

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.219 of 2005

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1. The State of Bihar through Collector, Bhagalpur.
 2. The Jaitindra Narayan Astang Ayurvedic Mahabidyalaya Bhagalpur, through its Principal.

.... Appellant/s

Versus

1. Nageshwar Mandal son of late Siyaram Mandal resident of Mohalla-Campanibagh P.S. Kotwali, District-Bhagalpur.
2. The Bhagalpur Municipal Corporation, P.S. Bhagalpur, District-Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Hari Shankar Roy, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-05-2017

Heard learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of reversal.

The plaintiff filed the suit for declaration that the plaintiff was an occupancy raiyat of the suit land and the settlement record prepared in the name of the defendants for the same were wrong and not binding upon the plaintiff and further relief for permanent injunction restraining the defendants from interfering with the possession of the plaintiff was also prayed.

Only the defendant no. 1-appellant no. 2 to this appeal which is a college, contested the suit by filing written statement. The



trial court decided the issues against the plaintiff and dismissed the suit. The appellate court below, in appeal by the plaintiff, on reappraisal of evidence, has reversed the findings of the trial court, allowed the appeal and granted the decree to the plaintiff, as prayed.

Learned counsel for the appellants has submitted that the appellate court below has failed to consider the evidence on record. It has been argued that the plaintiff's witnesses themselves admitted the suit land as belonging to the State of Bihar but the said fact has not been considered by the appellate court. In sum and substance, the entire submission on behalf of the appellants has centered around re-appreciation of evidence and for that purpose, the learned counsel for the appellants has placed in detail the findings by the trial court and appellate court. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the suit has been filed by the plaintiff claiming title over 5 bigha 8 katha of the suit land on the basis of settlement by the ex landlord. In support of the case of settlement, the plaintiff has filed the rent receipts granted by the ex land lord (Ext. 4 series) as well as the return submitted by the ex landlord on the basis of which the register-II was prepared in the name of the plaintiff (Bhogli Mandal since deceased). Further



the rent receipts (Ext. 4 series) by the State of Bihar also have been produced on behalf of the plaintiff in support of his claim. On the other hand, the defendant 1-appellant no. 2 has come out with the case of taking the suit land on lease on 26.05.1950 from Bhagalpur municipality for the purpose of construction of a college building and running college therein. However, no evidence has been adduced on behalf of the defendants to establish that any college building has been constructed thereupon and the rent has been paid accordingly to the lessor. Learned court below has further found that there is no evidence on record to show the acquisition of the suit land by Bhagalpur Municipality. The absence of evidence on behalf of the defendants to establish the inclusion of the suit land in the lease has also been noticed. The finding in this regard by the appellate court below that the plaintiff's claim of title cannot be defeated on the score that the municipality has the title over the suit land for the purpose of leasing out the same to the defendants is thus unassailable in second appellate jurisdiction.

At this juncture, the learned counsel for the appellants has submitted that the some documents have been produced on behalf of the appellants which have been mentioned in paragraph-7 of the trial court judgment which support the case of the appellants. However, on perusal of the said paragraph and the documents



mentioned therein, it transpires that only the rent receipts (Ext. A) and lease deed (Ext. C) filed on behalf of the defendants have been mentioned therein but on behalf of the appellants again it could not be established that those documents are sufficient and convincing to establish that the suit land belonged to the municipality (lessor) either by acquisition or through other legal means and the municipality was entitled to lease out the same. The findings of fact have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon.

It would also be pertinent at this stage to notice the interpretation given on behalf of the appellants to the depositions made by the plaintiff's witnesses where they had stated that the suit land had been taken into settlement by the plaintiff Bhogli Mandal from 'Sarkar'. This use of word 'Sarkar' has been interpreted by the trial court as the 'government' and the same meaning has also been endeavoured to be given on behalf of the appellants. The fact can be taken into judicial notice that in villages in Bihar, the rustic persons used to mention/call the Zamindar (ex landlord) as 'Sarkar' out of respect and reverence. The perversity in the conclusion in this regard by the trial court as well as in the submission on behalf of the appellants is thus explicit.

Ex consequenti, this Court holds that there is no



substantial question of law arising for consideration in this appeal
which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
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