

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.280 of 2016

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Awadhesh Singh Son of late Ganpat Singh(Mahto), Resident of Village-
Nawadih, P.S. Rohtas, District- Rohtas(Sasaram).

... .. Appellant/s

Versus

1. The State Of Bihar through the Collector, Rohtas
2. The Gram Panchayat , Rusulpur through its Mukhiya, P.S.- Rohtas District-
Rohtas

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Shantanu Kumar
For the Respondent/s : Mr.Sc22- Kundan Bahadur Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 22-07-2019

Heard both sides.

The appellant filed this second appeal being aggrieved with and dissatisfied by the judgment and decree dated 20.02.2016 passed by Additional District Judge VIII, Rohtas in Title Appeal No.51 of 2009 by which the judgment and decree dated 07.07.2009 passed by 2nd Additional Munsif, Sasaram in Title Suit No.164/1994/31/2007 was upheld and appeal was dismissed.

The plaintiff is the appellant. Plaintiff filed the suit for declaration of title and confirmation of possession with regard to the lands mentioned in Schedule A of the plaint holding that the lands are the raiyati land of the plaintiff and the defendants have got no manner of concern with the land. The



plaintiff stated in his plaint that C.S. Plot No.411 area 1 acre 73 decimals was recorded in the name of Ramdhani Mahto, son of Bhagelu Mahto, the grandfather of the plaintiff. Ramdhani got three sons Feku Mahto, Rambilas Mahto and Ganpat Mahto. Feku got four sons. Ganpat got three sons including the plaintiff, Awadhesh Singh. There was partition among the sons of Ramdhani Mahto. The disputed land C.S. Plot No.411 fell in the share of the father of the plaintiff. After partition, the plaintiff got the disputed land in his share. Further case of the plaintiff is that during the course of revisional survey, old Survey Plot No.411 was separated in several new plots fully described in Schedule B of the plaint including Plot No.1272 but R.S. Plot No.1272 was recorded as Anawad Sarv Sadharan. However, the lands remained in possession of the plaintiff and plaintiff also perfected his title by way of adverse possession.

The defendant-State of Bihar contested the suit stating that the suit land vested in the State of Bihar and the land was recorded in the name of State of Bihar. Learned Munsif dismissed the suit holding that survey record was prepared in the year 1971 and the plaintiff did not pay any rent and the suit is filed only in the year 1994, therefore, the suit is barred. It is also held that plaintiff has got no title and possession over the



disputed land.

The first appellate court also dismissed the appeal holding that the plaintiff-appellant made the foundation of his case on the pleadings that out of C.S. Plot No.411 of C.S. Khata No.81 area 1 acre 73 decimals, new Khata No.106 plot No.1259, 1258, 1257, 1253, 1256, 1255, 1254, 1270, 1271, 1234 and 1272 of new Khata No.283 were carved out but the plaintiff-appellant has not adduced any evidence of Survey Knowing Pleader Commissioner in order to prove the fact that R.S.Plot No.1272, area 10 decimals of R.S. Khata No.283 was carved out from C.S. Plot No.411 C.S. Khata No.81. P.W. 4, Sugriv Chaudhary, an Advocate who prepared the map disclosed that he had no knowledge of survey and measurement and he prepared the comparative map only on the basis of his experience, on such, appellate court held that in absence of any comparative map prepared by a Survey Knowing Pleader Commissioner for which the appellant did not take any step, it cannot be held that R.S. Plot No.1272 R.S. Khata No.283 was carved out from C.S. Plot No.411 C.S. Khata No.81.

Mr. P.K.Shahi, learned senior counsel for the appellant submits that R.S.Plot No.1272 of R.S. Khata No.283 was carved out from C.S. Plot No.411 C.S. Khata No.81 which



was recorded as raiyati land of the appellant but during the revisional survey, the land of R.S. Plot No.1272 was illegally recorded as Anawad Sarv Sadharan Bihar Sarkar. The Pleader Commissioner, P.W.4 prepared the comparative map(Ext. 8) and disclosed that R.S. Plot No.1272 is carved out from C.S. Plot No.411 but both the Courts illegally discarded the evidence of P.W. 4, the Pleader Commissioner.

Having considered the submissions and on perusal of judgments, it is apparent that the plaintiff led foundation of his case on the assertions that out of C.S. Plot No.411, C.S. Khata No.81, eleven plots including R.S. Plot No.1272 of R.S. Khata No.283 was carved out and the same was illegally recorded as Anawad Sarv Sadharan Bihar Sarkar. Of course, the Pleader Commissioner prepared the map but the Pleader Commissioner, P.W.4 himself admitted in his evidence that he has not obtained diploma of Survey Knowing Pleader Commissioner and prepared the comparative map on the basis of his experience. I find that the first appellate court has rightly disbelieved the report of P.W.4, Pleader Commissioner and held that a finding cannot be recorded that R.S. Plot No.1272 area 10 decimals of Khata No.283 is carved out from C.S. Plot No.411 C.S. Khata No.81. The onus was on the plaintiff to prove his case by



examining the expert or the Survey Knowing Pleader Commissioner who got skill and expertise to measure the lands and to prepare comparative chart of Cadastral Survey and Revisional Survey. In absence of evidence of such person having skill and expertise, the evidence of Advocate Commissioner who has got no skill or expertise in the field of measurement, cannot be worth reliable. Thus, I find that the appellate court has rightly held that the plaintiff could not be able to prove that R.S. Plot No.1272 of R.S. Khata No.283 was carved out from C.S. Plot No.411 C.S. Khata No.81. Thus, the finding does not require any interference in Second Appeal.

Resultantly, I find that no substantial question of law is arising for consideration in this second appeal and the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
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