

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.505 of 2010

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1. Girish Prasad Singh @ Girish Singh, Son of Late Lakhan Singh.
2. Smt.Jay Kanti Devi Wife of Girish Prasad Singh.
3. Munna Kumar Singh @ Munna Singh, Son of Girish Prasad Singh.
All resident of Village-Sherpar, P.S.-Barbigha, District-Sheikhpura. Appellants

Versus

1. Nirmala Devi, Wife of Sharban Kumar, Resident of Mohalla-Chhoti Sangat, P.S.-Barbigha, District-Sheikhpura.
2. Azad Prasad Son of Late Dashrath Ram, Resident of Mohalla- Chhoti Sangat, Barbigha, P.S.-Barbigha, District-Sheikhpura Respondents

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Appearance :

For the Appellant/s : Mr. BIRESH KUMAR SINHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-05-2017

Heard the learned counsel for the appellants.

The plaintiffs are the appellants in this appeal
against the judgment and decree of reversal dismissing the suit.

The matrix of facts discloses that the plaintiffs
and the defendants are the purchasers of different portions of the same
plot from the cosharers. The suit was filed by the plaintiffs for
declaration of title over the suit land claiming it to be the part of the
land purchased by the plaintiffs for the use as Rasta. The contesting
defendants, however, came out with the case that the suit land was not
the exclusive land of the plaintiff as part of the land purchased by the
plaintiff rather it was the common Rasta to be used both by the
plaintiffs and the defendants.



The trial court recorded the findings in favour of the plaintiff and granted the decree as prayed. The appellate court below, however, on reappraisal of evidence, has reversed the findings of the trial court and dismissed the suit by the impugned judgment and decree.

The learned counsel for the appellants has submitted that the suit land is the only Rasta for use by the plaintiff and there is apprehension that after the impugned judgment and decree the defendants would close the Rasta. It has been further submitted that it is a fit case for remand as there is no survey knowing pleader commissioner appointed for measurement to find out the truth.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the plaintiffs have claimed their title over the suit land on the basis of the purchase by three sale deeds. However, the appellate court below has come to the finding that the plaintiffs did not produce the two sale deeds in order to substantiate their case of purchase of the suit land and the one sale deed produced by the plaintiffs carried interpolation and overwriting in the same. It has further been noticed by the appellate court below that the Ext.A Series (sale deeds produced by the defendants) clearly demonstrate that there was a Rasta in between



land allotted to the vendor of the plaintiffs and vendors of the defendants. This fact has further been corroborated by Ext.B which was a memo of partition between the vendors of the defendants and the vendors of the plaintiffs wherein also the existence of the Rasta (suit land) in between the allotted lands to the cosharers finds mention. The appellate court below has also noticed that the trial court has wrongly relied upon the report of the pleader commissioner who was not survey knowing after rejecting the prayer for appointment of survey knowing commissioner. The appellate court below after considering the report and evidence of the said pleader commissioner has found him to be not reliable. The findings of facts have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon. During the course of submission, it could not be explained on behalf of the appellants as to why the remaining two sale deeds which were the basis of title as claimed by the plaintiffs over the suit land were not produced for consideration before the court, and for that reason raising adverse inference for suppressing the material evidence is inevitable against the appellants. This Court does not find that there is any perversity or unreasonableness in the findings by the appellate court below.

In the ultimate eventuate, it is held that there is



no substantial question of law arising for consideration in this appeal,
which is, accordingly, dismissed.

(V. Nath, J)

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