

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.13 of 2015

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1. Ram Ishwar Yadav Son of Late Tanik Yadav
2. Radhey Yadav Son of Ishwar Yadav.
3. Rabindra Yadav Son of Ishwar Yadav.
4. Babuo Yadav Son of Ishwar Yadav.
All are residents of village Malawan P.O. Awadhachak Dumrawan, P.S. Sare(Asthawan) District- Nalanda.

.... Appellants

Versus

1. Jirwa Devi Wife of Shri Maksudan Prasad Resident of village Malawan P.O. Awadhachak Dumrawan, P.s. Sare (Asthawan) District- Nalanda.
2. Shreemati Sumitra Devi
3. Ram Shakli Devi
4. Shreemati Kamla Devi
5. Shreemati Nirmala Devi 2 to 5 are daughter of Ramdhani Sao
6. Shree Bishundeo Prasad Son of Late Ramdhani Sao 2 to 6 are Resident of village Malawan P.O. Awadhachak Dumrawan, P.S. Sare (Asthawan) District- Nalanda. Presently residing at Sheikhpura (Jhanda chowk) Khichriparos ki Dukan P.O., P.S. and District- Sheikhpura.
7. Kishori Yadav, Son of Ishwar Yadav.
8. Arjun Yadav Son of Ishwari Yadav.
All Resident of village- Malawan P.O. Awadhachak Dumrawan, P.S. Sare (Asthawan) District- Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sudish Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-04-2017

Heard the learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiff as prayed for.

The plaintiff filed the suit for declaration of title and recovery of possession over the suit property described in detail in the



plaint. The plaintiffs have claimed over the suit property on the basis of the sale deed dated 04.02.1998 and have traced the title of her vendors (predecessors-in-interest) up to the settlement of the suit property in favour of Gopi Sao by the ex-landlord in the year 1920. The defendants, on the other hand, have contested the assertions of the plaintiff and claimed that the suit land had been settled with his predecessor by the ex-landlord in the year 1923. The defendants have claimed their possession over the suit land as title holders.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree as prayed. In appeal by the defendants, the appellate court below, on reappraisal of evidence, has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

The learned counsel appearing on behalf of the appellants has submitted that both the courts below have committed error in law in misappreciating the evidence on record as well as ignoring the material evidence on behalf of the defendants. It has been submitted that the predecessor-in-interest of the plaintiff namely Gopi Sao was not the resident of village where the suit land is located but the court below had discarded the evidence in this regard in mechanical manner. It has also been canvassed that the report submitted in the proceeding under Section 144 Cr.P.C. also supports the claim of possession of the defendants over the suit land and



negates the story of settlement in favour of Gopi Sao as propounded by the plaintiffs.

After considering the submissions and perusal of the judgments of both the courts below, it is pellucid that both the courts below have scrutinized the evidence adduced on behalf of the parties in detail before recording the conclusions. The findings have been recorded upon the holistic consideration of Ext.1 series, Ext.2 series , Ext.4 and Ext.7 as well as oral evidence which make the preponderance of probability in favour of the plaintiff. The appellate court below has also further taken into notice the other documentary evidence including the documents relating to the criminal cases between the parties for sustaining the claim of title of the plaintiffs over the suit land. The appellate court below has also noticed that there was absence of cogent and convincing evidence on behalf of the defendants to support their title and legal possession over the suit land. In this backdrop, this Court is not inclined to align with the submission on behalf of the appellants that the findings as recorded by both the courts below are not based upon the appreciation of the evidence on record. The submissions on behalf of the appellants for the most part has centered around reappraisal of evidence in order to interdict the concurrent findings of fact. This Court , however, finds that the conclusions by the courts below are based upon the evidence which were acceptable and could have been relied upon and



there is no perversity or unreasonableness in the same.

Ex consequenti, this Court holds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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