

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.37 of 2019

1. Ram Briksh Yadav, S/o Dularchand Yadav @ Dilchand Yadav, Village-Sheorampur, P.O- Rali, Via Belaganj P.S.- Belaganj, District- Gaya.
 2. Sarjoo Yadav, S/o Dularchand Yadav @ Dilchand Yadav, Village- Sheorampur, P.O- Rali, Via- Belaganj P.S.- Belaganj, District- Gaya.
- Appellant/s
- Versus
1. The State of Bihar through the District magistrate and Collector, Gaya.
 2. Anchal Adhikari, Belaganj, Belaganj Anchal, P.S.- Belaganj, District- Gaya, Bihar.
- Respondent/s
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Appearance :

For the Appellant/s : Mr. Arvind Kumar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 13-12-2022

This Second Appeal under Section 100 of the Code of Civil Procedure has been preferred against the Judgment dated 25.09.2018 and Decree 04.10.2018 passed by Additional District Judge-VIII, Gaya in Title Appeal No. 14 of 2017 (09 of 2008) dismissing the appeal and affirming the Judgment dated 12.12.2007 and decree dated 20.12.2007 passed by Munsif – IIIrd, Gaya in Title Suit No. 8 of 1997, whereby and whereunder the suit was dismissed on contest.

2. The appellants were the plaintiffs in the Trial Court who had filed the suit, *inter alia*, for declaration of right, title and interest of plaintiffs over the suit land (detailed in Schedule- 1 of the plaint) and for confirmation of possession over the same.



3. The case of the plaintiffs/ appellants is that C.S. Khata No. 47 having C.S. Plot No. 195 finds recorded in the name of one Marchhu Gope and C.S. Khata No. 85 having C.S. plot No. 196 finds recorded as 'Gair Mazarua Thikedar' in C.S. record of rights and in possession of the Bishwanath Narain Singh. Marchhu Gope surrendered his raiyati interest in the land to the landlord Bishwanath Narain Singh of Sahbajpur estate. The further case of plaintiffs is that the said Bishwanath Narain Singh settled both the suit plots in favour of the brother of the plaintiffs namely, Khirodhar Gope and possession was also delivered to him on 11.12.1948 and a memorandum of the transaction/ settlement was also issued as hukumnama. The name of the settlee was entered into sherishta of Ex-landlord and rent receipts were also issued to the settlee for the payment of rent. After sometime both the plots were amalgamated by the settlee into a block and settlee also cultivated the land so settled. The settlee-Khiroddhar Gope died unmarried and issueless leaving behind his brothers, the plaintiffs, who succeeded to the suit land and continued cultivation. During the revisional survey C.S. plots No. 195, 196 were converted into R.S. plot No. 359 admeasuring an area of 89 decimal and finds recorded under R.S. Khata No. 162 but wrongly in the name of 'Bihar Sarkar';



and it also recorded in the last column as 'Purani Parti'.

4. The plaintiffs claimed that they remained in continuous cultivating possession of the suit land and they even have perfected the title by adverse possession. The cause of action arose on 11.10.1996 when the plaintiffs went to pay the rent then revenue employee disclosed to the plaintiffs of wrong entry of the suit land in revisional record of rights, and refused to grant the receipt and threatened the plaintiffs to dispossess from the suit land. The defendants not filed written statement despite appearance, hence, the hearing of the suit proceeded ex parte against the defendant under Order 8 Rule 10 CPC.

5. The Trial Court on analysis of evidence given finding that there is nothing on the record to show as to when and how the recorded Raiyat (Marchhu Gope) relinquished his raiyat right over only one plot no.-195 and when the ex-landlord resumed possession. With respect to plot no. 196, it is stated that from exhibit-8 it is not clear as to how the alleged landlord Kumar Bishwanath Narayan Singh was thikedar of the said land. So the very source of derivation of title by Khirodhar Gope is vague and confused one. Furthermore, if the said ex-landlord had settled the land, then he would have submitted the return in the name of settlee and on that basis



Jamabandi/demand would have been opened in his name but the same has not come on the record.

