

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.322 of 2018

Kranti Thakur Son of Late Sukan Thakur Resident of Village- Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.

... .. Appellant/s

Versus

1. Most. Sukari Devi @ Sukhari Devi W/o Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
2. Smt Gyan Devi Daughter of Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
3. Smt Ghuran Devi Daughter of Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
4. Sri Umesh Kamat Son of Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
5. Sri Umesh Kamat Son of Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
6. Sri Dinesh Kamat Son of Late Sudhai Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
7. Sri Rakesh Kamat Son of Late Laxmi Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.
8. Sri Shiv Kamat Son of Late Laxmi Kamat Resident of Village Behat, Tola Adalpur, PS RS Shivir, Jhanjharpur, District- Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanat Kumar Mishra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 17-08-2022

Heard learned counsel for the appellant under Order 41

Rule 11 of the Code of Civil Procedure.

(2) The plaintiff who is appellant herein has filed this Second Appeal under Section 100 of the Code of Civil Procedure against the judgment dated 05.06.2018 and decree dated 19.06.2018 passed by Sri Om Prakash II, learned District



& Sessions Judge, Madhubani in Title Appeal No. 31/2016 confirming the judgment dated 24.06.2016 and decree dated 01.07.2016 passed by learned Munsif, Jhanjharpur, Madhubani in Title Suit No. 40/1995, whereby, the learned Munsif, Jhanjharpur dismissed the suit on contest.

(3) The plaintiff had filed the suit for declaration of title and confirmation of possession, alternatively, for declaration of possession on the basis of possession and permanent injunction against the defendants. The case of the plaintiff is that he had his house since long over suit land bearing C.S. Plot Nos.1010, 1011, 1016 and 1017 total area 18 dhur, situated at Mauza-Adalpur, P.S.-R.S. Shivir (Jhanjharpur), District-Madhubani. According to plaintiff he had obtained his right and title on the basis of Basgit Parcha issued by the government of Bihar vide Case No.34/1980-81 after due inquiry and investigation. Jamabandi was created and revenue is being paid. Defendants have their houses adjacent west to the suit land who tried to disturb the suit land, in order to grab the suit land, so the plaintiff filed a case u/s 144 Cr. P.C. in 1986 in which compromise took place confirming the title and possession of the plaintiff over suit land. In 1993 also the Circle Officer had found the possession of plaintiff over the suit land. In 1994 due



to heavy rain, plaintiff left his house then defendants tried to demolish the house of plaintiff, then proceeding u/s 144 Cr. P.C. initiated in which police found the possession of the plaintiff on suit land. The plaintiff alleged that defendants in collusion with the authority got prepared the Revisional Survey Khatiyani and map with respect to suit land in their favour. The defendant disclosed in proceeding under Section 144 Cr. P.C. that they have got Parcha under Bihar Privileged Persons Homestead Tenancy Act, 1947 (BPPHT) Act with respect to suit land which is forged and fabricated document.

(4) The defendants case is that the Survey Plot Nos.1009, 1010, 1011, 1012, 1013, 1016 & 1017 were amalgamated to each other and earlier the said land belonged to Mahanth Ram Chandra Das and later on the said land was acquired by Government of Bihar under the Provision of Land Ceiling Act out of which 2 Kathas and 6 Dhurs land were allotted in the name of Kailu Kamat, ancestor of defendants, through Parcha Vide Case No.80/1969-70. Jamabandi is running in his name as yet. Kailu Kamat died leaving behind his two sons namely, Sudhayi Kamat and Lakshmi Kamat who came in possession over the land left by Kailu Kamat by survivorship. The plaintiff some years ago kept his cattle in the suit land with permission



and tried to grab the said land of defendant initiated proceeding u/s 144 Cr. P.C. and subsequent to that a forged and fabricated Parcha was obtained.

(5) The learned Trial Court framed 10 issues on the basis of pleading of both parties and decided that the Basgit Parcha in favour of plaintiffs is invalid and non-operative and on the basis of which plaintiff has no right, title and possession over the suit land and accordingly dismissed the suit.

(6) In appeal, the learned 1st Appellate Court after considering the material available on records held that the Basgit Parcha in favour of the plaintiff is not a valid and operative document and accordingly the plaintiff has no title and possession over the suit land and dismissed the appeal.

(7) Learned counsel for the appellant submits that the impugned judgments of Trial Court and 1st Appellate Court are perverse in not considering the case and evidence of the plaintiff but went in considering the validity of Parcha of the plaintiff. It is further submitted that entitlement/issuance of Parcha under Bihar Privileged Persons Homestead Tenancy Act, 1947 could be challenged only by the landlord and in this case there is no challenge by the landlord to the issuance of Parcha to the plaintiff and Learned Courts below wrongly took the



defendant's Parcha to be true which was not admissible in evidence. It is next submitted that there are sufficient material available on record to prove the issuance of Parcha and running of Jamabandi and also the long possession of the plaintiff. He has lastly submitted that there are substantial questions of law arise in this Second Appeal accordingly, this appeal may be admitted for hearing.

(8) Having heard the learned counsel for the appellant and on perusal of judgments of both the Courts below i.e. Trial Court and 1st Appellate Court, it appears that both the Courts have held that plaintiff has no title and possession in the suit land. It has also been held that Basgit Parcha in favour of the plaintiff is not a valid and operative document.

9. The expression "substantial question of law" has acquired a definite connotation through various judicial pronouncements.

In **Hero Vinoth (Minor) Vs. Seshammal (2006) 5 SCC 545**,

the Hon'ble Supreme Court has observed that:

"The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law



erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

10. The Hon’ble Supreme Court in Vijay Kumar Talwar Vs.

Commissioner of Income Tax, Delhi reported in

MANU/SC/1027/2010;[(2011) 1 SCC 673] held that:

“A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.”

11. In the present case the findings are based upon appreciation of evidence on record. There is no perversity or unreasonableness in the said finding. It need not require to restate the reasoning given by Appellate Court which are all well discussed. The first Appellate Court is a final fact finding authority and in absence of demonstrated perversity in its finding, interference by this Court is not warranted.

12. Consequently, this Court does not find any



substantial question of law arising in this appeal for
consideration, which is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	NAFR
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