 10 decimals of R.S. Plot No. 1160 of Khata No. 346, with further relief for declaration that the entry of the names of Bihari Kahar and Chuni Kahar in the recent survey records for the suit land was wrong. The present appellants as plaintiffs also filed T.S. No. 40 of 2001 against the defendants (plaintiffs of T.S. No. 15 of 2001/ 81 of 2003) for declaration of their title over the same land measuring 10 decimals of R.S. Plot No. 1160 of R.S. Khata No. 346 with further prayer for

recovery of possession over the portion of the said land alleging encroachment by the defendants.

Both the suits were heard analogously. The trial court decreed the T.S. No. 40 of 2001 granting relief to the plaintiffs (appellants in the present two second appeals) of that suit and dismissed the T.S. No. 15 of 2001/ 81 of 2003 which was filed by the present respondents. The Title Appeal No. 21 of 2009 and Title Appeal No. 22 of 2009 were filed by the present respondents. The appellate court below heard both the appeals together and by the impugned judgment and decree in both these second appeals has reversed the judgment and decree passed by the trial court, dismissing the T.S. No. 40 of 2001 filed by the present appellants and decreeing the T.S. No. 15 of 2001/ 81 of 2003 filed by the respondents.

The rival case of the parties in short is deducible from the judgments of the courts below and also from the submissions on behalf of the appellants. The plaintiffs of T.S. No. 15 of 2001/ 81 of 2003 have pleaded that R.S. Plot No. 1160 has been carved out from C.S. Plot Nos. 983 and 984. It was their case that their vendor Moti Lal Gupta acquired 7 decimals of C.S. Plot No. 983 by way of inheritance as the only heir of Ganga Dayal Sah in whose possession the said land was recorded in the survey khatian. It was their further



case that their vendor Moti Lal Gupta acquired 5 decimals of C.S. Plot No. 984 by registered sale deed dated 03.08.1961 from Hari Narayan Sah and Dev Narayan Sah in whose possession the said land was recorded in the survey khatian. The plaintiffs of the T.S. No. 15 of 2001/ 81 of 2003 claimed to have purchased the suit land through sale deed dated 05.09.1970 from Moti Lal Gupta and on that basis they claimed to have come in possession over the suit land. On the other hand the plaintiffs of T.S. No. 40 of 2001 (present appellants) claimed to have title over the suit land on the basis that the same was given by the Ex-landlord to their predecessor after being pleased with their services for the purpose of constructing residential house. It was their further case that on the basis of their possession the names of the predecessors were entered into recent survey khatian for the suit land. They also claimed that their possession over the suit land had been known to the defendants from the very beginning. The plaintiffs of T.S. No. 40 of 2001 have further denied the fact that R.S. Plot No. 1160 had been carved out of C.S. Plot Nos. 983 and 984 and had also denied the title of Moti Lal Gupta who was the vendor of the defendants (plaintiffs of T.S. No. 15 of 2001/ 81 of 2003).

As earlier mentioned, the trial court returned the findings on the issues in favour of the plaintiffs of T.S. No. 40 of 2001 and

granted decree to them, as prayed, while dismissing the T.S. No. 81 of 2003. The appellate court on reappraisal of evidence has reversed the findings of the trial court.

Mr. Maitin, learned senior counsel for the appellants has submitted that the appellate court below has committed error of law in reversing the findings of fact recorded by the trial court, on mere surmises and conjectures. It has been contended that the appellate court below has not properly construed the pleading and evidence of the appellants and has also not noticed the reasonings of the trial court. It has been propounded that the suit land has been coming in possession of the plaintiff-appellants peacefully and uninterruptedly and they have also acquired title by adverse possession but the said fact has not been correctly appreciated by the appellate court. In order to elaborate his submissions, the learned senior counsel has extensively placed the findings of the appellate court below to persuade this Court to take a view that the findings are perverse and unreasonable.

