

Jogi Ram and ors Vs. Hari Ram and ors

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Court : Patna

Decided On : May-11-2012

Appellant : Jogi Ram and ors

Respondent : Hari Ram and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Second Appeal No.437 of 2008 Jogi Ram & Ors Versus Hari Ram & Ors -----

11. -1-2012 Heard the learned counsel appearing on behalf of the appellants in support of this appeal. The plaintiffs are the appellants in this appeal against the judgment of affirmance. The suit has been filed for declaration of title and for declaration that the recent survey Khatiyani with regard to the suit land prepared in the names of defendant 2nd set is wrong. The plaintiffs case, in short, is that the suit land has been allotted to the plaintiffs in partition in their family and they are coming in joint possession, but the Shebait of the defendant 2nd set has got the said land recorded in the names of defendant 2nd set in the recent survey proceeding collusively. It is the case of the plaintiffs that there has never been any temple or Pindi of the deities Sri Ganesh Jee Bhagwan or Sri Shankar Jee Bhagwan over the suit land, which has also never been used for religious purposes with regard to the said deities. The defendants in their written statement have contested the claim of the plaintiffs asserting that the disputed land originally was within the estate of the ex-landlord Babu Naurangi Sah and a Rent Suit No. 5919 of 1932 was filed against the Raiyats(ancestors of the plaintiffs) which was

decreed and the disputed land was sold in Execution Case No. 2062 of 1933 in execution of the aforesaid rent decree. The ex-landlord purchased the disputed land in the said auction sale and the sale certificate was prepared in his name and delivery of possession was also effected in his favour. Later on, after the death of the ex-landlord, his widow and his daughter executed Arpannama which included the suit land in favour of deities and appointed Ganga Prasad Ram as the Shebait. It has been further asserted by the defendants that Ganga Prasad Ram and after his death his three sons (defendant nos. 1 to

3) have been coming in possession of the suit land on behalf of the deities as Shebait. It is also the case of the defendants that at the time of vesting, the return had been filed with regard to the suit land in the name of the deities and on the basis of the said return, Jamabandi has been established by the State of Bihar in the name of the deities who are paying rent and getting rent receipts. It appears that later on, the plaintiffs amended the plaint and included the statement that the suit land was never auction sold and Naurangi Sah was the ex-landlord of the suit land and no Arpannama was ever executed or acted upon. The trial court, on the basis of consideration of evidence and pleadings of the parties, has come to the conclusion that the plaintiffs have no title over the suit land and the entry in the survey Khatiyan has been rightly prepared in the names of defendant 2nd set on the basis of Arpannama (Ext.D). It has also been held that the plaintiffs could not prove that there had been no rent suit and the auction sale, as claimed by the defendants, with regard to the suit land. The trial court has also concluded that even after the insertion of averments regarding rent suit, auction sale and delivery of possession as well as Arpannama in the plaint by 3 amendment, the plaintiffs omitted to seek any relief in that regard and therefore the bar of section 34 of the Specific Relief Act was also attracted. In appeal, the appellate court reconsidered the evidence of the parties and affirmed the findings of the trial court holding that the plaintiffs had not got right, title and interest over the suit land and had never come in possession over the same. Mr. K. N. Singh, learned senior counsel appearing on behalf of the appellants has vehemently submitted that both the courts below have ignored material evidence and also misappreciated the relevant evidence, and as such the findings, as recorded by them, are not sustainable in law. It has been contended that the plaintiffs have led ample evidence to sustain

their claim of title and possession over the suit land showing that the suit land was never in the estate of ex-landlord Naurangi Sah, rather it was under the estate of ex-landlord Dwarika Prasad Dhandhanian. It is also the contention of the learned senior counsel that there was no necessity for seeking relief with regard to the proceeding of the rent suit and Arpannama and the bar of section 34 of the Specific Relief Act is not attracted in the facts and circumstances of the case. On perusal of the impugned judgments and consideration of the submissions on behalf of the appellants, it appears that both the courts below have elaborately discussed the evidence of both the parties and thereafter have recorded the findings. On behalf of the appellants the contention has been made with regard to non-consideration of the material evidence, but the said contention could not be corroborated during the course of argument. Moreover, reappreciation of evidence in second appellate jurisdiction is not open unless the findings are shown to be perverse. Both the courts below, on the appreciation of evidence, have decided the issues between the parties, and I find no perversity in the findings of the courts below. It also appears that the plaintiffs had omitted to seek any relief with regard to the proceedings related to the rent suit including auction sale and delivery of possession and also the Arpannama, although the averments with regard to rent suit, auction sale and Arpannama were inserted by way of amendment. There is thus no illegality in the conclusion by both the courts below in attracting the bar of section 34 of the Specific Relief Act in the facts and circumstances. The issues arising between the parties have been settled by the concurrent findings of fact. For the foregoing reasons, it is held that no substantial question of law arises for consideration in this appeal, which is, accordingly, dismissed. (V. Nath, J.)

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