

1. Gobindpur
Distt-Varanasi
2. Raebareilly
Saurbhumi
3. Salma
Distt-Varanasi
4. Buxar
Saurbhumi
5. Tejpur
Vill-Jirba
6. Khajuraho
Jirba,

Versus

1. Bajnath Yadav S/O Late Bhagwat Yadav R/O Vill-Jirba, P.S.-Saurbazar, Distt-Saharsa
2. Shyam Yadav S/O Late Bhagwat Yadav R/O Vill-Jirba, P.S.-Saurbazar, Distt-Saharsa
3. Shukhdeo Yadav S/O Late Bhagwat Yadav R/O Vill-Jirba, P.S.-Saurbazar, Distt-Saharsa

.... Respondents.

For the Appellant/s : Mr. Pankaj Kumar Jha
For the Respondent/s : Mr.

Heard the learned counsel for the appellants.

The plaintiffs filed the suit for declaration of their title and confirmation of possession over the suit land and further to declare the entry made in the survey khatian for the suit land in the name of the defendants as void, illegal and inoperative and also to declare the sale deed made in respect of the suit land as

void, illegal and without consideration. The suit has been dismissed by the trial court returning the findings on the issue of title and possession over the suit land against the plaintiffs and further also holding the suit to be barred by limitation. In appeal the appellate court below, on reappraisal of evidence, has reversed the findings of the trial court and decreed the suit.

Before proceeding to consider the submissions on behalf of the appellants it would be apt to take into notice the fact that there were two sets of defendants in the suit. However, the written statement was filed only by defendant no.8, 8(A) and 8(B) of the defendant 1st set and a separate written statement was filed by the defendant 2nd set (except defendant no.14). The title and possession of the plaintiffs over the suit land was admitted in these two written statements with categorical assertion that the revisional survey entry for the suit land was wrongly prepared in the name of the defendants and no right has accrued to the purchaser-defendants on the basis of the sale deed which was false and fictitious. As stated above, the other defendants including the present appellants neither filed their written statement nor contested the suit. In appeal by the plaintiffs after the dismissal of the suit, it transpires from the appellate court's judgment that the present appellants as respondents in the said appeal have contested



the appeal but it further transpires from paragraph-10 of the impugned judgment of the appellate court below that these respondents after accepting not to have adduced any evidence in the suit have urged only the point of bar of suit by limitation on the basis that as the plaintiffs failed to raise objection to the entry in the survey khatian in the name of the defendants within the prescribed period of limitation, the suit was barred under the provision of Article 59 of the Limitation Act. The learned appellate court below has overruled the said contention and has held that the suit was not barred by limitation and has also come to the conclusion that the plaintiffs have succeeded in establishing their title and possession over the suit land.

In the backdrop of aforesaid facts and circumstances, the submission in this appeal on behalf of the defendant-appellants has to be considered. The foremost submission on behalf of the appellants relates to the bar of limitation with the emphasis by the learned counsel for the appellants that the plaintiffs were required to file the suit within 3 years of the final publication of the survey khatian in the name of the defendants. Elaborating further the learned counsel for the appellants has also contended that as the plaintiffs had failed to raise their objection to the survey entry as required under Section



106 B.T.Act, it was all the more necessary for them to file the suit within three years as envisaged under Article 59 of the Limitation Act. It has also been canvassed that the plaintiff had the knowledge of the publication of survey khatian and therefore there is no escape from the bar of limitation when the suit has been filed much beyond three years. It has also been submitted that the appellate court below has not correctly appreciated the facts and evidence on record and has wrongly granted the decree as prayed by the plaintiffs reversing the decree of dismissal of the suit by the trial court.

After perusal of the judgments of both the courts below and considering the submissions on behalf of the appellants, it is manifest that the present appellants were defendants in the suit but they did not file written statement nor contested the suit at any stage. Before the appellate court also where these appellants figured as respondents they had urged only the point of bar of the suit by limitation. However, in the memo of present second appeal they have chosen to raise the grounds in the fashion of a written statement making assertions of facts and denying the parawise assertions made by the plaintiff in the plaint. Be that as it may, the fact is apparent from the judgments of both the courts below that the plaintiffs have claimed their title and possession over the suit



land on the basis of the registered sale deed dated 29.10.1960. The fact is also apparent that the defendant 2nd set (except defendant no.14) and defendant nos.8, 8(A) and 8(B) of the defendant 1st set in their written statements have accepted the claim of right, title and possession of the plaintiff over the suit land and have also stated that the survey entry in question in the name of the defendants have been wrongly prepared and the sale deed in favour of the defendants was false and fictitious. The appellate court below has considered the oral as well as documentary evidence adduced on behalf of the plaintiffs before coming to the conclusion that the plaintiffs have succeeded in establishing their title and possession over the suit land. The appellate court below has also further taken into notice the assertion by the plaintiffs that the cause of action for the suit arose in the year 1996 when the defendants started interfering in the possession of the plaintiff over the suit land and it was only then that the plaintiffs came to know about the sale deed dated 05.07.1996 in favour of the defendant-appellants. The suit has been filed in the year 1997 within three years of the date of execution of the sale deed and also within three years when the interference in the possession of the plaintiffs in the suit land by the defendants was started.

The apex court in the case of *Daya Singh*

Vs. Gurdev Singh, (2010)2 SCC 194 has held that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Limitation Act and right to sue accrues only when there is a clear and unequivocal threat to the rights of the plaintiffs by the defendants against whom the suit is instituted. In view of this dictum, this Court does not find any error or illegality committed by the appellate court in overturning the finding of the trial court that the plaintiffs were required to file the suit within three years as envisaged under Article 113 of the Limitation Act from the date of final publication of the survey khatian. This Court has also not been persuaded during the course of submission, to find unreasonableness or perversity in any manner in the findings by the appellate court on the issue of title and possession in favour of the plaintiffs, which are based upon scrutiny of pleadings and evidence on record.

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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