

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.251 of 2017

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1. Bhushan Prasad, son of Nawal Kishore,
 2. Awadh Kishore Prasad, son of Late Suraj Prasad,
 3. Gyan Prasad, son of Late Suraj Prasad,
 4. Munna Prasad, son of Late Suraj Prasad, All are residents of Village- Saw Tola Gurwalia, P.O. Gurwalia, Police Station- Manuapul, Anchal- Chanpatia, District- West Champaran.

.... Appellant/s

Versus

1. Rama Shankar Prasad, son of Late Sahdeo, resident of Village- Saw Tola Gurwalia, P.O.- Gurwalia, Police Station- Manuapul, Anchal- Chanpatia, District- West Champaran.
2. Shankar Prasad, son of Late Suraj Prasad, resident of Village- Saw Tola Gurwalia, P.O.- Gurwalia, Police Station- Manuapul, Anchal- Chanpatia, District- West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Advocate
Mr. Rakesh Kumar Singh, Advocate
Mr. Amarendra Nath Verma, Advocate

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**
ORAL ORDER

4 21-06-2018 This second appeal has been preferred by the appellants, who are the defendants, being aggrieved by the judgment and decree dated 06.04.2017 passed by learned Additional District Judge-VI, Bettiah, West Champaran, in Title Appeal No.70 of 2011, whereby a title appeal preferred by the appellants has been rejected affirming the judgment and decree dated 28.06.2011 passed by learned Sub-ordinate Judge-I, Bettiah, West Champaran, in Title Suit No.37 of 2007.

2, The suit was filed for declaration of right, title and



interest of the plaintiff over the suit land fully described in the schedule of the plaint and for further declaration that the defendants had no right to interfere with the possession of the plaintiff over the suit property. It appears that following was the case of plaintiff before the trial Court:-

(I) R.S. Khata No.87, comprising eight plots, having total area of 2 Bigha, 3 Katha and 9 Dhurs situate in village Gurwalia in the district of East Champaran was recorded in the name of one Khenari Barai and Manhari Barai, in R.S. Khatian. Manhari Barai died unmarried leaving behind no heir or successor and accordingly Khenari Barai acquired his interest by virtue of survivorship and had become owner of the entire land of Khata No.87. Khenari Barai had one son, namely, Sahdeo Barai. The plaintiff/respondent No.1 was the son of Sahdeo Barai. Three years ago, the defendants' ancestor, Keshav Prasad had started claiming his right and title over 1.83 decimals of land comprising plot Nos.3579, 3624, 3635, 3673 and 3682 under Khata No.87 which had resulted into initiation of proceeding under Section 144 Cr.P.C.

3. In the said proceeding, the said Keshav Prasad claimed to have title over the said land on acquisition from one Chokat Raut by virtue of the sale deed dated 13.07.1931. Chokat



Raut was the maternal uncle of Sahdeo Barai, who on that point of time was a minor. The learned Sub-divisional Magistrate, Bettiah, disposed of the said case on 06.05.1978 with a direction to get the matter adjudicated by competent Civil Court. According to the plaintiff, the Circle Officer of the concerned Circle had submitted a wrong enquiry report showing possession of Keshav Prasad over the suit property. The report discloses that Chokat Raut was not the maternal uncle of Sahdeo Barai nor he was minor on the alleged date. He asserted that on 08.09.2006 when he had gone to Halka Karmchari for issuance of rent receipt for the land admeasuring 1 Bigha, 17 Katha and 19 Dhurs, the halka karmchari issued rent receipt only for 17 khata and 19 Dhurs. It is his case that Jamabandi was bifurcated and a new Jamabandi was created in the name of Chano Kunwar, Suraj Prasad and Bhushan Prasad, behind the appellants' back. Only after the defendant started hurling threats for dispossession, the plaintiff approached the Court by filing the civil suit.

4. The defendants/appellants though appeared before the trial court, they did not file any written statement which compelled the Court to pass order under Order VIII Rule-10 of the Code of Civil Procedure. The trial-court, upon appreciation of oral and documentary evidence adduced by the parties recorded



his finding that the plaintiff had got his right, title and possession over the property. Learned Appellate Court has affirmed the said judgment and decree of the trial-court. The Appellate Court, as is apparent from the impugned judgment and decree, has independently discussed and appreciated the evidence on record and held that total area of the disputed land appertaining to Khata No.87 was 2 Bigha, 3 Katha and 9 Dhurs was held and possessed by the plaintiff. On the said basis, the Appellate Court has affirmed the findings recorded by the learned trial-court.

5. I do not find any perversity in the finding recorded by the Courts-below. No finding can be said to be contrary to the evidence or without any evidence. The concurrent findings of fact recorded by the Courts-below are binding on this Court, in a proceeding under Section 100 of the Code of Civil Procedure. No substantial question of law arises in this second appeal, in my view. This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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