

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.299 of 2014

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Krishna Kumar Gupta Son of Late Jay Govind Gupta Resident of Village-Bela
Belhi Tola Bhalwa, Ward No.-1, P.S.-Jai Nagar, District-Madhubani..... Appellant
Versus

1. Raghunath Sah Son of Late Ram Swaroop Sah
2. Sobhit Sah Son of Late Ram Swaroop Sah
3. Durgesh Prasad Sah Son of Late Panna Lal Sah
4. Ashok Kumar Marik Son of Late Krishnadeo Marik
5. Punita Kumari Wife of Ashok Kumar Marik All Resident of Village-Bela Belhi,
Tola-Bhalwa, Ward No.-1, P.S.-Jai Nagar, District-Madhubani. Respondents

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Gupta, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-07-2017

Heard the learned counsel for the appellant.

The plaintiff is the appellant in this appeal
against the judgment and decree of reversal dismissing the suit.

The plaintiff filed the suit for declaration of title
and recovery of possession over the suit land described in Schedule-I
of the plaint alongwith the consequential reliefs. The plaintiff claimed
his title over the suit land; firstly, on the basis of compromise decree
passed in P.S.No.73/1963, then by way of re-union on the death of
Rameshwar Prasad Gupta and further also by purchase through
registered sale deed dated 20.09.1974 executed by Jibachh Mochi.
The defendant contested the assertions of the plaintiff and resisted the
grant of decree as prayed.



The trial court granted the decree to the plaintiff as prayed. However, in appeal, the appellate court below, on reappraisal of evidence, has allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit by the impugned judgment and decree.

Learned counsel for the appellant has firstly submitted that the respondent no.1 is resident of Nepal and therefore he cannot hold property in India and he could not have contested the suit. It has also been submitted that the appellate court below has wrongly overturned the finding of the trial court on the ground that the survey knowing pleader commissioner was not examined and the objection filed by the defendants to his report was not considered. It has also been contended that the impugned judgment and decree by the appellate court below is vulnerable for non-consideration of the material evidence on record. No other submission has been made on behalf of the appellant.

After considering the submissions and the perusal of the judgments of both the courts below, it is manifest that the plaintiff has filed the suit for declaration of title and recovery of possession. However, the appellate court below has taken into consideration the evidence on record as well as the deposition of the plaintiff himself, examined as P.W.4, and thereafter has come to the



finding that the plaintiff has failed to establish his claim of title by cogent evidence. The appellate court below has also further taken into notice that though the survey knowing pleader commissioner was appointed on the prayer of the plaintiff and had submitted his report but he refused to receive the summons issued by the court for his examination in the suit as required in view of the objection to his report by the defendant. It has also been found that after refusal of the said advocate commissioner to appear as witness in the suit, the learned court below had also not disposed of the objection filed by the defendants to his report by fixing a date of hearing of the said objection and has wrongly dismissed the same as not pressed. The findings by the appellate court below have been apparently recorded after considering the evidence on record. This Court has not been persuaded to hold that the findings by the appellate court below have stemmed out of non-consideration of evidence or are dehors the settled principles of law. So far as the submission alleging respondent no.1 to be a resident of Nepal, it appears that in the memo of appeal itself the address of the respondent no.1, as given by the appellant, does not show that the respondent no.1 is resident of Nepal or he is a citizen of that country. It has also been accepted on behalf of the appellant that this plea was not raised by the plaintiff-appellant in the trial court or the appellate court below.



For the aforesaid reasons and discussions, this Court does not find that 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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