

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.305 of 2014

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1. Manoj Kumar Mandal, Son of Late Prayag Mandal, R/o Village+ P.O.-Lokmanpur, P.S.-Kharik (Naugachia), District-Bhagalpur.
 2. Binod Mandal, Son of Late Prayag Mandal.
 3. Mamta Devi, Wife of Late Anuj Kumar Mandal@ Late Anuj Mandal.
 4. Anand Kumar, Son of Late Anuj Kumar Mandal.
 5. Makhan Kumar, Son of Late Anuj Kumar Mandal.
 6. Shikha Kumari, D/o Late Anuj Kumar Mandal.
- (Appellate nos.4 to 6 are minor represented through legal guardian their mother appellant no.3) All R/o Village+ P.O.-Lokmanpur, P.S.-Kharik (Naugachia), District-Bhagalpur.

.... Appellants

Versus

1. Bindeshwarif Singh, Son of Late Prayag Singh.
 2. Medni Prasad Singh, Son of Late Prayag Singh.
 3. Ganesh Prasad Singh, Son of Late Prayag Singh.
 4. Dharamsila Devi, Wife of Late Suresh Prasad Singh.
 5. Shyam Narain Singh, Son of Late Suresh Prasad Singh.
 6. Ful Kumar Singh, Son of Late Suresh Prasad Singh.
 7. Raghubansh Prasad Singh, Son of Late Suresh Prasad Singh.
 8. Pankaj Kumar Singh, Son of Late Suresh Prasad Singh.
 9. Vikash Prasad Singh, Son of Late Suresh Prasad Singh.
- All are R/o village-Kashimpur Kadwe, P.O.-Khairpur Kadwa, P.S.-Naugachia (Dholbaze) District-Bhagalpur.
10. Sakuni Devi D/o Late Prayag Singh, Wife of Sri Jagarnath Prasad Mehta, R/o Village+ P.O.-Maldhia, P.S.-Barahre Kothi, District-Purnea.
 11. Kala Devi, D/o Late Prayag Singh, Wife of Sri Pramod Prasad Mehta, R/o Village+P.O.-Ramganj, P.S.-Bihariganj, District-Madhepura.
 12. Bodh Narain Mandal, Son of Late Chitnarain Mandal.
 13. Jitendra Kumar Mandal, Son of Late Brahmdeo Mandal.
 13. (a) Abhay Kumar Mandal, Son of Late Brahmdeo Mandal.
- All are R/o Village+P.O.-Lokmanpur, P.S.-Kharik (Naugachia), District-Bhagalpur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Avinash

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-03-2017

Heard the learned counsel for the appellants.

The plaintiffs are the appellants in this appeal



against the judgment and decree of affirmance dismissing the suit.

The fact is apparent that the suit was filed by the plaintiff for declaration of title and further for declaration that the recent survey khatian with regard to the suit land in the name of the defendants was not correct and not binding upon the plaintiffs. It is further apparent that the proceeding of the suit was ex parte against the defendants who had failed to appear in spite of the service of notice upon them as directed by the trial court. In this backdrop, the learned counsel appearing for the appellants has strongly submitted that as the defendants failed to appear and file written statement contesting the case of plaintiff, the averments made in the plaint ought to have been taken to be admitted. It has thus been contended that the learned court below in the facts and circumstances should have granted the decree to the plaintiff as prayed for.

From the perusal of the judgments of both the courts below and considering the submissions, it is manifest that the proceeding of the suit was ex parte against the defendants. The suit has been filed for declaration of title and the relief against the entries in the recent survey khatian for the suit land in the name of the defendants as well. The plaintiffs have claimed their exclusive title over the suit property. The trial court after scrutiny of oral and documentary evidence as adduced by the plaintiffs came to the



conclusion that the plaintiffs have failed to establish the claim as made in the suit. In appeal by the plaintiffs, the appellate court below, on reappraisal of evidence, has concurred with the findings as recorded by the trial court. The appellate court has further also come to the conclusion that the plaintiffs have not disclosed the cause of action in his deposition when he has been examined as P.W.1. In this regard, the learned counsel has submitted that in paragraph-6 of the plaint the plaintiff has clearly averred that the defendants are interfering in possession of the plaintiff over the suit land. However, the appellate court below has come to the categorical finding that the plaintiff in his examination as P.W.1 has not supported the aforesaid averment made in the plaint. Even otherwise also, it appears that the findings have been recorded by the court below on the basis of appreciation of evidence which were acceptable and could have been relied upon. It is now well settled principle that even in ex parte proceeding in the suit, the plaintiff is not entitled to a decree straightway on the basis of doctrine of non-traverse. The apex court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has ruled that even in such a case, the plaintiff is not released of his obligation to establish his case. The learned counsel for the appellants have relied upon a decision in the case of ***Arti Jaiswal Vs. Sri Pawan Chaudhar , 2017 (1) PLJR 132***. However, the principles as laid down



in the said decision is demonstrably on the different setting of facts. It is not the case on behalf of the appellants that the judgments by both the courts below have stemmed out of non-consideration of evidence or are dehors the settled principles of law. At the second appellate stage, this Court cannot proceed to reappreciate the evidence in order to interdict the concurrent findings on facts.

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

(V. Nath, J)

Nitesh/-

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