

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.52 of 2017

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1. Sri Krishna Kahar @ Sri Krishna Ram, Son of Late Ram Narayan Kahar,
2. Praduman Ram, son of Sri Krishna Kahar,
3. Basant Ram, son of Sri Krishna Kahar,
4. Santosh Ram, minor son of Sri Krishna Kahar, all resident of Village- Darwa,
P.S.- Mohania, District- Kaimur at Bhabhua (Bihar).

.... Appellant/s

Versus

1. Rajendra Prasad Singh, Son of Late Jagarnath Singh, Resident of Village-
Darwa, P.S.- Mohania, District- Kaimur at Bhabhua (Bihar), at present residing at
Ward No.13, Bhahua, C/o of Sanjay Singh Patel, Near Post Office Lane, Bhabhua,
District- Kaimur (Bihar).
2. Chandrama Singh, Son of Late Jagarnath Singh,
3. Ram Brat Singh, Son of Late Jagarnath Singh,
4. Ramadhin Singh @ Ramdin Singh, Son of Late Suraj Singh, SL. No.2 to 4 are
resident of Village- Darwa, P.S.- Mohania, District- Kaimur at Bhabhua (Bihar).
5. Brij Bihari Kahar, Son of Late Ram Narayan Kahar,
6. Pramod Ram, Son of Sri Krishna Kahar,
7. Banarasi Ram, of Sri Brij Bihari Ram, Sl. No.5 to 8 Resident of Village- Darwa,
P.S.- Mohania, District- Kaimur at Bhabhua (Bihar).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Shankar Sahay, Adv.

For the Respondent/s : Mr. Upendra Pd. Adv.

Mr. Sunil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-11-2017

Heard the parties.

2. The petitioners are the appellants in the present second appeal under Section 100 of the Code of Civil Procedure assails judgement and decree dated 30.09.2016 passed by learned Addl. District & Sessions Judge 4th, Kaimur at Bhabhua in Title Appeal No. 23/2013 whereby the judgement and decree of the trial court in Title



Suit No. 119/1995 by learned Munsif Bhabhua has been reversed and the suit has been decreed in favour of the plaintiff by the appellate court. The appellants were defendants before the trial court. The suit having been dismissed, the plaintiff had preferred the suit title appeal no. 23/2013 which came to be disposed of by the impugned judgement and decree dated 30.09.2016 by the appellate court. For the benefits of convenience, the parties in the present second appeal are being generally described in the present judgement, as per their position before the trial court.

3. The suit was filed for a declaration that the entry in the revisional survey in respect of plot no. 762 was incorrect and wrong. Further, besides seeking declaration of title over an area of 04 decimal of the suit land, the plaintiff sought relief of restraining the defendants from encroaching upon the same and removal of encroachment.

4. It transpires from the judgment of the trial court that it framed altogether nine issues including the issue as to whether the suit was barred by limitation vide issue no. (Ga). The trial court decided the issue no. (Ga) first and held the suit to be barred by limitation having been filed after expiry of three years of the entry made in revisional survey, invoking Article 113 of the Schedule of the Limitation Act, 1963. The trial court did this on the reasoning that the alleged wrong revisional survey entry was made in the year 1970,



whereas the plaintiffs filed the suit twenty five years thereafter in 1995. The trial court while dismissing the suit considered the admitted fact that the plaintiffs had the knowledge about the entry in revisional survey Khatiyani in 1977.

5. After having held so, the trial court decided all the issues with reference to its finding that the title suit was barred by limitation.

6. The appellate court however, has reversed the finding of the trial court of the suit being barred by limitation and upon appreciation of evidence on record; the appellate court has decreed the suit in favour of the plaintiffs.

7. In the present second appeal, following substantial questions of law have been formulated by the appellants in the memo of appeal which according to the defendants/appellants, this second appeal involves.

Substantial questions of law

“ (i) Whether the Judgment and decree passed by learned appellate court is sustainable in law?

(ii) Whether the observation of encroachment over plot no. 761 and 762 by the defendants is legal, in case there is Public Road and drainage for excretion of water is between the plots of plaintiffs and defendants?

(iii) Whether the judgement and decree passed by the



learned trial court is substantial in law?

(iv) Whether the findings of learned appellate court with regard to encroachment or title and possession over plot no. 761 and 762 is legal on the fact that there is without correcting the said wrong entry?

(v) Whether the judgement and decree of learned appellate court is otherwise bad?"

It is evident from reading of the substantial questions of law so formulated in the memo of appeal that according to the appellants/defendants, the decision of the appellate court that the suit was not barred by limitation, does not raise any substantial question of law.

8. Mr. D. Choubey learned counsel appearing on behalf of the appellants however, has submitted in course of the hearing that it same does involve a substantial question of law in view of the admitted fact, as is evident from the plaint itself, that the plaintiffs had the knowledge about revisional survey entry at least in the year 1977. The plaintiffs having failed to file suit within a period of three years from the said date of knowledge could not have maintained suit eighteen years thereafter, in view of clear provision under Article 113 of the Schedule of the Limitation Act, 1963. He has relied on a decision of this court reported in the **year 2000 Vol. 3 BLJR P.2172**



(Kamal Mandal vs. Shri Ragho Mandal and ors) with special reference to paragraph 16, to support his contention.

9. The questions which have been framed in the memo of second appeal are questions of fact and in my view cannot be termed to be even questions of law, much less substantial questions of law.

10. This makes me to consider the only question as to whether appellate court has been correct in holding that the suit was not barred by limitation.

11. Learned counsel representing the plaintiffs/respondents (1) set has submitted that mere entry in the revisional survey records or knowledge of incorrect entry in the revisional survey records does not create cause of action. According to him, the cause of action would arise only if the right title of a party is attempted to be infringed or in fact infringed. He has relied on Supreme Court decision in case of **Daya Singh vs. Gurdev Singh (AIR 2010 SC 3240)**.

12. This is to be noticed that the suit was not filed only for declaring revisional survey entries to be incorrect. It is specifically mentioned in the plaint referring to the date(s) of cause of action when the defendants on 28.06.1995 and 20.07.1995 attempted to infringe their right title by encroaching upon the land/trying, to encroach upon the suit land.



13. I am in agreement with the submission advanced on behalf of the contesting respondents/plaintiffs on the question that a right to sue will accrue only when the right asserted in plaint is infringed or there is at least a clear and unequivocal threat to infringe that right by the defendants against whom the suit is instituted. In **paragraph 9** of the decision in case of **Daya Singh vs. Gurdev Singh (Supra)** the Supreme Court has clearly held that mere existence of adverse entry in the revenue record cannot give rise to cause of action.

The decision relied upon learned counsel appearing on behalf of the appellants/defendants in case of (**Kamal Mandal vs. Shri Ragho Mandal and ors**) will have no application in the facts and circumstances of the case since the suit in that case appears to have been filed for the sole purpose for challenging the entry made in revisional survey khatian. It does not appear from the said judgement as to whether the plaintiff/plaintiffs in that case had alleged infringement of their rights subsequent to entry made in the revisional survey khatian. The said decision cannot be applied in the facts and circumstances of the case. In any view of the matter, the judgement of Supreme Court in case of Daya Singh Vs. applies with full force in the present facts and circumstances of the case.

14. Accordingly, I am of the view that this case does not



involve any substantial question of law and therefore, does not
deserve admission. This appeal is accordingly dismissed.

I.A. No. 1853/17 stands disposed of.

(Chakradhari Sharan Singh, J)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2017
Transmission Date	NA

