

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.55 of 2015

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1. Satya Narayan Singh.
 2. Sanjit Singh. Both sons of Late Ganga Singh.
 3. Byas Devi. Wife of Late Ganga Singh. All resident of village - Pipraura, P.O.- Sikandarpur, P.S.- Madanpur, District - Aurangabad (Bihar).

... ..Appellants/Plaintiffs/Appellants

Versus

1. Ashok Singh.
2. Dilip Singh.
3. Ajit Singh.
4. Rana Ajay Pratap Singh.
5. Kaushal Kishore Singh. All are sons of Late Keshav Singh.
6. Dil Keshwar Kuer. Wife of Late Keshav Singh.
7. Mintu Kumar.
8. Chintu Kumar. Both sons of Ashok Singh.
9. Manish Kumar.
10. Dablu Kumar.
11. Nitish Kumar. All sons of Dilip Singh.
12. Chunmun Kumar. Son of Ajit Singh.
13. Mukesh Kumar.
14. Rakesh Kumar. Both sons of Rana Ajay Pratap Singh.
15. Raushan Kumar.
16. Gunjan Kumar. Both sons of kaushal Kishore Singh. All are resident of village - Pipraura, P.O.- Sikandarpur, P.S.- Madanpur, District - Aurangabad, Bihar.

... ..Defendants/Respondents

Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Sinha No.3
For the Respondents 1 2		Mr. Panditjee Pandey
		Mr. Shushil KumarSingh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-09-2018

This is the plaintiffs' second appeal against the judgment and decree dated 06.02.2015, passed by the learned Additional District Judge-IVth, Aurangabad in Title Appeal No. 63 of 2012/05 of 2013, whereby he has dismissed the appeal preferred against the judgment and decree dated 24.09.2012, passed by the learned Munsif, Aurangabad in Title Suit No. 142 of



2002.

2. I have heard Mr. Ashok Kumar Sinha No.3, learned counsel, appearing on behalf of the appellants and Mr. Panditjee Pandey, assisted by Mr. Shushil Kumar Singh, learned advocate representing respondent nos. 1 and 2 under Order 41, Rule 11 of the Code of Civil Procedure.

3. Briefly narrated, the case of the plaintiffs is that the suit land admeasuring two bigha and three katha was settled in favour of one Ganga Singh by the ex-landlord through a *Parwana* dated 21.05.1938, whereafter he was put in possession thereof and was granted rent receipts in lieu of payment of rent. After vesting of *Zamindari* in the State upon enactment of Bihar Land Reforms Act, 1950 (hereinafter referred to as 'the Act'), the ex-landlord had submitted his return in respect of the suit land also in the name of the settlee, Ganga Singh, whose name was mutated in the tenant's ledger of the State of Bihar. The settlee had been paying the land revenue and rent receipts were granted in his favour as token thereof. The said Ganga Singh, the settlee is said to have died in 1970, leaving behind his sons, plaintiff nos. 1 and 2 and the widow, plaintiff no.3. The plaintiffs-appellants developed a case in their plaint that the widow of Ganga Singh (Plaintiff No.3) was a *Pardanashin* lady and his sons were minors, the plaintiff no.3 used to give money to one Kesho Singh, the father of defendant



nos. 1 to 5 for payment of rent to the State of Bihar and for getting rent receipts, but the said Kesho Singh, having greedy eyes over the suit land, got his name and names of his sons mutated in the tenant's ledger of the State of Bihar. Based on illegal mutation of their names, the defendants had started issuing threats of dispossession and were making frequent attempts to dispossess the plaintiff-appellants, a cause of action arose for institution of the suit.

4. The suit was contested by defendant no.2 only, who, in addition to raising the technical plea of the suit being barred by Section 34 of the Specific Relief Act and principles of *res judicata*, denied the plaintiffs' case of settlement of the suit land by means of *Parwana* dated 21.05.1938 and asserted that the document was absolutely forged and fabricated, prepared *ante*-dated with ulterior motives. He asserted that Siya Sundari Dutta was not the ex-landlord of the concerned Hasuli Estate, to which the suit land belonged. He also disputed the case of the plaintiffs of having ever come in possession over the suit property. The defendant no.2 (respondent no.2 herein) asserted in his written statement that the land of the suit plot belonged to Hasuli Estate of which Rai Man Matho Nath Bose and others were the landlords, who had settled 1.87.1/2 acre of land of the suit plot to Kesho Mahto on 08.01.1941. He had also settled 94 decimals of land to one



Jagdish Singh on the same date and further settled 1.25 acre of land to one Ashoke Singh on 21.04.1948. By virtue of the said settlements, the defendant and other settlees were in possession of 4.6.1/2 acres of land of the suit plot and the remaining areas having been acquired for canal and road were being used for public purpose under the proprietorship of the State of Bihar. There is no dispute between the parties over the fact that the suit plot 1841 appertaining to khata no. 232 of Mauza Piproura under Mandanpur P.S. was recorded as 'Gair Majarua Malik' in cadastral survey records of right, which has been taken note of by the learned appellate court below and no dispute has been raised in respect of such finding by the parties, while making their submissions. Based on rival pleadings, the trial court framed 08 issues, out of which issue nos. IV and V were the main issues for determining the claim of the plaintiffs' title and possession over the suit land which are as under:-

“IV. Is the parvana bandobasti dt. 21.05.1938
in favour of the plaintiffs genuine, valid,
legal and operative?

