

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.276 of 2015

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1. Gopal Sah son of Bhola Sah
 2. Heera Sah @ Heera Lal Sah son of Shankar Sah
 3. Nasib Mian son of Ashraf Mian
 4. Rashid Mian son of Ashraf Mian
 5. Rajendra Khatik son of Rajai Khatik
 6. Narendra Rajak son of Fulena Rajak
 7. Surendra Rajak son of Fulena Rajak
 8. Rajaque Mian son of Late Roj Mian
 9. Haridwar Sah son of Sumer Sah
 10. Mumtaj Mian son of Rahim Mian
 11. Taj Mohammad Mian son of Chokat Mian
 12. Phool Mohammad Mian son of Nabi Hussain Mian
 13. Naga Ram @ Biga Ram son of Bhagirath Ram
 14. Yogendra Khatik son of Rajai Khatik
 15. Mahendra Khatik son of Rajai Khatik
 16. Sharda Khatik son of Rajai Khatik
 17. Idrish Mian son of Salamat Mian
 18. Mohammadin Mian son of Salamat Mian
 19. Iddin Mian son of Salamat Mian
 20. Israil Mian son of Salamat Mian All resident of Village- Rampurva, Police Station- Valmikinagar, District- West Champaran.
- Defendants Appellants

.... Appellants

Versus

1. Lalan Sharma son of Late Heeralal Sharma
 2. Chandan Sharma son of Late Heeralal Sharma
 3. Jaiprakash Sharma son of Late Heeralal Sharma
 4. Nirmala Devi wife of Awadhesh Lal and daughter of Late Heeralal Sharma
 5. Jainarain Sharma son of Ramugrah Sharma
 6. Dhrup Sharma son of Ramugrah Sharma
 7. Nandlal Sharma son of Ramugrah Sharma
 8. Manoj Sharma son of Late Kishun Sharma, All resident of Village- Rampurva, Police Station- Valmikinagar, District- West Champaran. Plaintiffs
 - Respondents
 9. Shambhu Sah Son of Shankar Sah
 10. Dharej Sah @ Dheeraj Sah son of Sant Sah Both Resident of Village- Rampurva, Police Station- Valmikinagar, District- West Champaran.
- Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Buxi S.R.P.Sinha, Sr. Advocate
Mr. Md. Shahab Khalil, Advocate

For the Respondent/s : Mr. Bashistha Narayan Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-03-2017



Heard Mr. Buxi S.R.P.Sinha, learned Senior Counsel appearing for the appellants. Learned Counsel for the respondents is also present.

2. The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree as prayed by the plaintiffs.

3. The plaintiffs filed the suit for declaration of title over Schedule I land of the plaint and for removal of encroachment made by the defendants respectively as described in Schedule II of the plaint. The defendants contested the claim of the plaintiffs taking the plea that they had been in possession over the suit land for long and thereby they had acquired title by adverse possession.

4. Both the courts below after considering the evidence and pleadings on record have returned the findings on the issue in favour of the plaintiffs holding that the plaintiffs have got title over the suit land and are entitled for decree for recovery of possession after removing the encroachments made by the respective defendants. The suit was decreed and thereafter the appeal by the defendants has also been dismissed.

5. Mr. Buxi S.R.P.Sinha, learned Counsel for the appellants, has at the outset submitted that the plea of adverse possession as raised by the defendants has not been properly considered by the courts below. By referring to Article 65 of the Limitation Act, it has been propounded that the defendants have been in possession over the suit land for more than twelve years and have acquired title over the same and the suit filed by the plaintiffs was barred by limitation. It has also been contended that the



Pleader Commissioner's report has not been properly considered by the courts below, particularly when the report of the Pleader Commissioner pointed encroachment by the defendants over different lands than the lands mentioned in Schedule II of the plaint. The learned Senior Counsel, however, has accepted that such an objection to the report of the Pleader Commissioner was not raised by the defendants either during the trial of the suit or at the appellate stage. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that the plaintiffs have filed the suit for recovery of possession alleging encroachment by the defendants, besides declaration of title over the suit land. Both the courts below on the basis of evidence on record, which were acceptable and could have been relied upon, have come to the conclusion that the plaintiffs have got title over the suit land and encroachments have been made by the defendants over the same as alleged by the plaintiffs. It is not the case on behalf of the appellants that the findings by the courts below have stemmed out of non consideration of evidence or dehors settled principle of law. The submission on behalf of the appellants regarding the adverse possession also could not be substantiated as there was no specific pleading disclosing the ingredients of adverse possession and there was also no cogent evidence for the same. Both the courts below have further taken into notice the admission by the defendants that they have no concern with the lands of the plaintiffs and they are ready to remove the structure if the encroachment by them would be found. Further, the further objection to the



report of the Pleader Commissioner which has been tried to be raised at the second appellate stage necessarily involves question of fact and the same was required to be raised by the defendant – appellants during the course of trial or even at the appellate stage. As the defendants have omitted to raise the same at the appropriate stage, this Court at the second appellate stage is not inclined to enter into the disputed questions of fact. Eventually, this Court comes to the conclusion that the findings have been recorded by both the courts after consideration of evidence of the parties and there is no perversity or unreasonableness in the same.

7. In the result, this Court holds that there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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