6. The R.S. Khatian stands recorded in the name of State of Bihar and there is presumption of correctness with regard to entry in Khatian subject to rebuttal but here in the suit R.S. Khatian published in year 1978 is remained unrebutted. The suit was filed in year 1997 i.e. 19 years after publication of the khatian and thus hopelessly barred by law of limitation. Accordingly, the Trial Court found the suit not maintainable and the plaintiff have got no cause of action for the suit and the suit was dismissed.

7. In appeal, the Appellate Court below find that the contended settlement is by Bishwanath Narain Singh but it is not pleaded as to who was Bishwanath Prasad Singh and how could he acquired the title or the status of Malik to entitle him to settle the suit land to settlee? The plaintiffs have not proved the facts pleaded in the plaint; the suit is barred by limitation and the plaintiff does not acquire any title on the pleading and evidence to the suit land but still bring into concept of adverse possession as a sword which is not permissible in law.

8. Learned counsel for the appellants submits that both the courts below should have accepted the averments made



in the plaint as defendant neither controverted the statement nor choose to contest the suit and the courts below erred in law by not considering that in case when no written statement is filed by defendant then it was neither necessary nor appropriate to direct the plaintiff to adduce evidences in support of fact pleaded.

9. It is further submitted that entry in revisional survey does not create right or title in favour of defendant -State. In support of his argument he has relied upon the Judgment of full Bench of this Court in Nand Kumar Rai & Ors. vs. State of Bihar & Ors. Reported in 1974 PLJR 27 wherein it was held that an entry in the records of rights does not create any title in favour of any person and the presumption of correction of entry could be displaced. In a suit under Section 106, the correction of the entry made by the Revenue Officer has to be judged with reference to the factum of possession and not of title.

10. The learned counsel next submitted that both the courts below failed to appreciate that zamindari receipts show the land in the name of Ex-landlord Bishwanath Narain Singh who got full right to settle the land in favour of settlee and defendant-State have accepted the rent and granted rent receipt



in his favour accordingly onus was upon the defendant to prove that land in question was not vested in the said Ex-landlord or he had no right to settle the said land. It is lastly submitted that finding recorded by both the courts below regarding non-filing of objection after final publication of Khatian in the year 1978 is erroneous and perverse as State Authority itself issued rent receipts in the name of plaintiffs up to 1988 therefore filing of objection prior to 1988 does not arise.

11. I am not in agreement with the argument of the learned counsel for the appellants that under Order 8 Rule 10 CPC, the plaintiffs were not required to adduce evidence in the support of the fact pleaded. In my considered view, even if the defendants do not file written statement the plaintiffs still have to prove their case. A mere omission to file the written statement does not amount to an admission of facts stated in the plaint.

12. If a written statement is not filed, under Order 8 Rule 10 CPC does not postulate a judgment to be pronounced and decree passed automatically. The Court has to apply its mind to the merit of the case. In Maya Devi vs. Lalita Prasad (2015) 8 SCC 588, the Hon'ble Apex Court observed that the absence of the defendant does not absolve the Trial Court from fully satisfying itself of the factual and legal veracity of the



plaintiff's claim. The failure to file a written statement thereby bringing Order 8 Rule 10 CPC into operation does not invite a punishment in the form of an automatic decree.

13. Both the Courts below on scrutiny of pleading and evidence on record held that plaintiffs have not proved the facts pleaded in the plaint and the suit is hopelessly barred by Law of Limitation and plaintiffs have no valid cause of action for the suit and also in this case plea of adverse possession is not permissible. There is no illegality in the impugned judgment and decree and no substantial question of law is involved.

14. The law is well settled that this Court cannot entertain a second appeal under Section 100 of the Civil Procedure Code unless a substantial question of law is involved. In this case, there is concurrent finding of facts and there is no perversity in the findings of the courts below.

15. As discussed above, there is no substantial question of law arises in this Second Appeal. Accordingly, this Second Appeal is dismissed at the stage of admission itself.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
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