

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.83 of 2014

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Arun Kumar Sinha son of Late Ram Narain Prasad Resident of Village- Bajaura,
P.S.- Dobhi, Dist- Gaya at present R/o Mohalla- New Godown Pahsi Lane, P.S.-
Kotwali, Dist- Gaya

..... Plaintiff Appellant

.... Appellant

Versus

1. The State of Bihar, through the Collector, Gaya
2. Anchal Adhikari, Dobhi Anchal, Gaya

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Nand Kishore Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-07-2016

Heard Mr. Dhrub Narayan, learned Senior Counsel appearing
for the appellant.

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

3. The plaintiff filed the suit for declaration of title alone and no
relief either for confirmation of possession or recovery of possession was
prayed. The plaintiff claimed to have acquired the suit land by inheritance
stating that his predecessor had purchased the *milkiyat* interest which
included the suit property and since then the said property had been
coming in possession of the plaintiff as title holder. It is also the case of
the plaintiff that the return was filed in the name of the plaintiff and
thereafter the defendant State of Bihar passed the order of mutation of
the name of the plaintiff with regard to the suit land. The plaintiff has
claimed to have been paying rent and getting rent receipts for the suit

land.

4. The defendant State of Bihar did not file written statement in the suit and did not contest the same. However, the trial court after considering the evidence adduced on behalf of the plaintiff, returned the finding that the plaintiff has failed to establish his claim of title over the suit land by cogent evidence. In the appeal by the plaintiff, the appellate court below on reappraisal of evidence has affirmed the finding of the trial court and dismissed the appeal by the impugned judgment and decree.

5. Mr. Dhruv Narayan, learned Senior Counsel appearing for the appellant, has submitted that the appellate court below has not properly considered the evidence adduced on behalf of the plaintiff. It has been canvassed that the plaintiff has adduced substantial evidence in support of his claim of title and possession over the suit land and the rent receipts granted by the State of Bihar to the plaintiff for the suit land further support the case of the plaintiff. No other submission has been made on behalf of the plaintiff.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiff has filed the suit only for declaration of title and has omitted to seek any relief either for confirmation of possession or recovery of possession. The claim of the plaintiff regarding acquisition of title by his predecessor in interest Baldeo Sahay has been considered by both the courts below and after elaborate scrutiny of evidence both the courts below have come to the conclusion that the claim of the plaintiff is not substantiated. The submission by the learned Senior Counsel appearing on behalf of the appellant that the plaintiff has been coming in possession over the suit

property and the cause of action for the suit has arisen only when the suit land has been record in the recent survey khatian in the name of State of Bihar is not substantiated when there is no prayer on behalf of the plaintiff either for confirmation of possession or recovery of possession. Even otherwise also, a long possession over the suit land will not confer title to any person in possession as such. The perusal of judgments of both the courts below further demonstrates that the entire evidence has been considered by both the courts below before reaching to the finding. It is not the case of the appellant that any evidence has been omitted from consideration by the courts below. The findings which have been recorded on the basis of evidence, which are acceptable and could have been relied upon are binding on the second appellate court. The possibility of another view on the same set of evidence cannot be a substantial question of law in the second appellate jurisdiction. The submission on behalf of the appellant has centered around reappréciation of evidence which cannot be possible in a second appeal.

7. Ex consequenti, this Court does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	
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