

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.295 of 2014

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1. Bujhawan Yadav Son of Late Bhagwat Yadav R/o Village Atadih, P.S. Ramgarh, District Kaimur (Bhabhua).
 2. Ram Harish Yadav.
 3. Jokhan Yadav both Sons of Late Nanhak Yadav.
 4. Ghamari Yadav Son of Late Bhagwat Yadav.
 5. Haridwar Yadav @ Haridwar Singh Yadav Son of Sri Ghamari Yadav.
 6. Paras Yadav @ Paras Nath Yadav Son of Sri Bujhawan Yadav.
 7. Ravindra Yadav.
 8. Ramesh Yadav both Sons of Late Darog Yadav All R/o Village Atadih, P.s. Ramgarh, District Kaimur (Bhabhua). Appellant/s

Versus

Dashrath Yadav Son of Late Balrup Yadav R/o Village Atadih, P.S. Ramgarh, District Kaimur (Bhabhua). Respondent/s

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Appearance :

For the Appellant/s	:	Mr. T.N. Maitin, Sr. Adv. Mr. Yogendra Kumar, Adv. Mr. R.N. Ray, Adv. Mr. Dr. M.K. Gautam, Adv.
For the Respondent/s	:	Mr. Uma Shankar Sharma, Adv. Mr. Shiv Kumar Prabhakar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-01-2017

Heard Mr. Maitin, learned senior counsel appearing on behalf of 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.

The plaintiff filed the suit for declaration of his title over the suit property described in schedule-Ka of the plaint. It appears from the materials on record that earlier the suit was dismissed as



barred by the provision of Order 2 Rule 2 C.P.C. but in appeal the said judgment and decree were set aside and the matter was remitted back for fresh hearing. The plaintiff claimed his title over the suit land on the basis of his purchase by registered sale deed from the admitted owner. In the suit, the defendants did not lead any evidence at the time of trial of the suit. However, the trial court proceeded and returned the findings on the issues framed therein in favour of the plaintiff and accordingly granted the decree to the plaintiff. The defendants filed the appeal against the judgment and decree of the trial court. The appellate court below, however, after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr. Maitin, learned senior counsel for the appellants has raised two submissions for consideration. Firstly, it has been contended that as the plaintiff filed the suit seeking the sole relief of declaration of title, the judgment and decree of both the courts below are vitiated as the finding of possession has been recorded in favour of the plaintiff of the suit land. It has been also contended that the suit was barred under the provision of Order 2 Rule 2 C.P.C as it was not maintainable when the plaintiff omitted to claim the relief for possession. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the



materials on record, it transpires that the defendants did not participate in the hearing of the suit and did not lead any evidence to substantiate their assertions made in the written statement. In appeal also no such plea objecting to the proceeding of the suit against the defendant being ex parte has been raised. It further transpires that in the suit the issue of title and possession have been framed and the finding has also been recorded. In absence of any evidence on behalf of the defendants that they have been in possession over the suit property, this Court does not find substance in the submission that the suit is barred under Order 2 Rule 2 C.P.C. Even otherwise also, when the specific issues have been framed in the suit and the parties went to trial on those issues, the party who lost in both the courts below cannot be heard at the second appellate stage complaining in that regard. The issues of fact have been concluded by concurrent findings of fact recorded on the basis of evidence which were acceptable and could have been relied upon.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

AFR/NAFR	
CAV DATE	
Uploading Date	07.02.2017
Transmission Date	

