

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.254 of 2005

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1. Sumitra Devi, daughter of Late Basudeo Chaudhur, w/o Kailash Mishra
 2. Baidh Nath Chaudhur, son of Rabi Nandan Choudur
 3. Rameshwar Chaudhur, son of Basudeo Chaudhur

All residents of Village Puran Chapra, P.O. Purtan Chapra, P.S. Chakiya,
District East Champaran

..... Defendants Appellants

.... Appellants

Versus

1. (a) Most.Banarsi Kuer, w/o Late Radhu Nath Chaudhur
(b) Manoj Kumar Chaudhur
©Binod Kuma Chaudhur
(d)Satish Kumar, all sons of Late Radhu Nath Chaudhur, residents of Village Parausi Risi, P.O. Tarawa, P.S. Shahebganj, District Muzaffarpur
(e)Manju Trivedi, wife of Binay Kumar Trivedi, daughter of Late Radhu Nath Chaudhur resident of Village Sharpur, P.O. P.S. and District Muzaffarpur
(f)Smt, Anju Devi, wife of Shyam Shankar Thakur, daughter of Late Radhu Nath Chaudhur, resident of Motihari Town Mohalla Shrikrishna Nagar, P.O. and PS Motihari, Town and District East Champaran
2. Kishundeo Thakur
3. Ram Lochan Thakur
4. Bishundeo Thakur, all sons of Jamdar Thakur, residents of Village Parausi Risi, P.O. Tarawa, P.S. Shahebganj, District Muzaffarpur
5. Girija Nandan Singh, son of Hira Singh, resident of Village & P.O. Ganesh Sirsia, P.S. Kalyanpur at present Chakia, District East Champaran
6. (a) Umesh Kumar
(b) Dinesh Kumar
(c) Rajesh Kumar
(d) Niktesh Kumar
(e) Mukesh Kumar, all sons of Late Parmanand Yadav
(f) Pratima Kumari, daughter of Late Parmanand Yadav
(g) Pratibha, daughter of Late Parmanand Yadav
(h) Chandra Jyoti Devi, wife of Late Parmanand Yadav, all residents of Village Harpur Nag, P.O. & P.S. Mehshi, District East Champaran
7. (a) Sambhu Nath Mishra, son of Late Ramchandra Mishra, resident of Village Puran Chapra, P.S. Chakiya, District East Champaran, Motihari
(b) Sarwati Kuer, wife of Late Satyanarayan Dubey, daughter of Late Ramchandra Mishra, resident of Village Kathauliya, P.O. Bibhiva, P.S. Barwaj, District Muzaffarpur
(c) Shail Kumari Devi, wife of Dudist Narayan Dubey, daughter of Late Ramchandra Mishra, resident of Village and P.O. and P.S. Shyampur, District Shivhar
(d) Manju Devi, wife of Raj Kishore Upadhya, daughter of Late Ramchandra Mishra, resident of Village Hasan purwa, P.O. Basghat, P.S. Chakiya, District East Champaran
(e) Laxmin Devi, wife of Nand Kishore Pandey, daughter of Late Ramchandra Mishra, resident of Village Taraniya, P.O. and P.S. Chakiya, District East Champaran



8. Most Indu Devi, wife of Late Bishwanath Mishra
9. Anil Kumar Mishra, minor son of Late Bishwa Nath Mishra, under guardianship of mother respondent No. 8 Indu Devi of village and P.O. Puran Chapra, P.S. Chakiya, District East Champaran

.... Respondents

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Appearance :

For the Appellants : Mr. S.S.Dwivedi, Sr. Advocate
 Mr. Chandra Kant
 Mr. Sangeeta Sharma
 Mr. L.L.Pandey
 Mr. Ravi Shankar Duivedi
 Mr. Shailendra Kmar Duivedi
 Mr. Ranjan Kumar

For the Respondent/s : Mr. Om Prakash

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-01-2017

Heard Mr. S.S.Dwivedi, learned Senior Counsel appearing for the appellants.

2. The defendant 1st set in the suit are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiffs as prayed.

3. The suit was filed by the plaintiffs for declaration of title and recovery of possession. Both the courts below have reached to the concurrent finding of fact that the plaintiffs have succeeded in establishing their title over the suit property by cogent evidence. The suit was decreed and thereafter the appeal filed on behalf of the defendant 1st set has been dismissed by the impugned judgment and decree.

4. Mr. Dwivedi, learned Senior Counsel appearing for the appellants, has at the out set emphasised that the appellate court below has abdicated its duty as appellate court in not proceeding to reappraise the evidence on behalf of the parties. It has been contended that the appellate court's judgment would reveal that its finding of concurrence



has been recorded with absolute non consideration of the material evidence of the defendant 1st set- appellants. It has also been submitted that there is no finding about dispossession and therefore also the judgment of the courts below are vitiated. Reliance has been placed on behalf of the appellants on the decision in the case reported in the case of ***Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board & ors, 2010 (13) SCC 216*** in support of the submission that the findings have been recorded on the basis of *ipsi dixit* by the appellate court below, which was required to reconsider the evidence led on behalf of the parties. Learned Senior Counsel has submitted that in view of the aforesaid proposition substantial question of law arise for consideration in this appeal.

5. After considering the submission and perusal of the judgments of both the courts below it is manifest that the suit has been filed by the plaintiffs for recovery of possession on the basis of title. The matrix of fact discloses that the suit plot recorded in the recent survey as plot No. 921 was carved out of C.S. Plot No. 723 are 9 Katha and Plot No. 724 area 10 Katha. There is no dispute between the parties that C.S. Plot No. 73 and 74 belonged to Bhagwan Mishra and the fact is also admitted that the said title holder Bhagwan Mishra transferred the entire area of C.S. Plot No. 724 measuring 10 Katha in favour of predecessor of the defendant 1st set. The plaintiffs' case is that after transfer of some area in Plot No. 723, 4 Katha 17 dhurs remained with the descendents of Bhagwan Mishra who transferred the suit land out of it in favour of the plaintiffs by registered sale deed. The defendants have resisted the claim of the plaintiffs on the basis of acquisition of title over



the suit land through oral exchange claiming the same to have been given to them by Bhagwan Mishra. The courts below have come to the finding that the defendants have failed to prove the acquisition of title through oral exchange. The submission on behalf of the appellants that the appellate court below was required to reappraise the evidence of the parties before concurring with the finding of fact as recorded by the trial court, has failed to impress this Court in view of the finding recorded by the appellate court below particularly in para 12 and 13 of its judgment while concurring with the findings of the trial court and also in view of the observation in this regard by a three judges Bench of the Apex Court in the case of **Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179**. The very foundation of title and interest claimed by the defendant No. 1 has been found by the courts below not to be in accordance with law. In that view of the matter this Court is not persuaded to find that the appellate court below has abdicated in its duty as appellate court below to reappraise the evidence of the parties. The issues arising between the parties are concluded by findings of fact on the basis of evidence which were acceptable and could have been relied upon.

6. This Court thus does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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