V. Whether the plaintiffs have got right, title
and possession over the suit land?”

5. The parties adduced their evidence, both oral and



documentary. It is noteworthy that the sheet-anchor of the plaintiffs' claim of title over the suit land was the Parwana settlement, said to be executed by the ex landlord Siya Sundari Dutta on 21.05.1938 which was taken in evidence as Ext. 3 by the trial court. It transpires from the judgment of the first appellate court that Ext.3, alleged document of *Parwana* settlements on 21.05.1938 did not bear the signature and seal of the ex landlord or any person authorized.

6. The trial court, upon appreciation of evidence on record, both oral and documentary, recorded his finding that the plaintiffs failed to establish the genuineness of the *Parwana* dated 21.05.1938 in the absence of any evidence of action taken subsequent to the issuance of the said *Parwana*. The trial court also noted that there was no documentary evidence to support the plaintiffs' case that Ganga Singh had been paying rent after the settlement of the land in his favour. The trial court refused to accept the plea that defendant no.3, the widow of original settlee, was giving money to Kesho Singh, father of the defendants to pay the rent. The defendants, on the other hand, were able to establish their case of their title and possession by proving rent receipts in support of payment of rent and other documentary and oral evidence. After having discussed elaborately the evidence adduced, the trial court decided issue No.IV against the plaintiffs



and consequently issue No. V too against the plaintiffs. Since the issue Nos. IV and V came to be determined against the plaintiffs, the suit was dismissed.

7. The appeal preferred by the plaintiffs has also been dismissed by the learned first appellate court below by the impugned judgment and decree dated 06.02.2015, affirming most of the findings recorded by the learned trial court, which was crucial for determination of the rival claim of the right, title and possession over the suit land.

8. Mr. Ashok Kumar Sinha No.3, learned counsel, appearing on behalf of the appellants, has argued at length to convince this Court that the court below has not appreciated the evidence adduced on behalf of the plaintiff in correct perspective. He has, with all perseverance, contended that the *Parvana* issued by the ex landlord dated 21.05.1938 in favour of Ganga Singh, the father of the appellants which was exhibited as Ext.3, has not been properly examined by the court below. He has submitted that the court below has not duly appreciated the the evidence adduced on behalf of the plaintiffs/appellants. These two aspects, according to him, raise substantial question of law for the purpose of admission the present second appeal. In addition, he has drawn my attention to the following substantial questions of law set out in the memo of appeal which, according to him, arise:-



- “i. Whether the finding of the appellate Court without discussing the case and evidence issue no.4, 5 and 6 is sustainable in law ?
- ii Whether the Judgment and decree of Courts below without examining the evidence on records filed by the parties independently sustainable in law?
- iii Whether the finding of the appellate Court without discussing the matter in holding that the trial Court has committed controversial and evidence in perspective which is sustainable in law?
- iv. Whether the finding of the appellate Court has failed the issues of the trial Court and without appreciating or records is sustainable in law?
- v. Whether the decision is given by both Courts ignoring the law and considering the records is sustainable in law?
- vi. Whether the finding of the appellate Court is erroneous, misconceived and bad in law?
- vii. Whether the finding of both Courts below is violation of the natural justice?
- viii. Whether the finding of the appellate Court is arbitrary not apply judicial mind is sustainable in law?”

9. On mere reading of the proposed substantial questions of law framed in the memo of appeal, which according



to the appellants arise in this appeal it can be easily noticed that the questions have been vaguely framed without referring to the particular aspect as to how those questions arise, much less the substantial questions of law.

10. It is noticeable from the case of the appellants/plaintiffs, as developed in the plaint in course of trial at the first appellate stage and in the present proceeding also that the sheet-anchor of their case has been the *Parvana* dated 21.05.1938 issued by the ex landlord in favour of Ganga Singh, the deceased father of the appellants. The learned first appellate court has re-appreciated the entire evidence on record and has dealt with each and every issue so framed. Referring to Ext. 3, the said *Parvana* dated 21.05.1938, which according to the plaintiffs, was executed by the ex-landlord Siya Sundari Dutta has recorded that the same did not bear any signature and seal of the ex-landlord or any person authorized. The appellants/plaintiffs had relied on Ext.7 which according to them, was a compensation return submitted by the ex-landlord in the name of Ganga Pd. Singh, too disclosed over writing and cuttings. The appellate court had weighed the evidence in respect of Ext.7 which was admitted in evidence on the basis of production by P.W.10. The learned appellate court below has recorded that its veracity could not be established in view of Ext. O which was a document of information supplied by



the concerned office to the effect that the name of Ganga Pd. Singh did not find place in the revenue record.

11. In my view, the finding of the court below, based on appreciation of evidence, cannot be said to be suffering from the vice of perversity. The concurrent finding of facts recorded by the courts below cannot be successfully assailed at the second appellate stage, unless perversity in such finding is shown. A finding can be said to be perverse, if it is based on no evidence or it is contrary to the evidence adduced. In my view, this appeal does not involve any substantial question of law which needs to be determined in the present second appeal.

12. This appeal has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
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