

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.203 of 2014

=====

Niranjan Gain son of Rati Kant Gain, resident of village Amarpur, P.O. & P.S. Amarpur, District Banka, Holding Power of Attorney on behalf of Prakash Das, son of Late Adhil Das, resident of village Bahangama, P.S. Amarpur, District- Banka
..... Plaintiff Appellant

.... Appellant

Versus

Nand Kishore Sah, son of Late Shyam Sunder Sah, resident of Amarpur Bazar, P.O. & P.S. Amarpur, District- Banka
..... Defendant Respondent

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma, Advocate
Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-01-2017

Heard Mr. Jitendra Kishore Verma, learned Counsel appearing for the appellant.

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

3. The plaintiff filed the suit for declaration of title over the suit land and other allied reliefs. The plaintiff has claimed himself to be the power of attorney holder of one Prakash Das, son of Adhish Das. The plaintiff's claim of title over the suit land was based firstly upon the settlement of the suit land with Adhish Das by the ex-landlord by *hukumnama*. Secondly, the plaintiff had also come out with the case of settlement of the suit land by the Circle Officer in his favour. Lastly, the plaintiff claimed his title over the suit land by adverse possession as well.

4. Both the courts below have taken into notice the fact that the plaintiff did not produce documentary evidence to support the case of



settlement by *hukumnama*. It has also been noticed that no return submitted by the ex-landlord or Register II was adduced in evidence on behalf of the plaintiff and even no documentary evidence was brought on record to substantiate the claim of settlement of the suit land by the Circle Officer. Both the courts below have returned concurrent finding of fact that the plaintiff has failed to prove his claim of title over the suit land by cogent evidence. The suit was dismissed and the appeal thereafter has also been dismissed by the impugned judgment and decree.

5. Mr. Verma, learned Counsel appearing for the appellant has mainly emphasised that the courts below though have taken into notice that the oral evidence have been adduced on behalf of the plaintiff in support of his case, but in absence of the documentary evidence the courts below have refused to rely upon the oral evidence and grant the decree on that basis. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiff has failed to substantiate his claim of title either through settlement by the ex-landlord or through the settlement by the Circle Officer by producing cogent evidence in that regard. The submission made on behalf of the appellant that even the settlement can be done orally cannot be countenanced in view of the specific case of the plaintiff that the settlement was done with him through *hukumnama* or settlement by the Circle Officer in a proceeding according to law. As the claim of the plaintiff could not be substantiated by cogent evidence this Court does not find that the conclusions by both the courts below are perverse or unreasonable in any manner. In fact the courts below after



considering the totality of the facts and circumstances as well as the evidence have come to the conclusion that the plaintiff has failed to establish his case. The issues are concluded by finding of fact based upon evidence which are acceptable and could have been relied upon.

7. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	12.01.2017
Transmission Date	N/A

