

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.371 of 2009

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1. Chandra Shekhar Singh, Son of Late Yugal Kishore Singh.
 2. Indu Shekhar Singh, Son of Chandra Shekhar Singh.
 3. Smt. Ahilya Devi, Wife of Chandra Shekhar Singh.
All resident of Village-Sondiha, (Tarapur), P.O.+P.S.-Tarapur, District-Munger.
 4. Shambhu Prasad, Son of Late Kapildeo Prasad Singh.
 5. Nikki Devi D/o Late Smt. Sudha Devi Wife of Late Kapildeo Prasad Singh.
Both Resident of Village-Ramchua, P.S.-Shambhuganj, District-Banka.
 6. Raj Kumari Devi @ Raj Kumari, Wife of Sri Ranjeet Prasad Singh, Resident of
Village-Milki, P.S.-Haweli Kharagpur, District-Munger.

.... Appellants

Versus

1. The State of Bihar through the Collector, Munger.
2. The Collector, Munger.
3. The Additional Collector, Land Reforms, Munger.
4. The L.R.D.S. Sadar , P.S.+District-Munger.

.... Respondents.

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Appearance :

For the Appellant/s	:	Mr. S.S.Dwivedi, Sr.Adv. Mr.Vinay Kirti Singh, Sr.Adv. Mr.Akhileshwer Singh, Adv.
For the Respondent/s	:	Mr. Rakesh Narayan Singh, Adv. A.C. to A.A.G.15.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-08-2017

Heard Mr.S.S.Dwivedi, learned senior counsel
appearing on behalf of the appellants and Mr. Rakesh Narayan
Singh, learned counsel appearing for the respondents.

The plaintiffs filed the suit for declaration of
their title and confirmation of possession and in the alternative
for recovery of possession with ancillary and consequential relief
over the suit land described in Schedule-I of the plaint. The
plaintiffs also prayed for declaration that the State of Bihar-
defendants had no right to hold hat over the suit land nor have



right to realize tolls from the persons transacting business in the Hat over the suit land.

The facts in detail need no notice and it would suffice to state that according to the case of the plaintiffs, the suit land originally belonged to and was in possession of Haro Chaudhary who sold the same by registered sale deed dated 23.04.1936 (Ext.2) to Sk. Ataullah. The plaintiffs have claimed their title and possession over the suit land on the basis of purchase by four registered sale deeds dated 16.05.1985 (Ext.1 to 1/C) executed by the heirs of Sk. Ataullah in favour of the plaintiffs. The plaintiffs have also averred in the plaint that their vendor Sk.Ataullah and others used to hold a Hat in the Mango Orchard over the suit land. The reasons for filing the suit, as stated by the plaintiffs, is that tolls have been claimed by the defendant-State of Bihar in the Hat over the suit land and the shopkeeper of the HAT have refused to pay tolls to the plaintiffs on the ground that the tolls are being realized by the State of Bihar-defendants.

The case of the defendants as per their written statement is the denial of right, title and interest of the plaintiffs over the suit land. It has been specifically pleaded that though Haro Choudhary was the recorded tenant of the suit land, but in view of Section 87 of the Bihar Tenancy Act, the possession of the same was resumed by the ex-landlord after Haro Chaudhary



abandoned the same and as a HAT was being held over the suit land by the ex-landlord, it vested in the State of Bihar after the abolition of the Jamindari. The defendants, in substance, have claimed the suit land to be public land and have further stated that the HAT over the same is held by the State of Bihar and several pucca shops as well as Sahid Asmarak alongwith public library have been constructed over the suit land.

The trial court returned the findings in favour of the plaintiffs and decreed the suit. In appeal by the defendants, the appellate court below, on reappraisal of evidence has reversed the findings of the trial court, allowed the appeal and dismissed the suit filed by the plaintiffs.

This appeal has been admitted for hearing on the following substantial questions of law:

- (i) Whether the court of appeal below, while reversing the judgment and decree of the trial court, was justified in ignoring that although the State was the custodian of the Return, but it failed to produce the same to show that the suit land vested in the State of Bihar at the time of vesting of the Zamindari under the Bihar Land Reforms Act ?
- (ii) Whether the claim of the respondents was falsified due to non-production of the relevant documents, namely, the record of land acquisition



case, the return submitted by the landlord, final records of right as well as compensation roll prepared under section 28 of the Bihar Land Reforms Act ?

(iii) Whether the Hat & Bazar of a raiyat can legally vest in the State of Bihar under the Bihar Land Reforms Act ?

