

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.447 of 2008

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1. Dayawanti Devi, wife of Ram Chandra Lall
2. Sunil Kumar
3. Rajiv Kumar @ Babalu, sons of Ram Chandra Lall
All residents of Village Surajbhanpur, PO & PS Bairiya, District Ballia (UP) at
present Dak Bunglaw Road (inside the Braj Kishore Kinder Garten), Chapra,
PO Chapra, PS Chapra Town, District Saran
..... Defendants Appellants
..... Appellants

Versus

1. Binod Kumar Chamariya, son of Late Gopal Prasad Chamariya, resident of
Mohalla Bhagwan Bazar, Town Chapra, District Saran
2. Ritu Agrawal, wife of Late Ramesh Agrawal, D/o Late Gopal Prasad
Chamariya, resident of Sector 31, Block 13, House No. 4 Faridabad, Hariyana
3. Sudha Devi, wife of Sajjan Kariwal, D/o Late Gopal Prasad Chamariya, resident
of Spring Field Colony, Block No. 19, House No. 9, Sector 31, Faridabad,
Hariyana
4. Indu Devi Gutgutiya, wife of Balkrishna Gutgutia, D/o Late Gopal Prasad
Chamariya, resident of Gutgutiya Sadan, Nepali Kothi Compound, Montessary
Gali, Boarding Road, Patna
5. Renu Devi, wife of Harish Gupta, D/o Late Gopal Prasad Chamariya, resident
of Sector 37, Spring Field Colony, House No. 649, Faridabad, Hariyana
6. Uma Jain, wife of Anand Jain, D/o Late Gopal Prasad Chamariya, resident of
A.M.X. 152 Pandra Krishna Bazar, Pandra Ranchi Jharkhand
7. Meera Khandelia, wife of Ladheshyam Khandelia, D/o Late Gopal Prasad
Chamariya, Resident of C/o T.B.A. Centre, BABUGANJ, Khagariya, District
Khagaria
8. Annapurna Devi, wife of Ravishankar Sah, D/o Late Gopal Prasad Chamariya,
resident of Sommya Stores, Jaiguru Market, Main Road Market, Godda,
Jharkhand.
..... Plaintiffs Respondents
..... Respondents

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Appearance :

For the Appellant/s : Md. Anis Akhtar, Advocate
For the Respondent/s : Mr. Chandra Kant
Mr. Manish Chandra Gandhi

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-03-2017

Heard Mr. Anis Akhtar, learned Counsel appearing for the
appellants.

2. The defendants are the appellants in this appeal against the



judgment and decree of affirmance granting the decree to the plaintiff as prayed.

3. The plaintiffs filed the suit for declaration of title over the suit property described in Schedule II of the plaint and for recovery of possession by removing the encroachments made by the defendants over the suit land.

4. From the submissions made on behalf of the appellants as well as from perusal of the judgments of both the courts below it is pellucid that the title of the plaintiff over the suit land at one point of time has been accepted by the defendants. However, the defendants came out with the case that the father of the plaintiff entered into an agreement for sale of the suit land with the defendant No. 1 who paid ₹. 3000/- to him and was put in possession over the suit land. It is not in dispute that the father of the plaintiff died thereafter and there was no sale deed executed in favour of defendant No. 1 in pursuance of the said agreement for sale. It is also not in dispute that no suit for specific performance of contract was filed by the defendant No. 1 against the plaintiff or his father seeking execution of the sale deed in accordance with the agreement for sale,

5. The pleas taken by the defendants in the written statement for resisting the grant of decree to the plaintiff are two folds; firstly the defendants have been in possession over the suit property in pursuance to the agreement for sale which fact was admitted by father of the plaintiff in the sale deed dated 31.5.1976 (Ext. 2) executed by him in favour of Surendra Prasad for adjoining land and secondly on the basis of having acquired title by adverse possession.



6. During the course of submission learned Counsel for the appellants has fairly accepted that as there is no sale deed in favour of the defendants for the suit land they cannot claim title over the suit land on the basis of agreement for sale or on the basis of the name of defendant No. 1 having been mentioned in the sale deed (Ext. 2) as boundary raiyat. However, it has been emphatically submitted that as the defendants are in possession over the suit land for more than 12 years they have perfected their title by adverse possession over the suit land. The learned Counsel has also placed para 21 of the written statement in support of his contention. No other submission has been made on behalf of the appellants.

7. It is evident that the title of the plaintiff over the suit land is admitted fact. The defendants' case has been that they have been put in possession over the suit land in pursuance of the agreement for sale by father of the plaintiff. Even in para 21 of the written statement, as placed on behalf of the appellants during the course of submission, the assertion has been made by the defendants to be in possession over the suit property as purchasers. No pleading on behalf of the defendants could be pointed out during the course of submission to suggest or draw the inference that their entry into possession over the suit land was forcible or they have been made in possession exercising hostile title against the father of the plaintiff. In this regard, the submission by the learned Counsel for the appellants that the plaintiff was required to establish his possession within 12 years of the filing of the suit is clearly erroneous in view of the provisions of Article 65 of the Limitation Act.

8. The courts below have correctly interpreted the law and



further have recorded the findings of fact on the basis of evidence which were acceptable and could have been relied upon. This Court does not find any perversity or unreasonableness in any manner in the findings by the courts below.

9. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	02.05.2017
Transmission Date	N/A

