

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.240 of 2014

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Shambhu Mahto, Son of Late Hari Nandan Mahto, Resident of Village-Narepur,
P.S.-Bachhwara, Sub Registry Teghra, Pargana Akbarpur Rani, Sub Division
Teghra, District-Begusarai.

.... Appellant.

Versus

1. Urmila Devi , Wife of Late Ram Ayodhya Mahto.
2. Manju Devi, Wife of Late Ram Ayodhya Mahto.
3. Kamlesh Kumar.
4. Saurabh Kumar.
- Both minor sons of Late Ram Ayodhya Mahto.
5. Sarita Kumari.
6. Puja Kumari.
7. Kajal Kumari.

All minor daughters of Late Ram Ayodhya Mahto.

All the minors respondent nos. 3 to 7 are under guardianship of their mother
(Urmila Devi-respondent no.1).

All (1to7) are resident of Village- Narepur, P.S.-Bachhwara Pergana Akbarpur
Rani, Sub Division-Teghra, District-Begusarai.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Satyendra Narayan Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-07-2017

Heard learned counsel appearing for the
appellant.

The defendant is the appellant in this appeal
against the judgment and decree of affirmance.

The plaintiff filed the suit for eviction of the
defendant from the suit premises described in Schedule-II of the
plaint. It has been the case of the plaintiff that the Schedule-I
land was purchased in the year 1992 and Schedule-II was part



of the said land over which the suit premises was constructed and the defendant was inducted as tenant by the plaintiff. The defendant denied the assertions of the plaintiff and claimed his entitlement to possession on the basis of adverse possession.

Learned counsel appearing on behalf of the appellant, at the outset, has submitted that the trial court has committed error in law in granting the decree to the plaintiff from Schedule-I of the land when there was no such relief prayed in the plaint and the relief for eviction was confined to eviction over Schedule-II property only. It has been next contended that the appellate court below has acted mechanically in affirming the findings by the trial court without reappraisal of evidence. Learned counsel has put much emphasis on the fact that the defendant has been in adverse possession over the suit property and therefore has acquired a title over the same on that basis. During the course of submission, learned counsel for the appellant has submitted that initially the possession of the defendant was permissive over the suit land but later on when the defendant or his predecessor left the service of the owner of the land, the said possession became adverse against the original owner as well as the plaintiff who purchased the land in the year 1992. No other submission has been made on behalf of the appellant.

After considering the submissions and



perusal of the judgments of both the courts below, it is apparent that the plaintiff has filed the suit for eviction of the defendant from the suit premises. The plaintiff has described the purchased property in Schedule-I and has further stated that the two Phus roof houses were constructed by the plaintiff and let out to the defendant as described in Schedule-II of the plaint. From the perusal of the judgment and decree passed by the trial court, it appears that the trial court has directed the defendant to vacate the Schedule-I land on which two Phus roof houses were constructed as described in Schedule-II within two months. In the opinion of this Court, the whole submission on behalf of the appellant is misconceived that the defendant has been directed to vacate the entire Schedule-I land. There is no ambiguity in the direction by the trial court for vacating the premises described in Schedule-II land which is standing over Schedule-I land. This Court further finds that the defendant has claimed his entitlement to be in possession on the basis of adverse possession but has failed to specify the date on which his possession became adverse. The defendant has admitted his initial entry over the suit land to be permissive. The case of the defendant as mentioned in the judgments of both the courts below does not reveal that the defendant has anywhere stated that he had the animus to possess the land illegally and forcibly. Possession simpliciter over any property irrespective of



the period of possession is not adverse. This principle of law has been well settled by several authoritative pronouncements. From the perusal of the judgment of the appellate court below, it does not appear that the appellate court below has mechanically affirmed the findings of the trial court rather it appears that the appellate court below has scrutinized the evidence of the parties and thereafter affirmed the findings of the trial court. This Court has not been persuaded to find any perversity or unreasonableness in the findings of the courts below.

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

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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