

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.267 of 2014

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Raj Kumari Devi W/o Chhabilal Rajak, Resident of Mohalla- Naya Tola Katihar,
P.O., P.S. & Dist.- Katihar

..... Plaintiff Appellant

.... Appellant

Versus

State of Bihar through Collector, District- Katihar

..... Defendant Respondent

.... Respondent

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Appearance :

For the Appellant : Mr. P.K.Jaipuriyar, Advocate
Mr. Anshuman Jaipuriyar

For the Respondent : Mr. Binod Kumar
Ms. Deepanjali Gupta

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-01-2017

Heard Mr. P.K.Jaipuriyar, learned Counsel appearing for the
appellant.

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

3. The suit has been filed by the plaintiff for declaration of his
title and confirmation of possession over the suit land. The averments
made in the plaint as well as the submissions made on behalf of the
appellant disclose that the plaintiff's relief of declaration of title over the
suit land is on the basis of having acquired title over the same by adverse
possession. The defendant State of Bihar did not file written statement
but from the judgment of the appellate court below it appears that the
learned Counsel for the defendant-respondent has appeared therein and
made submissions in the appeal.

4. Both the courts below after scrutiny of pleading and



evidence of the plaintiff and after hearing the submissions have come to the concurrent findings of fact that the plaintiff has failed to establish her case of acquisition of title over the suit land by adverse possession by cogent evidence. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

5. Mr. Jaipuriyar, learned Counsel appearing for the appellant has vehemently submitted that the appellate court below and/or for that matter both the courts below have not properly construed the pleadings and evidence of the plaintiff-appellant. Learned Counsel has also placed before this Court portions of the findings as recorded by the appellate court below in order to persuade this Court that those findings are not legally sustainable. The learned Counsel has also propounded that once after the defendant failed to file written statement in that case the assertions made by the plaintiff would be deemed to have been admitted in view of the provisions as contained in Order 8 Rule 5 CPC. No other submission has been made on behalf of the appellant.

6. After considering the submissions and the judgments of both the courts below it is pellucid that the claim of title by the plaintiff over the suit land is based on the assertion that the plaintiff remained in hostile possession over the suit land for more than the prescribed period in that regard. However, both the courts below have scrutinised the evidence adduced on behalf of the plaintiff and the pleadings made in the plaint and thereafter have come to the conclusion that the pleadings as set up could not be established by cogent evidence. It is not the case on behalf of the appellant that the findings by the courts below have stemmed out of non consideration of evidence or are dehors settled



principle of law.

7. The principles governing the claim of adverse possession over the government land have been clearly laid down by the apex court in the case of **Mandal Revenue Officer vs Goundla Venkaiah (2010) 2 SCC 461**. Further in the case of **Ramesh Chand Ardawatiya vs Anil Panjwani on 5 May, 2003 AIR 2003 SC 2508**, the apex court has ruled that even in cases of exparte proceeding, the plaintiff would not be entitled to decree straightway. The submissions on behalf of the appellant on the basis of the provision of Order 8 Rule 5 is clearly misconceived and have been made blurring the nature and scope of the said provision with that prescribed under Order 8 Rule 10 CPC.

8. It is also well settled that the jurisdiction of the second appellate court is confined to finding out as to whether the conclusions by the courts below are perverse or unreasonable. The second appeal is not “a third appeal on facts”. This Court has not been persuaded to find perversity or unreasonableness in the findings recorded by both the courts below. The conclusions by the courts below are based upon evidence which were acceptable and could have been relied upon.

9. 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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