

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.534 of 2011

1. SHIV KUMAR PD. S/O Late Ram Lal Mahto
 2. Birendra Prasad
 3. Abdhendra Prasad
 4. Jitendra Prasad
- 2 to 4 Minor S/O Shiv Kumar Prasad
All R/O Village- Mauja- Devi Sarai, P.S- Deep Nagar, Post- Maghara,
District- Nalanda.

... .. Appellant/s

Versus

1. SRI JOGENDRA PD. S/O Shri Chottan Mahto
 2. Mukesh Kumar
- Minor S/O Sri Jogendra Prasad
Both Resident Of Village Devi Sarai, Post Maghara, P.S- Deep Nagar,
District- Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Anil Chandra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date : 15-02-2019

Heard Mr. Anil Chandra learned counsel appearing on
behalf of the appellants.

The appellants are the plaintiffs. The plaintiffs filed
title suit no. 25/03 Trial No. 4/2009 for declaration of title and
also for recovery of possession after removing wall and
encroachment mentioned in schedule 2 of the plaint.

Learned Addl. Munsif decreed the suit and held that
the plaintiffs have got right of easement over the lands
mentioned in schedule 2 of the plaint and accordingly decreed
the suit. On appeal being filed by the respondents/defendants the



appellate court held that the plaintiff/appellants did not have title over the disputed land and the learned trial court illegally decreed the suit holding that the plaintiff has got right of easement over the suit land. Although, plaintiff did not claim such relief in the plaint. He further submits that in fact the plaintiff filed a suit stating therein that the lands in question are in joint possession of both parties plaintiff and defendants. Learned appellate court reversed the judgement/decreed of the trial court.

Having considered the submissions and on perusal of both judgements, I find no force in the submission of the learned counsel for the appellants.

In fact the appellant filed the suit for declaration of title and recovery of possession of the disputed land after removal of encroachment, but trial court held that the plaintiff has got right of easement over the disputed land beyond the pleading and relief sought for by the plaintiff and the learned appellate court on this fact set aside the judgement and decree passed by the trial court holding that the plaintiff failed to prove title over the disputed land and he has not sought relief for right of easement over the disputed land. Thus, I find no substantive question of law is involved.



Accordingly, the Second Appeal is dismissed.

(Prabhat Kumar Jha, J)

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CAV DATE	NA
Uploading Date	21.02.2019
Transmission Date	

