

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.399 of 2013

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1. Kumar Amit S/O Late Akhileshwar Sahai
2. Mina Sahai W/O Late Akhileshwar Sahai
3. Amita Sahai @ Anita Srivastava D/O Late Akhileshwar Sahai
4. Nilu Kumari D/O Late Akhileshwar Sahai
5. Minu Kumari D/O Late Akhileshwar Sahai
6. Ritu Sharan D/O Late Akhileshwar Sahai
7. Nitu Verma @ Rita Kumari D/O Late Akhileshwar Sahai All Resident Of
Village & Post Office Chandi, District- Bhojpur, At Present Of Resident Of
Mohalla & Post Office- Sheogang, Police Station- Ara Town, District- Bhojpur
.... Appellants

Versus

1. The State Of Bihar Through The Collector Bhojpur At Ara.
2. Samaharta (D.M), Bhojpur At Ara.
3. Anumandaladhikari, (S.D.O), Ara, Bhojpur Respondents

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Appearance :

For the Appellant/s : Mr. ASHOK KUMAR
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-02-2017

Heard Mr.W.Rahman, learned counsel appearing

for the appellants.

The plaintiffs are the appellants in the appeal against the judgment and decree of affirmance dismissing the suit filed by the plaintiff.

The plaintiff filed the suit for declaration of title and confirmation of possession over the suit land and further for declaration that the defendants had no right to demolish the plaintiffs' platform over the suit land.

The matrix of facts as revealed from the



submissions and perusal of judgments of both the courts below shows that the suit property is a public Nala over which the plaintiff has claimed to have made a platform. The plaintiff has claimed title over the said Nala on the basis of oral sale from the Ara Municipality. The defendant State of Bihar and other defendants in the suit did not file the written statement.

Both the courts below have scrutinized the pleadings of plaintiff and evidence adduced on behalf of the plaintiff and have come to the conclusion that the plaintiffs have failed to establish their claim of title and possession over the suit land. The suit was dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

Mr.Rahman, learned counsel appearing for the appellants has submitted that the judgments passed by the courts below suffer for the defect of non-framing of material issues. It has been canvassed that the plaintiffs have adduced documentary evidence in support of the claim of title over the suit land but the said documentary evidence have not been correctly appreciated by the courts below. The learned counsel for the appellants, however, has not pressed the claim of the plaintiffs over the suit land on the basis of adverse possession.

After considering the submissions and judgments



of both the courts below, it is manifest that the claim of title over the suit land has been made by the plaintiff on the basis of oral sale from the Ara Municipality. It is the admitted fact by the plaintiff in his plaint that a public Nala is flowing from the suit land. The plaintiff has however pleaded that the said Nala is flowing with the permission of the plaintiff. Though the defendants did not file written statement but it is also apparent from the records that the plaintiffs who have claimed their title over the suit land by oral sale from Ara Municipality have failed to implead the Ara Municipality as a party- defendant in the suit. It is manifest in the facts and circumstances of the case and in view of the public nature of the Nala and the claim of the plaintiff that the Ara Municipality was a necessary party to the suit. Further after consideration of oral and documentary evidence of the plaintiffs, both the courts below have come to the finding of fact that the plaintiffs have failed to establish their title and entitlement to possession over the suit land.

It is not the case on behalf of the appellants that the findings by both the courts below have stemmed out of non-consideration of evidence or dehors the settled principles of law. This Court finds that the conclusions of the court below are based upon the evidence which were acceptable and could have been relied upon. The submission with regard to non-framing of the material issues is not substantiated from the perusal of the judgments of both



the courts below particularly paragraph-4 of the trial court judgment.

In the ultimate eventuate, this Court comes to the conclusion 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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