

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.77 of 2011

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Sharda Nand Prasad, son of Dhannu Lal, resident of Mohalla Pratappur (Ranipur),
P.S. Khajekalan, P.O. Patnacity, District Patna

..... Plaintiff Respondent

.... Appellant

Versus

1. Jagdish Choudhary
2. Prakash Choudhary, both sons of Late Sita Ram Choudhary, resident of Mohalla Pratappur (Ranipur), P.S. Khajekalan, P.O. Patnacity, District Patna
..... Defendants Appellants
3. Dayanand Choudhary, son of Sitaram Choudhary
4. Basmati Devi, widow of Late Ram Krishna Choudhary
5. Sheo Shankar Choudhary,
6. Raju Kumar Choudhary, both sons of Late Ram Krishna Choudhary
7. Tetri Devi, widow of Late Sita Ram Choudhary, all residents of Mohalla Pratappur (Ranipur), P.S. Khajekalan, P.O. Patnacity, District Patna
..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. DHANANJAY KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-07-2017

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal. The plaintiff filed a suit for declaration of title over the suit land and for consequential relief pertaining to possession.

3. The matrix of facts discloses that the plaintiff claimed the suit land to have been settled with his predecessor Kharchu Mahto by unregistered *Hukumnama* and on the said basis the plaintiff claimed his right, title and interest over the suit land. The fact is apparent that the plaintiff had also claimed the suit land in a partition with his brother. But on behalf of the appellant, during course of submission, it could not be shown that when father of the plaintiff was alive how no share was allotted to the father of the plaintiff in the suit land measuring 12¹/₂ dhurs of land. It is noticeable that the father of the plaintiff namely Dhannu Lal



was examined as a witness in the suit. The plaintiff has further also accepted that some land was settled with the defendants by the ex landlord in the same plot which was a bigger plot. The defendants, however, came out with the case that the suit land was the part of the settled land with the defendants by the ex-landlord.

4. The trial court returned the finding on the issues in favour of the plaintiff and granted the decree as prayed. In appeal by the defendants the appellate court on reappraisal of evidence has reversed the finding of the trial court, allowed the appeal and dismissed the suit by the impugned judgment and decree.

5. Learned Counsel for the appellant has strongly submitted that the findings by the appellate court below are not based upon proper consideration of evidence and, therefore, are vulnerable. It has been contended, by drawing the attention of the court to the memo of appeal, that there was no pleading or allegation of fraud and there was also no finding by the appellate court below that the *Hukumnama* executed in favour of the plaintiff predecessor Kharchu Mahto was a fraudulent document. It has been further submitted that the plaintiff's name was entered in the Municipal Corporation with regard to the suit land where holding was created after construction of house by the plaintiff. It has also been argued that the appellate court below has wrongly brushed aside the documents evidencing creation of holding in favour of the plaintiff by the Corporation and erred in holding that the same are suspicious. Learned Counsel for the appellant, however, has accepted that the *Hukumnama* in question was not with regard to agricultural land but argued that even if it was not registered it could have been used for collateral purposes. It has been propounded that the possession of the plaintiff is continuing over the suit land since after the settlement but the appellate court below has overlooked the long possession of the plaintiff over the suit land. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below it is pellucid that the plaintiff has based his claim of title over the suit land on the *Hukumnama* granted by



the ex-landlord. It has, however, been not disputed that the Hukumnama was unregistered though it was required to be registered as the suit land was admittedly not agricultural land and even according to the case of the plaintiff, the holding has been created over the suit land after construction of house by the plaintiff. There is no pleading nor there is evidence aliunde that the ex-landlord submitted return in the name of the plaintiff or his predecessor at the time of vesting of Jamindari. There is also no pleading or evidence that Jamabandi was created in the name of the plaintiff or his predecessor for the suit land and the plaintiff ever paid any rent. In support of his possession over the suit land the plaintiff has clearly relied upon the creation of holding by the Municipal Corporation in the name of the plaintiff or his predecessor and the entry in the assessment register. The appellate court below has scrutinised the evidence on record pertaining to municipal records and has come to the conclusion that the entry in the assessment register was made even prior to recommendation made by the appropriate authority in favour of the plaintiff and the date with regard to such entry has been mentioned much later in the assessment register. After elaborate discussion of evidence the appellate court below has come to the finding that the records relating to assessment register in the name of the plaintiff are dubious and illegally made and therefore are suspicious. This findings by the appellate court below has been recorded on the basis of consideration of evidence which were acceptable and could have been relied upon. As the Hukumnama was not a registered document the same could not be the basis of title of the plaintiff. Even otherwise also, absence of materials relating to filing of return by the ex-landlord in the name of the plaintiff or absence of pleading of creation of Jamabandi in the records of the State also supports the findings recorded by the appellate court below against the plaintiff. During the course of submission non-consideration of pleadings has been raised as a substantial question of law to the extent that if allegation of fraud has been raised the same could not have been brushed aside by the court below. However, this submission is misconceived inasmuch as the fact is admitted that an unregistered Hukumnama cannot be the basis of title of the plaintiff, and other



collateral evidence to support the same are missing. The submission by the learned Counsel for the appellant that the defendants did not lead material evidence in support of their case, cannot also ensure any benefit to the plaintiff as it is well settled principle that the plaintiff has to stand on his own legs and not to take benefit of the weakness of the case of the defendants. This Court does not find persuaded to come to the conclusion that the findings of fact as has been recorded by the appellate court below are perverse or unreasonable in any manner.

7. 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	
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