

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.42 of 2017

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Basudeo Yadav, son of Dukhan Yadav, resident of Village Barwa, P.O. Siswa
Basantpur, P.S.Chautarwa, District West Champaran

.... Appellants

Versus

1. Shanker Prasad
2. Raj Kumar Prasad
3. Shatrudhan Prasad
4. Smt. Bhagmati Devi
5. Smt. Suchwati Devi
6. Smt. Lilawati
7. Smt. Antima Devi
8. Umesh Prasad

.... Respondents

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Appearance :

For the Appellant/s : Mr. Buxi S.R.P.Sinha, Sr. Advocate
Mr. Zainul Abedin, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-05-2017

Heard Mr. Buxi S.R.P.Sinha, learned Senior Counsel
appearing for the appellant in this appeal under Order 41 Rule 11 CPC
along with the Interlocutory Application (I.A. No. 2741 of 2017) filed for
stay of the further proceeding in the court below including delivery of
possession.

2. The defendant is the appellant in this appeal against the
judgment and decree of affirmance granting the decree to the plaintiff as
prayed.

3. The plaintiff filed the suit claiming his title over the suit land
with further case that the suit land and premises were given to the
defendant for use on the occasion of marriage of his daughter but after
the marriage ceremony was over the defendant refused to vacate the
same. The relief for recovery of possession was thus prayed in the suit.



4. The defendant appeared in the suit but did not file the written statement and ultimately the court debarred the defendant from filing the written statement. During the course of submission it has been accepted on behalf of the appellant that the defendant did not question the said order debarring him from filing the written statement before the higher forum and continued to contest the suit by cross-examination of the witnesses of the plaintiff.

5. The trial court after considering the evidence eventually led only on behalf of the plaintiff has come to the conclusion that the plaintiff has succeeded in establishing his entitlement for recovery of possession over the suit land against the defendant and granted the decree accordingly. The defendant thereafter filed an appeal. Before the appellate court also the defendant did not raise any grievance against the order debarring him from filing the written statement. The appellate court has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

6. Mr. Sinha, learned Senior Counsel appearing on behalf of the appellant has emphatically submitted that the judgment passed by the appellate court below is not a judgment in the eye of law as it does not conform to the provisions of Order 41 Rule 31 CPC. It has been submitted that the appellate court below has not considered the evidence led on behalf of the plaintiff before concurring with the findings of the trial court. The learned Senior Counsel has also placed the part of the plaint filed in the suit in order to substantiate his submission in an answer to the query of the court as to whether in the suit there was any allegation with regard to encroachment. No other submission has been



made on behalf of the appellant.

7. After considering the submissions and judgments of both the courts below, this Court finds that the suit has been filed by the plaintiff for recovery of possession on the basis of title. The specific case of the plaintiff was that the suit land and premises belonged to the plaintiff and the defendant was in permissive possession over the same on account of marriage ceremony of his daughter. It was the case of the plaintiff that the defendant however refused to vacate the suit land and premises after the marriage ceremony was over. Admittedly, the defendant was debarred from filing the written statement and from the records, it transpires that the defendant allowed the said order to attain finality as he did not chose to assail the same or had made any prayer for recall of that order. The plaintiff led his evidence in support of his case of title over the suit land and the trial court as well as the appellate court below have found that the plaintiff has got title over the suit land. In absence of any plea on behalf of the defendant claiming his own title over the suit land, both the courts below accordingly have granted the decree for recovery of possession to the plaintiff. So far as the submission on behalf of the appellant that the judgment passed by the appellate court below is not a judgment in the eye of law, the fact is apparent that the appellate court below has passed a judgment of affirmance in a suit where the defendant did not file written statement and obviously therefore there was no pleading and evidence on behalf of the defendant. A three judges Bench of the apex court in the case of ***Santosh Hazari V. Purushottam Tiwari (deceased) by LRS 2001 (3) SC 179*** has considered the duty of the appellate court while passing a



judgment of affirmance and has held that in such a case the appellate court is not required to reappreciate in detail the import of evidence on behalf of the defendant and expression of general agreement with the findings of the trial court may suffice. In view of the dictum of the apex court this Court does not find substance in the submission on behalf of the appellant that the appellate court below has committed error in law in not venturing to reappreciate the evidence led on behalf of the plaintiff when admittedly there was no pleading controverting the same and there was also no evidence aliunde. No part of the cross-examination on behalf of the plaintiff witnesses has been placed before this Court to support the contention that if the same would have been be considered it would have turned the table in favour of the defendant.

8. The findings are concluded by both the courts below on the basis of appreciation of evidence which were acceptable and could have been relied upon.

9. In the ultimate eventuate, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

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CAV DATE	N/A
Uploading Date	24.05.2017
Transmission Date	N/A

