

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.36 of 2014

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The Secretary, Goushala Committee, At P.O+ P.S+ District- Khagaria.

..Appellant

Versus

1. The State Of Bihar, Through The Collector, Khagaria.
 2. The Collector, At+ P.O+P.S+ District- Khagaria.
 3. The Deputy Collector Land Reforms, At P.O+ P.S+ District- Khagaria.
 4. Anchal Adhikari, At+ P.O+ P.S+ District- Khagaria. Respondents.
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Appearance :

For the Appellant/s : Mr. S.S.Dwivedi, Sr.Adv.
Mr. Subodh Kumar Jha, Adv.
Mr.Pranav Kumar Jha, Adv.

For the Respondent/s : Mr. SHEO SHANKAR PRASAD

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-05-2016

V.Nath, J.

Heard Mr.S.S.Dwivedi, learned senior counsel
appearing for the appellant.

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

The plaintiff, which is a charitable institution, filed a
suit for declaration of title and confirmation of possession over the
suit land described in Schedule-I of the plaint and further for
declaration that the order passed by the Deputy Collector, Land
Reforms cancelling the Jamabandi was illegal. It was the case of the
plaintiff that the suit land in Plot No.520 was recorded in the survey
record of rights as 'Gair Majarua Aam' with remark column entry



showing existence of 261 trees of Babool in the possession of the Malik (landlord) who later on settled the said land admeasuring 2 bigha 19 katha 3 dhur in the year 1944 with Basudeo Gosai @ Basudeo Mishra by grant of rent receipt. By sale deed dated 26.09.1950 Basudeo Gosai @ Basudeo Mishra sold this land to the plaintiff and further by another sale deed dated 25.10.1951 he sold the remaining land of the Plot No.520 in his possession. It was also the case of the plaintiff that the return at the time of vesting was submitted in the name of the plaintiff by the ex-landlord and Jamabandi was accordingly created. Subsequently, however, the said Jamabandi was cancelled by the Deputy Collector, Land Reforms. It was also the case of the plaintiff that the suit land was never used as Aam Rasta.

The defendants contested the assertion of the plaintiff by contending that the suit land was a public road in the use of general public and it was never in khas possession of the ex-landlord. It was also the case of the defendant that the ex-landlord illegally settled the suit land which was the public land and therefore the Jamabandi had rightly been cancelled.

The trial court returned the finding on the issues in favour of the plaintiff and granted decree to the plaintiff. The appellate court below, in appeal by the defendants, has set aside the

findings of the trial court after reappraisal of the evidence, allowed the appeal and dismissed the suit.

Mr.Dwivedi, learned senior counsel appearing for the appellant has submitted that the impugned judgment passed by the appellate court below is vulnerable as the settled principles of law have been ignored and the reasonings of the trial court have also not been considered. It has been canvassed that the settlement of the suit land with the plaintiff by the ex-landlord will be deemed to have been admitted by the defendant in view of the provision of Order 8 Rule 4 C.P.C and therefore the plaintiff was entitled for a decree on the basis of admission itself. It has also been propounded that the ex-landlord had a right to settle even the land recorded as Gair Majarua Aam land which aspect has not been considered by the appellate court below. It has, therefore, been argued that the substantial questions of law arise for consideration in this appeal.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiff has averred in the plaint that the suit land was recorded as Gair Majarua Aam land in the survey record of rights and it was settled with the vendor of plaintiff by the ex-landlord. The learned appellate court below, however, on the basis of scrutiny of the cadestral survey (Ext.-A-1) and survey map (Ext.A) has found that the suit land has



been recorded as Gair Majarua Aam Rasta in the records of rights. The appellate court below has further found that there is no pleading in the plaint as to how and when the nature of the suit land changed and it ceased to be used as Aam Rasta (public way) rather on the basis of Ext.4/C (mortgage deed of year 1925) produced by the plaintiff itself, it has been found that the suit land has been described therein as Rasta. Moreover the appellate court below has scrutinized the oral evidence on behalf of the plaintiff to find that almost all the plaintiff's witnesses in their deposition have admitted the fact that the suit land is being used by general public. It has, therefore, been concluded that the suit land is not in possession of the plaintiff as claimed. The story of settlement as propounded by the plaintiff has also been disbelieved by the appellate court below after taking notice of the statement of P.W.11 that 2 bigha of suit plot no.520 was settled by the ex-landlord in favour of his uncle namely Shibu Sah in the year 1934 demonstrably falsifying the plaintiff's case of settlement of 2 bigha 19 katha 8 dhur of the same plot in the year 1944 with his vendor Basudeo Gosai when the total area of the said plot was only 2 bigha 7 katha 17 dhur according to the survey khatian. In this regard the appellate court below has also referred to the rent receipts (Ext.2 series) produced by the plaintiff which also reveal that the 2 bigha land had been settled with Shibu Sah in the year 1934 corroborating



the statement of the plaintiff's witness no.11. The appellate court below, therefore, has concluded that the plaintiff has failed to establish his legal title and possession over the suit land. In this backdrop when the very factum of settlement of the suit land with the vendor of the plaintiff could not be proved by the plaintiff by cogent evidence, the submission on behalf of the plaintiff-appellant that the landlord had got the right to settle even the Gair Majarua Aam land obviously has no relevance. Even otherwise also the right of the ex-landlord to settle Gair Majarua Aam land has been held to be subject to the right acquired by public at large but in the present case there is evidence to the contrary on record, as noticed by the appellate court below that even the plaintiff's witnesses have accepted that the suit land is still being used by the general public as 'rasta' (way). The appellate court below in paragraph-17 has also mentioned that the trial court has not considered the evidence that the suit land is Gair Majarua Aam Rasta with Babool trees. As held by the apex court in ***Damodar Lal Vs. Sohan Devi, (2016)3 SCC 78*** that even if a finding of fact is wrong that by itself will not constitute a question of law unless the said finding is shown to have stemmed out of a complete misreading of evidence or based only on surmises and conjectures. In the present case this Court finds that the conclusions have been recorded by the appellate court below on the basis of evidence on

record, which is acceptable and could have been relied upon.

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
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