

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.223 of 2010

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1. TETARI DEVI, wife of Kanchal Pandit, D/o late Babulal Pandit, resident of Village-Bhopat, P.O. Maharoni, P.S. Mohammadpur, District Goaplganj
2. Sharban Pandit
3. Dashrath Pandit
4. Durga Pandit
5. Tuna Pandit alias Tuntun Pandit
All (2 to 5) sons of late Babulal Pandit, residents of Village-Manglapur, P.S. Sangrampur, District-East Champaran

... .. Appellant/s

Versus

1. SUDARSHAN PANDIT
2. Yogendra Pandit
Both (1 & 2) sons of late Amichan Pandit, resident of Village-Manglapur, P.S. Sangrampur, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Uma Kant Shukla, Advocate
Mr. Shakti Suman Kumar KUMAR
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-02-2018

The defendants in Title Suit No. 13 of 1999, which came to be decreed in favour of the plaintiffs by learned Munsif Sadar, Motihari, are the appellants herein, as the said judgment and decree, dated 11.11.2004, has been affirmed by the learned 4th Additional District Judge, East Champaran, Motihari, by judgment and decree, dated 21.12.2009, passed in Title Appeal No. 111 of 2004/15 of 2009.

2. The suit was filed for declaration of title and



recovery of possession over the suit property as described in Schedule-II of the plaint. The plaintiffs' case was that one Manbharan Pandit was recorded as tenant of Plot Nos. 1920 and 1921 under khata No. 119 of village Barahiya Tola Rajpur, who died after revisional survey operation, leaving behind his only son Dahaur Pandit. Dahaur Pandit died leaving behind his two sons, namely, Deonath Pandit and Basudeo Pandit. It was the case of the plaintiff that his father Amichandra Pandit had purchased the suit property through registered sale-deed, dated 06.02.1966, for consideration and, upon the death of Amichandra Pandit, the plaintiffs acquired title and possession over the suit property. With the case that the defendants dispossessed the plaintiffs on 25.12.1988 and 08.01.1999, they filed the suit for relief as noted above.

3. The appellants-defendants appeared in the suit proceeding and contested the suit by filing written statement. It was their common case that the said Manbharan Pandit, the recorded tenant, had abandoned his tenancy and had shifted to some other village leading to the landlord taking over the land in question. The suit land remained in khas possession of the khewatdar,



which was subsequently orally settled in favour of one Tapeswar Pandit, who was put in possession over the suit property. It was further case of the defendants that said Tapeswar Pandit subsequently executed a sale deed in respect of suit Plot Nos. 1920 and 1921, dated 24.02.1981 in favour of Shrawan Pandit and put defendant No.2 in possession and accordingly defendants were rightfully coming in possession over the suit property after having acquired title over the same.

4. Upon framing of the issue by the learned trial Court, the parties led their evidence, both oral and documentary. Learned trial Court upon consideration of the evidence on record, both oral and documentary, recorded specific finding that the sale deed, dated 24.02.1981, executed by Tapeswar Pandit in favour of Shrawan Pandit (defendant No.2), appellant no.2 herein was illegal. The trial recorded this finding after holding that there was no evidence to show that the ex-landlord came in possession of the suit land nor there was any evidence on the point of oral settlement by the ex-landlord/Khewatdar in favour of the said Tapeswar Pandit. The trial Court took note of the fact that the



defendants did not file any return submitted by the ex-landlord to the Government of Bihar, at the time of vesting of *Zamindari*.

5. There is specific finding that the defendants could not establish their case pleaded in the written statement that Manbharan Pandit, the ancestor of the vendor of the plaintiffs's father had left his village and shifted to some other village because of which he had abandoned his tenancy rights over the suit property.

6. After having recorded the findings, as noted above, *inter alia*, the trial Court decreed the suit in favour of the plaintiffs declaring the plaintiffs' title over the suit property and granted decree for recovery of possession as well *mesne profit*.

7. The appellate Court by the judgment and order has affirmed the judgment and decree of the trial Court as well as the findings recorded by the trial Court. On perusal of the impugned judgment and decree of the appellate Court, dated 21.02.2009, it is noticeable that the appellate Court below has formulated the points for determination including the point:

“whether the defendants have dispossessed



the plaintiffs over the suit land”.

8. Upon independent appreciation of the evidence on record, the first appellate Court, affirming the findings recorded by the trial Court has held that the defendants/appellants had dispossessed the plaintiffs/respondents on 25.12.1998 from the suit property. The appellate Court has concurred with the findings recorded by the trial Court on the point as to whether the said Manbharan Pandit had ever abandoned his tenancy over the suit property before his death by shifting to some other village and has negated the plea of the defendants taken in the written statement.

9. Mr. Uma Kant Shukla, learned counsel appearing on behalf of the appellants has submitted that the findings of the Court below, though concurrent, require interference by this Court, the same being perverse. According to him, the Courts below have incorrectly held that there was no proof in support of the defendants’ case that the ex-landlord had submitted return in favour of Tapeswar Pandit, despite there being evidence showing the rent receipts in the name of settlee and the defendants were purchasers from the settlee.



According to him, the Courts below have failed to consider the material evidence available on record adduced at the trial while recording the findings.

10. I have perused the judgments of the trial Court and the appellate Court.

11. From the said judgments and decrees, I find that the Courts below have dealt with the evidence adduced at the trial, both oral and documentary. Nothing specific has been pointed out on behalf of the appellants as to which evidence, documentary or oral, which was material for adjudication of the rights of the rival parties has not been considered or appreciated by the Courts below. The submission on behalf of the appellants that the findings of the Courts below are perverse, cannot be accepted. A perverse findings is one which is either without any evidence or contrary to evidence. Failure to take into account irrelevant materials for recording finding and leaving out the relevant ones may also be termed as perverse. However, I do not find any such situation available in the present second appeal. No finding is said to be without any evidence or contrary to the evidence.



12. In my view, therefore, concurrent findings of the Courts below are not perverse and, therefore, do not require interference in exercise of second appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

13. The second appeal, in my view, does not involve any other substantial question of law.

14. This appeal does not deserve admission and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
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