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Court : Patna

Decided On : Sep-05-2002

Judge : Radha Mohan Singh, J.

Appeal No. : S.A. No. 362 of 1999

Appellant : Most. Suraj Devi Pariwal and anr.

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Judgement :

Radha Mohan Singh, J.

1. This second appeal is against the judgment passed in Title Appeal No. 48 of 1997 by 6th Additional District Judge, Purnia affirming the judgment passed by Sub-Judge III, Araria in Title Suit No. 30 of 1984.
2. The suit was filed by the State of Bihar and the defendants are the appellants.
3. The plaintiff claim to be the title holder and in possession over the suit land mentioned in Schedule A of the plaint situated in village Bhagpokhar since the time of vesting of Sultanpur Estate in the State of Bihar. According to the plaintiff, the suit land is Jalkar, known as Sitadhar Jalkar and is being settled every year and the plaintiff derived income from the said settlement. It has been alleged that

the defendants have neither any concern nor any right and title over the suit land, but, in collusion with the survey Amlas during the survey operation, the municipal survey khatian of the suit land had wrongly been published in the name of the defendants. Hence, the plaintiff filed suit for declaration that municipal survey khatian of the suit land finally published in the name of the defendants is wrong and illegal and it should be rectified in the name of the plaintiff in place of defendants.

4. The defendants in their written statement denied the possession of the plaintiff over the suit land and it has been stated that the ancestor of defendants 1 and 2 are in continuous possession over the suit land for more than 12 years i.e. since the date of settlement on 22.9.1948 by execution of Kabuliyat duly registered and also by Parwana dated 5.11.1948 executed by the Manager of the Sultanpur Estate. The municipal survey entry was finalised after the objection made on behalf of the plaintiff, and the suit land had been settled in the name of defendants. It has been claimed that the suit land was never a jalkar and the same was not owned by the State of Bihar at any time, The collusion or fraud alleged by the plaintiff in preparation of municipal survey khatian has been denied and it has been stated that the State of Bihar has accepted the rent of the suit land, and, thus, the suit is fit to be dismissed.

5. The trial Court on consideration of the pleadings as well as evidence both oral and documentary adduced on behalf of the parties came to the conclusion that the defendants are entitled for only 1.5 decimals land of Khesra No. 20 under Khata No. 113 and the plaintiff is entitled for the remaining 49 decimals of land of khesra No. 20 alongwith entire land of khesra No. 18 under the same khata i.e. Khata No. 113, and that the plaintiff is entitled for declaration that municipal survey khatian prepared in respect of C.S. khesra No. 18 khata No. 113 not covered under registered Kabuliyat (Exhibit-H) is wrong and it should be rectified in the name of the plaintiff in place of defendant. The lower appellate Court on appeal affirmed the findings of the trial Court.

6. It is submitted by the learned Counsel appearing for the appellants that the Courts below have not assigned any reason while discarding the evidences of

D.Ws. and have also not considered properly the documentary evidence produced by the defendants. He further submitted that the Courts below have committed error in holding that the suit land is Sitadhar Jalkar of the State of Bihar, and that the Courts below have failed to consider the registered Kabuliyat (Exhibit-H) accompanied by a Patta granted by the ex-landlord.

7. The lower appellate Court in paragraph 8 of its judgment has discussed about the evidence of the parties with respect to Sitadhar Jalkar and found that since C.S. Khata No. 113 plot No. 18 area 2.38 decimals has been shown in the C.S. Khatian as Sitadhar and C.S. Khesra No. 20 area 1.54 decimals has been shown as Parti Kadeem, the case of the defendants that there is no Sitadhar in Forebesganj particularly in village Bhagpokhar gets falsified. As regards the registered Kabuliyat (Exhibit-H), the lower appellate Court in paragraph 11 of its judgment has recorded its findings that it transpired from the perusal of Kabuliyat (Exhibit-H), which is an application for settlement by the forefather of the defendants, that under Khata No. 113 Khesra No. 20 only 1 acre 5 decimals land was intended to be taken on settlement by the settles and no land of Khesra No. 18 under Khata No. 113 was intended to be taken on settlement. The total area of Khesra No. 20 is 1 acre 54 decimals, out of that only 1 acre 5 decimals was taken by the forefather of the defendants by Kabuliyat and the remaining 49 decimals was not covered by the registered Kabuliyat. The land of Khesra No. 18 was Sitadhar and the same was neither settled to the defendants nor the same was ever intended to be taken by them.

8. Both the Courts below on consideration of the evidence in detail have found that the defendants are entitled for only 1.5 decimals land of Khesra No. 20 under Khata No. 113 and the plaintiff is entitled for the remaining 49 decimals of land of khesar No. 20 alongwith entire land of Khesra No. 18 under the same khata, and held that the plaintiff is entitled for declaration that municipal survey khatian prepared in respect of C.S. Khesra No. 18 khata No. 113 not covered under registered Kabuliyat (Exhibit-H) is wrong and it should be rectified in the name of the plaintiff in place of defendants. Learned Counsel for the appellants has failed to show any infirmity in the findings recorded by the Courts below. Thus, in my opinion, the judgment of both the Courts below does not warrant any interference

in Second Appeal.

9. As the matter stands concluded by the concurrent findings of fact by the two Courts below, this Court does not find any reason to interfere with the impugned judgments, moreso, when no substantial question of law has been argued. The appeal is, thus, dismissed summarily.

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