(iv) Whether the defendants having accepted the predecessor of the plaintiffs as previous raiyat, but had claimed abandonment, the onus was on the defendants to prove the same ?

(v) Whether the court of appeal below was justified in making out a third case of Bhauli right although the claim of the defendants was of abandonment ?

While criticizing the impugned judgment, Mr. Dwivedi, learned senior counsel for the appellants, has submitted that the learned appellate court below has completely misread as well as also ignored the material evidence on behalf of the plaintiff. After elaborating the facts, it has been contended that the right, title and interest of the plaintiff's predecessor-in-interest namely Haro Choudhary has been clearly admitted by the defendants in their written statement and as such there was no scope for appellate court below to embark upon exploring the issue of title. It has been argued that the defendants after



accepting the title of Haro Choudhary over the suit land have failed to establish that said title stood extinguished and vested in the ex-landlord in accordance with law. It has also been submitted that the fact of acquisition of a part of the land of Plot No.10 and payment of compensation to Sk. Attaullah (vendor of the plaintiff) has not at all been explained by the defendants which completely demolishes their case of vesting of the suit land in the State of Bihar. It has been argued that the learned appellate court below has allowed it to be swayed by the extraneous material like research papers and history books even when the same have not been brought on record nor there has been pleading of those facts. It has been finally argued that the trial court has passed a well considered judgment which has been reversed without considering the reasonings of the trial court in support of its conclusion.

Learned counsel for the respondents, in reply has submitted that the impugned judgment is perfectly in accordance with law and the findings have been recorded after scrutiny of evidence. By placing the judgment of the appellate court below in detail, it has been contended that the suit land has vested in the State of Bihar where a Hat is held from time immemorial. It has been argued that a 'Sahid Smarak' and a public library have been established over the suit land and its nature as public land is well known in the locality. It has been



emphatically submitted that the appellate court below has acted within jurisdiction to draw inferences from the history books containing historical fact of firing in the suit land and some persons, killed therein, attaining the glory of martyrs. It has been finally submitted that this appeal has no merit and is fit to be dismissed.

After careful consideration of the submissions on behalf of the parties and perusal of judgments of both the courts below, it is quite limpid that the plaintiffs have come out with the case that Haro Choudhary was the recorded Raiyat of the suit land and he transferred the same to Sk. Ataullah by registered sale deed dated 23.04.1936 (Ext.2). The plaintiffs have claimed their right, title and interest over the suit land on the basis of their purchase by four registered sale deeds dated 16.05.1985 (Ext.1 to 1C) executed by the heirs of Sk. Ataullah . At this juncture , it would be fruitful to take into notice the relevant averments made by the defendants in the written statement :

9. “ ... That even in survey record of right, land in question is not recorded as homestead land rather, according to survey record of right Raj Banaili was landlord and Haro Chaudhary and others were recorded as tenants of the suit land.



10. "...That in view of Section 87 of the B.T.Act , as there was no raiyat on suit plot the land was abandoned land which came in possession of ex-landlord and the same was used by way of holding "HAT" on the land by ex-landlord since before 1929 and after the last survey operation of the land of Khata No.115 as the same has been learnt from the old people of the locality that Hatia took place long before 1929.

13. "...That facts stated at para 2 of the plaint are partly true and partly false and it is submitted that Khesra No.7 and 10 pertaining to Khata No.115 once belonged to recorded tenant Haro Chaudhary and others as tenants and the Raj Banaili was landlord but in course of time the tenants abandoned the land in question and ceased to be tenants and no rent was paid after abandonment..."

It is thus demonstrably clear from the aforesaid statements made by the defendants in the written statement that the status of Haro Choudhary as tenant of the suit land has been accepted. It is also the further case that under the provisions of Section 87 of the B.T.Act, the ex-landlord resumed



back the possession of the suit land as the recorded tenant abandoned the suit. It is therefore plain and patent that the Raiyati right of Haro Choudhary over the suit land stands admitted by the defendant and the said raiyati right could have been extinguished only in accordance with law. The plea of the defendants in this regard has been specific that the said raiyat abandoned the suit land and the possession was thereafter resumed back by the ex-landlord.

The ambit and scope of Section 87 of the B.T.Act has been explained by a Bench decision of this Court in the case of **Ramdhari Rai Vs.Gorakh Rai, AIR 1931 Patna 236** where their lordships have held as follows:

“.....As to whether there has been an abandonment or not within the meaning of Section 87 is in each case a question of fact.....

At the same time the inference from facts found as to whether there was abandonment or not is a question of law.....

In order that there might be an abandonment under Section 87, Ben. Ten. Act, there must be a finding that the tenant had left the village in which the holding was situated without making any arrangement for payment of the rent ...”



