

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.334 of 2014

1. Sushil Singh @ ushil Kumar Singh, son of Late Ram Charitar Singh, resident of Village Sankherha, P.S. Baheri, District Darbhanga  
2. Smt. Geeta Singh, wife of Sri Umadhar Singh, D/o Late Ram Charitar Singh  
3. Nitesh Singh, son of Late Umadhar Singh  
4. Rekha Singh @ Rekha Devi, D/o Late Umadhar Singh, resident of Nishihara, P.S. Biraul, District Darbhanga  
All except respondent No. 4 resident of Village Sinuara, P.S. Bahadurpur, District Darbhanga at present residing at Mohalla Madarpur, P.S. Laheria Sarai, District Darbhanga  
..... Defendants ..... Respondents  
..... Appellants

Versus

Smt. K.c. Mariamma Singh @ Smt. K.C.Singh, wife of Dr. Navin Prasad Singh, resident of Mohalla Dilawarpur, Donar, P.S. Laheria Sarai, District Darbhanga  
..... Plaintiff ..... Appellant  
..... Respondent  
with

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..... Plaintiff ..... Appellant  
..... Respondent  
with

Appearance :

(In SA No.334 of 2014)

For the Appellant/s : Mr. D.K.Sinha, Sr. Advocate  
Mr. Girish Chandra Jha, Advocate  
Mr. Kumar Gautam, Advocate

For the Respondent/s : Mr.

(In SA No.335 of 2014)

For the Appellant/s : Mr. D.K.Sinha, Sr. Advocate  
Mr. Girish Chandra Jha, Advocate



Mr. Kumar Gautam, Advocate

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 11-04-2017**

Heard Mr. D.K.Sinha, learned Senior Counsel appearing for the appellants in both the appeals.

2. The learned Senior Counsel for the appellants, in both the appeals, at the out set has submitted that both the appeals arise out of the same judgment and decree by which the appeal by the plaintiff and the cross objection by the defendant have been disposed of.

3. The defendants are the appellants in both the appeals. The facts in short necessary for appreciation of the submission on behalf of the parties is that the suit land admittedly belonged to Sukhram Tatma as raiyat. This fact is supported by the entry in the C.S.Khatiyani which has also been accepted to be correct by the parties. The plaintiff claimed the said land after various transactions including the transfer of the suit land by the heirs of Sukhram Tatma in favour of a Match factory, the auction sale of the same thereafter and purchase by the plaintiff from the auction purchaser or his descendants. The suit has been filed by the plaintiffs for declaration of their title and confirmation of possession along with the decree declaring the document of title of the defendants to be forged and fabricated. The defendants, in turn, came out with the specific case that Sukhram Tatma abandoned his land and the ex-landlord after resumption of possession settled the same with the predecessor of the defendants. On this base the defendants claimed their exclusive title and possession over the suit property. The defendants also denied the assertion of the



plaintiffs as well as the identify of the suit land on the ground that the suit land as recorded in the municipal survey was not carved out of the cadastral survey plot in dispute.

4. The trial court returned the finding on the issue of abandonment as raised by the defendants against the defendants holding that it could not be proved by the defendants on the basis of cogent evidence that Sukhram Tatma abandoned the suit land and thereafter the possession was resumed by the ex-landlord. The trial court, however, came out with the further finding that the suit land has not been carved out from the Cadastral survey plot in dispute and, therefore, the claim of the plaintiff was not fit to be allowed. The suit was accordingly dismissed. The plaintiff filed the appeal and the defendants filed their cross objection being aggrieved by the findings as recorded in the judgment of the trial court. The appellate court below on reappraisal of evidence has concurred with the findings of the trial court on the issue of abandonment but reversed the finding with regard to the identify of the suit property as disputed by the defendants. The appeal has been allowed by the impugned judgment and decree granting the decree to the plaintiff as prayed and dismissing the cross objection of the defendants.

5. The two second appeals i.e. S.A. No. 334 of 2014 and S.A. No. 335 of 2014 have been filed by the defendants against the decree allowing the appeal of the plaintiff and the decree by which the cross objection of the defendants has been dismissed.

6. Mr. D.K.Sinha, learned Senior Counsel for the appellants, at the out set while assailing the finding on the issue of abandonment or surrender, has submitted that the defendants' case, in fact, was of



abandonment of the suit land by Sukhram Tatma and the resumption of possession by the ex-landlord namely Darbhanga Maharaj. The learned Senior Counsel has emphatically submitted that the findings on the issue of abandonment of the suit land by Sukhram Tatma was the basis for claim of the defendants over the suit land but the said issue has been wrongly decided by both the courts below against the defendants. Elaborating his submission the learned Senior Counsel has placed the findings of the appellate court below to persuade this court to take a view that the evidence on behalf of the parties have been wrongly interpreted. The next submission on behalf of the appellants is regarding identity of the suit land stating that the suit land is not the same as has been recorded in the cadastral survey plot. During the course of submission the learned Senior Counsel has accepted that the provisions of Section 87 of the B.T. Act is attracted while considering the case of abandonment of tenancy and resumption of possession by the ex-landlord. No other submission has been made on behalf of the appellants.

7. After considering the submissions and perusal of the judgments of both the courts below it is manifest that the dispute between the parties revolves around the issue of abandonment of suit land under his tenancy by Sukhram Tatma. It is noticeable that Sukhram Tatma was the raiyat for the suit land which fact is admitted by both the parties. The heirs of Sukhram Tatma had sold away the suit land in favour of the Match factory which fact has also been accepted by both the parties. However, the case of the defendants in that regard is that the said heir of Sukhram Tatma is not legally entitled to transfer the suit land after



abandonment of the same by Sukhram Tatma. However, both the courts below after elaborately considering the oral and documentary evidence of the parties have come to the concurrent finding that the fact of abandonment of the suit land by Sukhram Tatma has not been established by cogent and convincing evidence by the defendants. It is well settled by now, as laid down by a Bench of this Court in the case of ***Ramdhari Rai Vs. Gorakh Rai, AIR 1931 Patna 236***, that the issue of abandonment within the meaning of Section 87 of the B.T.Act in each case is a question of fact and there must be a finding that the tenant left the village in which his holding was situated without making any arrangement for payment of the rent. In the present case there is no evidence that Sukhram Tatma left the village in the sense of abandoning the same. To the contrary the witnesses examined on behalf of the parties have accepted that the heirs of Sukhram Tatma were residing in the village. The finding of fact in this regard has been recorded by both the courts below on the basis of scrutiny of oral and documentary evidence which were acceptable and could have been relied upon. The possibility of another view on the same set of evidence cannot give rise to a substantial question of law at the second appellate stage. The further finding on the identity of the suit land has also been recorded by the appellate court below on the basis of evidence and this Court has not been persuaded to find perversity or unreasonableness in the same. But, in any view of the matter, as both the courts below have recorded concurrent finding that the defendants have failed to prove the fact of abandonment of the suit land by Sukhram Tatma and resumption of the same by the ex-landlord, the claim of title and possession by the



defendants over the suit land on the basis of settlement by the ex-landlord cannot be legally upheld. It is not the case on behalf of the appellants that the findings of fact as recorded by both the courts below have stemmed out of non consideration of evidence or are dehors settled principle of law.

8. Ex consequenti, this Court does not find any substantial question of law arising for consideration in these two appeals, which are, accordingly, dismissed.

(V. Nath, J.)

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