

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.195 of 2015

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Ganesh Jha S/o Late Anantlal Sah, Resident of Village- Fatehpur, P.O.-
Bishambharchak, P.S.- Amarpur, District- Banka. Appellant.

Versus

Chhedi Prasad Jha S/o Late Parmeshwar Jha, Resident of Village- Fatehpur, P.O.-
Bishambharchak, P.S.- Amarpur, District- Banka.

.... Respondent.

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-05-2017

Heard the learned counsel appearing for the
appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance granting the decree to
the plaintiff as prayed.

The plaintiff filed the suit for declaration of
title and recovery of possession over the suit land. The plaintiff's case
was that the suit land was his ancestral land and allotted to him after
partition and out of allotted 5 decimals, house was constructed by the
plaintiffs over 4 decimals of land and 1 decimal was left for use as
Sahan. The defendants did not claim any title over the suit property
and the only defence was that the suit land was being used by the
public at large and so the decree as prayed by not granted to the
plaintiff.



Both the courts below on scrutiny of evidence as well as pleadings of parties have returned the concurrent findings on the issues in favour of the plaintiffs. The suit was decreed and thereafter the appeal by the defendant has been dismissed by the impugned judgment and decree.

The learned counsel for the appellants has submitted that both the courts below have erred in law in not considering the material evidence on record properly before granting the decree to the plaintiffs as prayed. It has been submitted that 1 decimal of land of Plot No.639 was being used by the public at large and therefore the plaintiff's claim for title and recovery of possession over the said land was not tenable. The learned counsel has placed the findings of the courts below as well as the part of the depositions by the witnesses in order to persuade this Court to take another view in the matter. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is pellucid that the suit has been filed by the plaintiff for declaration of title and recovery of possession over the suit land and permanent injunction restraining the defendants from interfering in the peaceful possession over the suit land. The defendant has not claimed his own title over the suit land



and the only case on behalf of the defendant was that the suit land was used by the public at large and was a public Rasta. The finding by the learned court below on the basis of evidence is that the defendant has purchased Plot No.688 for the use as passage for ingress and egress in his house. During the course of submission also, this fact has not been denied on behalf of the appellants. It is, therefore, transparent that the defendant-appellant has got his own private passage for ingress and egress from his land. The court below after scrutiny of evidence has also come to the finding that the Plot No.639 belongs to the plaintiff. The only contention on behalf of the defendant-appellant is that it is a public Rasta. There is no pleading or evidence aliunde, as noticed by the appellate court below indicating the year from which the land of the plaintiff was in use as Rasta by the public at large in order to confer the prescriptive right or easementary right over the said plot. The appellate court below has further also taken into notice the material evidence on record before coming to the finding that the plaintiff has got title and right to possession over the suit land and is entitled to the decree as prayed. During the course of submission also, nothing could be shown on behalf of the appellants to establish any right conferred in law upon the defendant for the use of the land of the plaintiff. The entire submission on behalf of the appellant, in fact, has centered around the reappreciation of evidence which could



not be done at the second appellate stage to interdict the concurrent findings of facts as this Court further does not find that the conclusions by both the courts below are unreasonable perverse in any manner.

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)

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