During the course of hearing , it could not be shown on behalf of the respondents that any cogent evidence has been adduced on behalf of the defendant-respondents to establish the fact of abandonment of the suit land by the recorded tenant Haro Chaudhary or further to substantiate the fact that he left the village without making arrangement for payment of rent. It is vivid , therefore, that the crucial fact regarding the extinguishment of the right, title and interest of the recorded tenant Haro Chaudhary, which is the main basis of the claim of the defendants over the suit land, has remained unestablished. Though the trial court delved into this aspect taking into notice the pleadings of the parties, the appellate court below while passing a judgment of reversal has bypassed the same.

It is transparent from the judgment of the appellate court below that the finding has been recorded that the predecessor-in-interest of the plaintiff namely Haro Chaudhary had only a limited interest over the trees standing over the suit land and had no right, title or interest over the suit land. The said finding has been recorded overlooking the categorical admission by the defendants that Haro Chaudhary was the recorded tenant of the suit land which was resumed back by the ex-landlord under Section 87 of the B.T.Act after he (Haro Chaudhary) abandoned the suit land. In the opinion of



this Court , the appellate court below has definitely erred in law by making out a third case for reversing the finding of the trial court regarding the right, title and interest of Haro Chaudhary over the suit land which was recorded on the basis of evidence as well as in view of the admission made by the defendants in paragraph-9,13 and 14 of the written statement.

The trial court has also extensively scrutinized Ext.7 which is certified copy of the proceeding under Section 11 of the Land Acquisition Case No.06/1954-55 and has found that the part of the suit plot was subject matter of the said land acquisition proceeding and after acquisition of the same, the compensation was paid to Sk. Ataullah and others (predecessor in interest of the plaintiff) . Though the defendants who were custodian of the documents pertaining to the said land acquisition case, they did not bring on record the original documents to explain away the payment of compensation to Sk. Ataullah in the land acquisition proceeding for the part of the suit plot. The appellate court below has also taken into notice that the land of Plot No.10 (suit plot) was subject matter of acquisition in the said land acquisition case but has declined to draw the necessary inference on that basis only on the ground that the nature of the land was different though the fact to be taken into notice was the acquisition of land of Plot No.10 and not the nature of the land which was acquired. This finding is



again vulnerable because of the fact that the defendants have nowhere pleaded or adduced evidence aliunde to show that the land of Plot No.10 which was acquired in the said land acquisition proceeding was some land other than the suit plot. The learned senior counsel for the appellants has drawn the attention of this Court to the khatian (Ext.5 and 5/A) of Khata No.115, Plot No.10 (suit plot) to show that the recorded area of Plot No.10 is 1.17 acres which is the suit land. Evincibly, therefore, if the part of Plot No.10 was the subject matter of the land acquisition proceeding as evidenced by Ext.7, the onus was clearly upon the defendants to explain the said fact in view of their own case that the Plot No.10 (suit plot) had vested in the State of Bihar after the Jamindari abolition. In absence of any explanation at all in this regard by the defendants, the appellate court below has again committed error in coming to the conclusion that the said land acquisition proceeding was not with regard to the acquisition of any portion of the suit plot for reversing the finding of the trial court in that regard. The appellate court below, in upholding the case of the defendants, has, in fact, allowed the defendants to blow hot and cold together.

The appellate court below has further also taken into notice some materials like research papers and History books to hold that a HAT was held at Tarapur Mango Orchard



where some persons died when a firing was ordered and those persons were later on regarded as martyrs. It appears, however, that these facts have not been mentioned in the written statement of the defendants nor such materials have been brought on record by way of evidence. Learned counsel for the respondents, however, has explained that these facts are well known in the locality and therefore the appellate court below has rightly taken into notice the same, but has failed to show that those materials showing existence of a HAT at village Tarapur, in fact, have any bearing on the main issue that it was the suit land where the Hat (as referred in the books) was held. The appellate court below though has extensively taken into notice those materials but has not at all adverted to the crucial fact that those materials are in any way related with the suit land. The findings by the appellate court are apparently based upon applying wrong test of assumption and supposition as well as ignoring admissions and misreading of evidence while passing a judgment of reversal. This Court, therefore, holds that the findings by the appellate court below are erroneous and deserves to be overturned.

For the aforesaid reasons and discussions, the substantial questions of law are answered in favour of the appellants.

This second appeal, accordingly, succeeds and the



impugned judgment and decree of the appellate court below is set aside. In the facts and circumstances, there shall however, be no order as to cost.

(V. Nath, J)

Nitesh/-

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