

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.318 of 2014

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1. Uchit Sharma
2. Bindeshwari Sharma @ Bindeshbari
3. Gyani Sharma
4. Rukama Devi
5. Monka Devi All sons and daughters of Late Ram Kishun Sharma Residents of Village - Meerahak, P.S.-Bihpur, Dist.-Bhagalpur

.... Appellants

Versus

1. Pramod Kumar Sharma
2. Amod Prasad Sharma Both sons of Late Saudagar Sharma
3. Smt. Shanti Devi D/o Late Saudagar Sharm All residents of village - Meerachak, P.S. - Bihpur Dist.-Bhagalpur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Diwakar Upadhyaya
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-04-2017

Heard Mr. Upadhyay, learned counsel appearing for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of reversal granting the part decree to the plaintiffs.

The plaintiffs filed the suit for declaration of title and confirmation of possession over the suit property. A further relief with regard to declaration that the survey entry in the name of Fulwati Devi (mother of the defendants) was not binding upon the plaintiffs was also prayed for. The plaintiffs claimed their title over the suit land on the basis of purchase by sale deeds dated 14.07.1973, 21.01.1974 and



25.03.1975. The defendants contested the assertions of plaintiffs and resisted the reliefs as prayed. It was the case of the defendants that the plaintiffs have been in possession over the suit land as tenants of the defendants. Further, it was also asserted that the defendants had purchased 11 decimals of land by sale deed dated 16.01.1971.

The Trial Court returned the findings on the issues against the plaintiffs and also came to the conclusion that the suit was barred by limitation as the relief was against the survey entry also but the suit was filed after lapse of 23 years from the date of publication of the R.S. *khatian*. In appeal by the plaintiffs, the appellate court below, after reappraisal of evidence, has reversed the findings of the Trial Court and allowed the appeal granting part decree to the plaintiff against the survey *khatian* only.

Mr. Upadhyay, learned counsel appearing for the appellants has submitted that the appellate court below has failed to consider that the plaintiffs have purchased the land of another village which fact is apparent from the sale-deeds of the plaintiffs as well as statements made by the plaintiffs in their depositions. It has been contended that the plaintiff's claim of title on the basis of sale deeds (Ext.1 series) could not have been sustained. The learned counsel, however, during the course of submission has failed to substantiate that such a plea was raised by the defendants in the written statements. It has been next contended that the Trial Court has recorded the



conclusion that the suit filed by the plaintiffs was barred by limitation but the appellate court below has even not touched the said issue. By placing the findings of the appellate court below *in extenso*, the learned counsel for the appellants has tried to draw sustenance to his submissions.

After considering the submissions and perusal of the judgments of both the courts below, it is apparent that the plaintiffs have filed the suit for declaration of title and confirmation of possession along with the relief against the recent survey entry for the suit property. As the defendants have accepted the possession of the plaintiffs over the suit land asserting the same to be as their tenants, the appellate court below, therefore, was not apparently required to go into the question of possession over the suit land. However, it is also apparent from the judgment of the appellate court below that the elaborate consideration has been given to the fact that the vendors of the plaintiffs had purchased the land from the recorded tenants of plot no. 2418 and the defendants had also purchased the land from the recorded tenants of plot no. 2418. The boundaries of the lands purchased by the plaintiffs and defendants respectively have also been taken into notice by the appellate court below along with the admitted fact that out the C.S. plot no. 2418, R.S. plot no. 4224, 4225 and 4226 have been carved out. The findings of facts on the issues have been recorded by the appellate court below on the basis of evidence which



were acceptable and could have been relied upon. In the course of submissions, this Court has not persuaded to find the perversity of unreasonableness in any manner in the findings of facts by the appellate court below. So far as the submission with regard to bar of the suit by limitation is concerned, it is firstly to be noticed that the suit has been filed by the plaintiffs for declaration of title and confirmation of possession and the relief against the recent survey entry has been sought only as a consequential relief. Even otherwise also, it is well settled by law that the entry in a survey *khatiyan* neither creates nor extinguishes title and the publication of such *khatiyan* cannot be the starting point of limitation in a suit filed for declaration of title and confirmation of possession. This court, therefore, finds no substance in the submissions on behalf of plaintiffs in this regard.

Consequently, this Court comes to the conclusion that there is no substantial question of law in this appeal which is accordingly, dismissed.

(V. Nath, J.)

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