

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.249 of 2007

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1. Abdul Quayum, s/o Abdul Quadir
 2. Geyasuddin, s/o Nazir Ali
 3. Md. Yasin, s/o Ashgar Ali
 4. Iftakhar Ahmad, s/o Ali
 5. Shakil Ahmad, s/o Mohammad Munshi Khan
 6. Abdul Mazid, s/o Md. Ali Jaan
 7. Md. Amanullah, s/o Gulab Mian

All residents of vill-Mauza-Bhimpur, Bara, PS- Barharia, Dist- Siwan

.... Appellants

Versus

1. Maheshawar Singh, s/o Late Chandradeo Singh
2. Ashok Singh @ Surendra Singh, s/o Chandrika Singh
3. Binod Singh, s/o Chandrika Singh
4. Shila Devi
5. Gudiya Kumar, 4 and 5 are daughters of Late Chandrika Singh
6. Lal Mani Devi, w/o Late Chandrika Singh
7. Daroga Singh
8. Bachcha Singh, 7 and 8 of Late Chandrika Singh
9. Solabi Devi
10. Somakhi Devi
11. Sri Kanti Devi
12. Ramawati Devi, 9 to 12 are daughters of Chandrika Singh
13. Upendra Singh, son of Dwarika Singh
14. Lal Bahadur Singh
15. Hari Narayan Singh
- 14 and 15 are sons of late Hira Singh

All residents of vill-Mauza-Bhimpur, Bara, PS- Barharia, Dist- Siwan

.... Respondents

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Appearance :

For the Appellant/s : Mr. Chandra Kant, Adv.

For the Respondent/s : Mr. Rajiv Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-04-2017

Heard Mr. Chandrakant, learned Counsel appearing
for the appellants and Mr. Rajiv Ranjan, learned Counsel appearing
for the respondents.

The plaintiffs are the appellants in this appeal against



the judgment and decree dated 20.08.2007 passed in T.A. no. 117 of 1994 dismissing the appeal and affirming the judgement and decree dated 07.10.1994 passed in T.S. no. 215/1970/183/1994.

The plaintiffs filed the suit under Order 1 Rule 8 of Code of Civil Procedure for declaring that the suit land measuring 01 *katha* and 19 *dhurs* was the part of the total 15 *katha* and 17 *dhurs* of plot no. 1006 which was the *kabristan* of the Muslim community of vill-Bhimpur. The plaintiffs claimed themselves to be the representatives of the Muslim community of the village and it was asserted that the defendants had encroached over the suit land by making construction and by planting trees over the suit land. The defendants contested the assertions of the plaintiffs and resisted the relief as prayed for.

The trial court returned the findings on the issues against the plaintiffs holding that the plaintiffs failed to establish their case by cogent evidence regarding the nature of the suit land to be the *kabristan*. In appeal by the plaintiffs, the Appellate Court below has concurred with the findings of the trial court and dismissed the appeal by impugned judgment and decree.

Mr. Chandrakant, learned counsel appearing for the appellants has submitted that both the Courts below have not correctly appreciated the material evidence on record. Elaborating the



submissions, it has been contended that the plaintiffs' claim over the suit land has been on the basis of customary right and the ingredients of the same as noticed in the case reported in *Akram Sheikh And Ors. vs Makid Sheikh And Ors. AIR 1971 Calcutta 405* have been fully established but both the Courts below have ignored the same. It has further been argued that both the Courts below have wrongly relied upon the documents relating to Settlement case no. 35 of 1975-76 which came into existence during pendency of the suit and therefore, could not have been relied upon. It has further been canvassed that the courts below have also wrongly placed reliance upon the compromise entered into in T.S. no. 206/43 of 1934-35 (Ext.D) for coming to the conclusion that the Muslim community of the village were granted some other land by the ex-landlord to be used as *kabristan*. It has also been argued on behalf of appellants that the documentary evidence i.e. Ext.D, Ext.I, Ext.B series and Ext.F have wrongly been interpreted and the oral evidence has also been wrongly appreciated and therefore the findings by both the Courts below are vulnerable. 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 manifest that the plaintiffs have filed the suit for declaration that the suit land measuring an area of 01 *katha* and 19 *dhurs* is part of the land used by the Muslim



community of the locality as *kabristan* but has been wrongly encroached upon by the defendants. Both the Courts below have taken into notice the report of the local inspection (Ext.I) submitted by the pleader commissioner and it is noticeable that the plaintiff did not raise objection to that report. In the said report, the pleader Commissioner has found no signs of graveyard over the suit land. Though, it was the case of the plaintiffs that the land in question being part of plot no. 1006 was being used as *kabristan* from before the survey operation, the same has undisputedly been recorded in the recent survey *khatian* as *Gair Mazarua Malik*. PW1 examined on behalf of the plaintiff-appellants has accepted that he was the ex-landlord of the village. Both the Courts below have taken into notice the decree passed in Title Suit no. 206/43 of 1934-35 (Ext.D) which has disclosed that some other land was given to the Muslim community of the village for using as graveyard. The appellate court has also taken into notice that the brother of PW1 was one of the parties in the said suit. There is no explanation on behalf of plaintiff-appellants in this regard although submission on behalf of appellants has been made that the said decree could not have been relied upon. The courts below have also taken into notice the oral evidence adduced on behalf of parties before coming to the conclusion that the plaintiffs have failed to establish their case that the suit land



was ever used as *kabristan* by the Muslim community of the village.

It is well settled that the civil disputes are decided on the basis of preponderance of probability. In the present case, both the Courts below have recorded the findings of fact on the basis of the evidence which were acceptable and could have been relied upon. It is not the case of the appellants that the findings have stemmed out of non-consideration of evidence or are *dehors* the settled principles of law. This Court finds that the findings have been recorded on the basis of appreciation of evidence and there is no perversity or unreasonableness in the same in any manner.

For the aforesaid reasons, this Court finds that there is no substantial question of law arising for consideration in this appeal which, accordingly, is dismissed.

(V. Nath, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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