

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.307 of 2014

- =====
1. Ravindra Rai Son of Bishwanath Rai
 2. Dewanti Devi, wife of Shyam Bihari Singh, resident of Village Tekan, Thana Mohania, District Kaimur
 3. Hiranman Rai, son of Suraj Rai
 4. Lal Bahadur Rai @ Lal Bahadur Singh,
 5. Baban Rai @ Babban Singh.
 6. Dadan Rai, all sons of Hiranman Rai
- All resident of Village Pathalpura, P.S. Karagahar, District Rohtas
..... Plaintiffs Respondents

... Appellants

Versus

1. Ramadhar Rai Son of Ram Sakal Rai .
 2. Ugrah Narayan Rai Son of Ramadhar Rai
 3. Vinod Kumar Rai Son of Ramadhar Rai
 4. Babloo Kumar Rai Son of Ramadhar Rai
 5. Most. Kahlmano Devi, wife of Late Viswnath Singh
- All resident of Village Pathalpura, P.S. Karagahar, District Rohtas
..... Defendants Appellants

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. D. Choubey, Advocate
Mr. Lallan Pandey, Advocate

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr. D. Choubey, learned Counsel for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal dismissing the suit filed for removal of encroachment.

3. The matrix of facts discloses that according to the case of the plaintiffs by a consent decree passed in a suit the plaintiffs were allotted $5\frac{1}{2}$ decimals of land from eastern side and the defendants were allotted $5\frac{1}{2}$ decimals of land from the western side in Plot No. 280. It was, however, the allegation of the plaintiffs that the contesting defendants had encroached over 16 X 80 links of land of the plaintiffs. The contesting defendants denied the assertion of the plaintiffs with



further case that the said consent decree itself was a fraudulent decree.

4. The trial court returned the findings on the issues against the defendants and granted the decree as prayed. However, the appellate court on reappraisal of evidence has reversed the findings of fact and has allowed the appeal by the present judgment and decree.

5. Mr. Choubey, learned Counsel for the appellants has submitted that the findings by the appellate court below is not based upon evidence, when on the same set of evidence the trial court has come to the finding that the defendants have encroached over the suit property. The learned Counsel has propounded that after the consent decree in the suit the defendants are entitled to have title and possession over 51/2 decimals from western portion in Plot No. 280, but there are sufficient evidence on record to show that the defendants have encroached over the part of the land of the plaintiffs as described in Schedule I of the plaint. The learned Counsel has also placed the findings by the trial court as well as the appellate court below in order to substantiate his submission.

6. After considering the submission and perusal of the judgments of both the courts below it is apparent from para 13 of the judgment of the appellate court below that the report of the survey knowing Pleader Commissioner (Ext. 1) along with his deposition as PW 6 has been considered by the appellate court below. It is further also apparent from the said paragraph that the appellate court below has taken into notice the fact as submitted in the said report that the plaintiffs have been found in possession over 10066 links of the land whereas the defendants have been found in possession of 7368 links of land. During the course of submission on behalf of the appellants the aforesaid



position with regard to the quantum of land possessed by the defendants and the plaintiffs could not be explained. It is the case of the plaintiffs themselves that the defendants were entitled to possess 5¹/₂ decimals of land in Plot No. 280 whereas the plaintiffs are also entitled to possess the same area i.e. 5¹/₂ decimals in the said plot. In that view of the matter, it is demonstrably clear that the plaintiffs are in possession of more area than that possessed by the defendants and it was for the plaintiff-appellants to explain the said position of fact. The appellate court below after taking into notice the said fact and other evidence on record has come to the finding that there is no encroachment by the defendants and there was no other cogent evidence on behalf of the plaintiffs to establish the case of encroachment. The submission by the learned Counsel for the appellants, therefore, has no substance that the finding by the appellate court below has been recorded without evidence.

7. This Court has not been persuaded to hold that the findings as recorded by the appellate court below are perverse or unreasonable in any manner.

8. 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	02.05.2017
Transmission Date	N/A