From the perusal of the impugned judgment of the appellate court below and in the backdrop of the submissions made on behalf of the appellants, it becomes pellucid that the first issue between the parties pertained to the carving out of R.S. Plot No. 1160 (suit plot) from the C.S. Plot Nos. 983 and 984. The appellate



court below has taken into notice the evidence adduced on behalf of the parties in this regard and in particular the report submitted by the pleader commissioner and the statement made by the said pleader commissioner in his deposition. The said pleader commissioner has been examined as PW-5 in T.S. No. 40 of 2001 filed by the present appellants and in his report and deposition, he has stated that R.S. Plot No. 1160 has been carved out from C.S. Plot Nos. 983 and 984. The appellate court has further also taken into notice the report submitted by the survey knowing pleader commissioner appointed in T.S. No. 15 of 2001/ 81 of 2003 (filed by the present respondents) and the statement made by him in his deposition. The report and deposition of this pleader commissioner also supported the fact that R.S. Plot No. 1160 was carved out from C.S. Plot Nos. 983 and 984. The finding by the appellate court below that R.S. Plot No. 1160 has been carved out from C.S. Plot No. 983 and 984 is demonstrably based upon the evidence on record. The appellate court below has further taken into notice the entries made in respect of C.S. Plot Nos. 983 and 984 in the khatian prepared in 1912 and has found that the entries in C.S. Plot Nos. 983 recorded the possession of Ganga Dayal Sah and C.S. Plot No. 984 was recorded in the name of Deo Narayan Sah and others having their house. On consideration of the deposition of Moti Lal Gupta (vendor of the respondents) as PW-6



the appellate court has further found that Moti Lal Gupta had inherited C.S. Plot NO. 983 as heir of Ganga Dayal Sah in whose possession the said plot was recorded. Further on the basis of scrutiny of the sale deed dated 03.02.1961 (Exhibit-2) and the statement made by the appellant no. 1 as PW-5 in T.S. No. 40 of 2001, the court has found that Moti Lal Gupta, vendor of the plaintiff, was within his rights to transfer the land of C.S. Plot Nos. 983 and 984 in favour of the plaintiffs of T.S. No. 15 of 2001/ 81 of 2003 (present respondents).

While considering the case of the present appellants, the appellate court below has noticed that the present appellants have claimed their title over the suit land, firstly by adverse possession, secondly on the basis of entry in the recent survey khatian and thirdly by way of settlement from the Ex-landlord. After considering the claim of the appellants on these three basis, it has been rightly concluded that the claim of adverse possession as made by the present appellants could not be entertained in view of their own case of acquisition of title of the suit land from the Ex-landlord. It has also been further found that there was no cogent evidence or pleading on behalf of the present appellants to support their claim of settlement of the suit land by the Ex-landlord. It has also been rightly held that no title can be claimed on the basis of the entry in



the survey records as the same cannot create or extinguish title over the land recorded therein. The appellate court has also taken into notice the statement of the appellant no. 1 in paragraph no. 13 of his deposition as PW-5 that the present respondents had dispossessed the appellants from the part of the suit land prior to the filing of the suit. These findings by the appellate court below are clearly based upon the scrutiny of the evidence which were acceptable and could have been relied upon and this Court has not been persuaded to find perversity or illegality in the same. In fact, the entire submission on behalf of the appellant has centered around reappreciation of evidence in order to establish that the findings recorded by the appellate court below are perverse as another view is also a possibility. It would be fruitful here to notice the observation by the Apex Court in the case of **Damodar Lal vs Sohan Devi, AIR 2016 SC 262**, as follows:-

“.....Even if the finding of fact is wrong, that by itself would not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man’s inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.....”

Tested on the anvil of the above dictum by the Apex Court, this Court is not inclined to hold that the findings by the

appellate court below are perverse. The appellate court below has further also taken into notice the reasoning as well as the findings recorded by the trial court below and found the same not to be in accordance with law. This Court further also finds that the cogent reasons have been given by the appellate court below in this regard before recording its disagreement with the trial court.

For the aforesaid reasons and discussions, this Court holds that no substantial question of law arises for consideration in these two appeals, which are, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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