

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.247 of 2014

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1. Kariman Kurmi Son of Doman Kurmi Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
 2. Barister Kurmi @ Barister Choudhary Son of Hardeo Kurmi Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
 3. Indradeo Kurmi @ Inderdev Kurmi Son of Late Govind Kurmi Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
 4. Bahadur Kurmi @ Bahadur Chaudhary Son of Late Govind Kurmi Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
 5. Paras Kurmi @ Paras Chaudhary Son of Late Govind Kurmi Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
- Plaintiffs Appellants

.... Appellants

Versus

1. The State of Bihar Through The Collector, Kaimur At Bhabhua
 2. The Anchal Adhikari, Bhagwanpur, P.S. - Bhagwanpur, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar) Defendants Respondent 1st set
 3. Sanchi Ram Son of Antu Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 4. Radhiya Devi W/o - Lallu Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 5. Ram Baran Ram Son of Bhagirathi Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 6. Budhu Ram Son of Ram Khelawan Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 7. Most. Sanjira Kuer W/o - Late Sukar Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 8. Lal Muni Ram Son of Manohar Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 9. Lakshmina Kuar W/o - Late banshropan Ram Resident of Village - Jaitpur, P.S. - Bhagwanpur, Distt. - Dist. - Kaimur At Bhabhua (Bihar)
 10. Bhanu Pratap Singh @ Bhanji Son of Yadunath Pd. Singh Resident of Village - Jaitpur Kala, P.S. - Bhagwanpur, Distt. - Kaimur At Bhabhua (Bihar)
- Defendants Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Abhishek

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-04-2017

Heard Mr. Dhrub Narayan, learned Senior Counsel appearing



for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit holding that it is barred by the provisions of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act.

3. From perusal of the judgments of both the courts below it is manifest that the plaintiff filed the suit for declaration that the order passed in the ceiling proceeding in Case No. 1111 of 1975 was null and void, fraudulent and not binding upon the plaintiffs. From perusal of the judgment of the trial court it does not appear that any issue with regard to title and possession of the plaintiffs over the suit land was framed. The trial court decided the issues against the plaintiffs and further also came to the conclusion that the bar of Section 43 of the Ceiling Act to the maintainability of the suit was attracted. In appeal before the appellate court below filed by the plaintiffs, the submission was made on behalf of the plaintiffs that the suit was maintainable in view of the law laid down by this Court in the case of **Brij Nandan Mahto vs. Smt. Ranjoo Devi 2013 (2) PLJR 687**. However from perusal of para 12, 13 and 14 of the judgment of the appellate court below it transpires that the appellate court below has come to the conclusion that the plaintiffs have not filed the suit for declaration of title and possession over the suit land and the only relief was against the order passed by the ceiling authorities and therefore the suit was hit by the provisions of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act.

4. Mr. Dhruv Narayan, learned Senior Counsel appearing for the



appellants has firstly submitted that there has been amendment in the appellate court below itself in the plaint by the plaintiffs incorporating the relief for declaration of title and possession. However, during the course of submission the learned Counsel could not substantiate the said stand relating to amendment in the plaint. Even otherwise also it does not appear from perusal of the judgment of the appellate court below or from the memo of the present appeal that such an amendment was ever preferred by the plaintiffs in the court below. In this fact situation when the suit has been filed by the plaintiffs assailing the order passed by the ceiling authorities under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, the bar of Section 43 is clearly attracted.

5. Both the courts below, therefore, have committed no error in law in dismissing the suit of the plaintiffs on the said ground.

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

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(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.04.2017
Transmission Date	N/A

