

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.176 of 2010

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1. Krishna Kant Kumar, son of Late Ram Kripal Kumar @ Ram Kripal
 2. Ahilya Devi, wife of Late Nawal Kishore Kumar
 3. Navneet Kumar, son of Late Nawal Kishore Kumar
 4. Rekha Kumari
 5. Anju Kumari
 6. Navnita Kumari @ Namita Kumari
 7. Abha Kumari, all daughters of Late Nawal Kishore Kumar, all residents of Village Sonbarsa, P.S. Bihpur, District Bhagalpur Defendant Ist party
..... Appellants Ist party
 8. Most. Mukhta Devi, wife of Late Rajendra Kumar
 9. Pintu Kumar
 10. Nilesh Kumar, sons of Late Rajendra Kumar
 11. Gunjan Devi @ Gunja Devi
 12. Amrita Devi
 13. Nutan Devi
 14. Anjana Kumari @ Anju Devi
 15. Rubi Devi @ Rubi Kumari
 16. Roji Kumari @ Rosy Devi, daughters of Late Rajendra Kumar
 17. Phuloo Kumar @ Fulo Kumar
 18. Ram Naresh Kumar, sons of Late Chhatish Kumar
 19. Shiromani Devi @ Siromani Devi, daughter of Late Chhatish Kumar
..... Defendant IIIrd party Appellant IInd party
 20. Arun Kumar
 21. Pravin Kumar @ Praveen Kumar
 22. Rakesh Kumar @ Rakesh @ Shahib Kumar
 23. Rajesh Kumar
 24. Ranjana Devi
 25. Soni Kumari @ Soni Devi
 26. Anita Kumari, sons of daughters of Late Shiv Dulari Devi and wife of Late Bedanand Kumar, all resident of Village Sonbgarsa, P.S. Bihpur, District Bhagalpur Defendant IVth party Appellant IIIrd party
.... Appellants

Versus

1. Yogendra Kumar, son of Late Injori Kumar
2. Anirudh Kumar, son of Amir Kumar
3. Mritunjay Kumar, son of Bhujangi Kumar, All resident of Village Sonbarsa, P.S. Bihpur, District Bhagalpur Plaintiffs Respondent Ist party
4. Bibi Akina, widow of Late Tajmul Khan
5. Salauddin, sons of Late Tajmul Khan
6. Aman, sons of Late Tajmul Khan
7. Baby, daughter of Late Tajmul Khan
8. Gaffar Khan, son of Late Basarat Khan, all resident of Village Babhangama Pathan Toli, P.S. Bihpur, District Bhagalpur Defendant IInd party Respondent IInd party
9. Bachneshwar Kumar
10. Niwas Kumar, sons of Late Chhatish Kumar
11. Sushila Devi



12. Rani Devi, daughters of Late Chhatish Kumar, all resident of Village Sonbarsa,
P.S. Bihpur, District Bhagalpur Defendant IIIrd party Appellant
IInd party

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sidhendra Narayan Singh
Mr. Ritesh Kumar Narayan Singh
Mr. Amiya Kunal

For the Respondent/s : Mr. S.S.Dwivedi, Sr. Advocate
Mr. Yugal Kishore
Mr. Sanjay Kumar Singh
Mr. Rajesh Kumar, Mr. Prajesh Kumar
Mr. Parth Gaurav

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2017

Heard learned Counsel for the appellants.

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

3. The plaintiffs filed the suit for declaration of title and confirmation of possession and has prayed for recovery of possession against defendant Nos. 6 and 7 over the suit land fully described in the plaint.

4. Both the courts below have categorically returned the finding on the issues in favour of the plaintiffs and granted the decree to the plaintiffs.

5. Learned Counsel for the appellants has firstly submitted that both the courts below have misconstrued the Kabulnama (Ext. 'C') and the deed of bajidawa (Ext. 'D') though both were registered documents of the year 1921 and have fully corroborated the claim of title of the defendants over the suit property. It has been contended that the courts



below ought to have placed reliance upon the aforesaid two documents and ought to have come to the conclusion that the plaintiffs have not acquired any title over the suit land on the basis of purchase as claimed. It has also been canvassed that the courts below have not considered that the bar of limitation with regard to the relief as prayed against the survey entry was there against the plaintiffs but the trial court omitted to consider the same, whereas the appellate court has held that the suit would be barred with regard to the relief against the survey entry. The learned Counsel has emphatically submitted that the courts below have adopted the dual standards for considering the cases and evidence of the plaintiffs and the defendants. It has also been argued that the title deed of the defendants has not at all been considered nor the oral evidence on record has been considered by both the courts below which by itself is a substantial question arising in this appeal. The learned Counsel has also submitted that the issue of adverse possession as raised by the defendants for basing their claim of title has also been wrongly decided by the courts below on the basis of surmises and conjectures. The learned Counsel has placed reliance upon a decision of the apex court in the case of **Haryana State & anr. Vs. Gram Panchayat Village Kalehri 2016 (3) BBCJ (IV) 473** in support of his submission that the interpretation of Ext. 'C' and Ext. 'D' raises a substantial question of law in this appeal. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below it is manifest that the defendants have come out with the categorical case that entire property of Khata



No. 241 and 242 of which the suit property was a part was auction sold in the year 1921 and purchased by the ex-landlord. It has been further case of the defendants that the said ex-landlord settled the suit property to Piru Khan as evidenced by deed of Kabuliyat (Ext. 'C') and the said Piru Khan executed registered deed of bazidawa (Ext. D) in 1930 in favour of predecessor of defendant. It is evident therefore that these two documents were the basis of the claim of title of the defendants in the suit property. Both the courts below have considered the two documents in detail along with other evidence on record and thereafter have come to the conclusion that on the basis of Ext. 'C' and Ext. 'D' it cannot be held that the lands in question were auction sold and purchased by the ex-landlord. It is not in dispute that there is no direct evidence on record about the auction sale of the suit property or delivery of possession effected in pursuance of the said auction sale. In this view of the matter there is no substance in the submission on behalf of the appellants that there is a dispute regarding the interpretation of Ext. 'C' and Ext. 'D'. Though it has been submitted that Ext. 'C' and Ext. 'D' are registered documents but that alone cannot make the said two documents as the sole basis for upholding the claim of title of the defendants as made. This Court does not find that the learned Courts below have committed any error in considering the two documents Ext. 'C' and Ext. 'D' and thereafter declining to accept the same as basis for claim of title of the defendants over the suit property. The submission with regard to the adverse possession is equally misconceived as the defendants who have claimed their title over the suit property have not disclosed as to how they have been claiming prescriptive right against the plaintiffs when they



have challenged the title of the plaintiffs over the suit property. So far as the bar of limitation is concerned for the relief of declaration against the survey entry, it is obvious that such relief is only a consequential relief. It is not the case on behalf of the appellants that the main relief of declaration of title and confirmation of possession/recovery of possession was also barred by limitation. The decision of the apex court in the case of **Haryana State & anr. Vs. Gram Panchayat Village Kalehri (supra)** has been rendered in different set of facts where claim of title of the parties was directly based on interpretation of document. In the present case this Court does not find that there is any ambiguity in the two documents (Ext. 'C' and 'D') which require interpretation as there is distinction between the 'consideration' and "interpretation" of a document.

7. The findings of facts have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon. The possibility of another view on the same set of evidence cannot give rise to a substantial question of law.

8. 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
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