

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.200 of 2010**

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1. Mohan Paswan, son of Late Jiut Paswan  
2. Brijesh Paswan  
3. Dinesh Paswan, both sons of Late Rajaram Paswan  
All residents of Village and Post Dhamaura, P.S. Sathi, District West Champaran  
..... Defendant 1st set ..... Appellant

.... .... Appellants

Versus

1. Dhuandhar Paswan  
2. Fulena Paswan, both sons of Late Bipat Paswan  
3. Kheera Devi, wife of Late Bipat Paswan  
4. Babu Lal Paswan, son of Late Sakal Paswan, all residents of Village and Post Dhamaura, P.S. Sathi, District West Champaran ..... Plaintiffs .....  
Respondent 1st set  
5. Most. Lakhpatri Kuer, wife of Late Kashi Singh  
6. Sunil Singh, son of Late Kashi Singh  
7. Ambedika Devi, daughter of Late Kashi Singh, all resident of Village Lachhnauta, Post Dhamaura, P.S. @ District West Champaran  
8. Mithila Devi, daughter of Late Kashi Singh, wife of Anil Singh, resident of Village Pokharia, P.S. Pokharia, P.S. Chanpatia, District West Champaran  
9. Prema Devi, daughter of Late Kashi Singh, wife of Ashok Kumar Rai, resident of Village Gobaraura, P.S. Lauria, District West Champaran  
10. Bigal Raut, son of Sita Ram Raut  
11. Sk. Shamshul, son of Sk. Hamid  
12. Sk. Jajul, son of Sk. Chhedi  
13. Jahia Kuer, wife of Late Kodai Sah  
14. Moti Sah, son of Late Kodai Sah, all resident of Village and Post Dhamaura, P.S. Sathi, District West Champaran  
..... Defendant 2<sup>nd</sup> set ..... Respondent 2<sup>nd</sup> set  
.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. SHIV KUAMR DWIVEDY  
Mr. Amlesh Kr. Verma

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 20-04-2017**

Heard Mr. S.K.Dwivedi, learned 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 plaintiffs filed the suit for declaration that the suit property described in Schedule II of the plaint was the joint family property of the plaintiffs and the defendant 1st set in which the plaintiffs had got  $2/3^{\text{rd}}$  share. Further relief was also sought to adjust the land sold by the defendant 1st set as described in Schedule III in the plaint, in the share of the defendant 1st set.

4. The facts in detail need not be noticed for the purpose of appreciation of the submissions made on behalf of the appellants and suffice it to state that the plaintiffs and defendant 1st set both have accepted that the suit land was a *Goraiti Jagir* given by the ex-landlord and was in possession of the three brothers namely Sakal Hazra, Jiut Hazra and Bipat Hazra. The descendants of Sakal Hazra and Bipat Hazra are plaintiffs in the suit and the descendants of Jiut Hazra are defendant 1st set. The plaintiffs claimed  $2/3^{\text{rd}}$  share in the suit property, whereas the defendants claimed that the *Goraiti Jagir* was surrendered to the ex-landlord by Sakal Hazra and Bipat Hazra and thereafter the ex-landlord settled the suit land with Jiut Hazra as *Gorait*. The defendants on this base have claimed their exclusive title and possession over the suit property.

5. The trial court after considering the pleadings and evidence of the parties concluded that the defendant 1st set has failed to establish by cogent and convincing evidence that Sakal Hazra and Bipat Hazra surrendered their *Goraiti Jagir* in favour of the ex-landlord and also the fact that the said land was settled by the ex-landlord in favour of Jiut Hazra as *Gorait*. The trial court has also scrutinised the evidence in detail including the unregistered deed of *Bajidawa* (Ext. 'E') which has been filed on behalf of defendant 1st set to establish the fact of surrender by Sakal Hazra and Bipat Hazra and it has been found that the said



document (Ext. 'E') is not above suspicion. The trial court after returning the finding on this issue in favour of the plaintiffs has granted the decree as prayed. In appeal by defendant 1st set, the appellate court below after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

6. Mr. Dwivedi, learned Counsel for the appellants, has submitted that both the courts below have erred in law in misinterpreting the evidence on record before recording the finding against the defendant 1st set – appellants. Elaborating the submission, it has been contended that the deed of *Bajidawa* (Ext. 'E') which is sheet anchor of the case of defendant 1st set has not been properly appreciated and both the courts below have wrongly not placed reliance upon the same. It has also been argued, by placing portion of judgments of both the courts below, that the findings are perverse and not reasonable. It has, however, been accepted on behalf of the appellants that it is not the case on behalf of the appellants that any of the material evidence has not been considered by the courts below.

7. After considering the submission and perusal of the judgments of both the courts below, it is manifest that initial right, title and interest of the three brothers namely Sakal Hazra, Jiut Hazra and Bipat Hazra in the suit property has been admitted by both sides. However, no cogent and convincing evidence has been adduced on behalf of defendant 1st set to establish their case of surrender by the two brothers namely Sakal Hazra and Bipat Hazra of their Goraiti interest in the suit land in favour of the ex-landlord. There is also no direct evidence on behalf of defendant 1st set that the ex-landlord thereafter settled the entire suit land in favour of Jiut Hazra. The trial court has elaborately analysed the evidence with regard to the deed of relinquishment (Ext. 'E')



and has come to the conclusion that the said document is doubtful. The appellate court below has also taken into notice in detail the material evidence on behalf of the parties and thereafter has recorded the finding of concurrence. In view of the law laid down by the three judges Bench of the apex court in the case of **Santosh Hazari V. Purushottam Tiwari (deceased) by LRS 2001 (3) SC 179** the appellate court in the judgment of concurrence is not required to go into detail analysis of the evidence on record. It is not the case on behalf of the appellants as noticed above that the findings have stemmed out of non-consideration of evidence or are dehors settled principles of law.

8. This Court finds that the concurrent findings of fact by both the courts below are based upon evidence which were acceptable and could have been relied upon. The possibility of another view on the same set of evidence cannot raise a substantial question of law in a second appeal.

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

Snkumar/-

(V. Nath, J.)

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