

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.242 of 2013

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1. Shio Murat Bind son of late Mangaru Bind.
 2. Paras Bind
 3. Gorakh Bind Both sons of Shio Murat Bind
 4. Pappu Bind
 5. Neharu Bind
 6. Awadhesh Bind All three minor sons of Shio Murat Bind, under guardianship of their natural guardian father namely Shio Murat Bind All resident of village Darunpur, P.S- Chand, District- Kaimur at Bhabua
 7. Banshropan Bind son of Late Mangaru Bind
 8. Bahadur Bind
 9. Daya Shankar Bind Both sons of Banshropan Bind resident of Village Darunpur, P.S- Chand, District- Kaimur at Bhabua.

.... Appellant/s

Versus

1. Jitan Bind son of Late Mangaru Bind
2. Saraj Bind son of Jitan Bind
3. Kalawati Kuwer wife of late Shivdayal Bind
4. Pintu minor son of Late Shivdayal Bind
5. Puspanjali Kumari minor daughter of Late Shivdayal Bind Both minor under guardianship of their natural guardian mother namely Kalawati Kuwer.
6. Murahu Bind son of Late Mangaru Bind
7. Bikram Bind
8. Vijay Bind both sons of Murahu Bind All resident of village Darunpur, P.S- Chand, District- Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 20-04-2015

Heard Mr. Tribhuwab Narayan, the learned counsel appearing on behalf of the appellants.

The appellant nos. 1 to 6 were the plaintiffs in the suit and the appellant nos. 7 to 9 were the defendants in the suit. They altogether have filed this appeal against the judgment and decree of affirmance dismissing the suit for partition. The learned counsel for the appellants has accepted that the appellant nos. 7 to 9 supported the case of the plaintiffs in the trial court but they have not preferred any appeal against the judgment and decree of the trial court dismissing the suit.

The plaintiffs filed the suit for partition of their 1/4th share in the suit property claiming unity of title and jointness of possession over the suit property. The contesting defendants filed their written statement denying the claim of the plaintiffs for a share in the property mentioned in Schedule-Ka and Kha of the written statement (also included as suit property) and by filing a counter-claim they have asserted the same to be the self acquired property of the defendant nos. 1 and 7. It was, however, the case of the defendants that they had no objection for partition of the properties other than the properties described as schedule-Ka and Kha of the plaint.

The trial court, after considering the pleadings and

evidence of the parties, returned the findings against the plaintiffs and dismissed the suit. The appellate court below, on reappraisal of the evidence, has concurred with the findings of the trial court, affirmed the dismissal of the suit and dismissed the appeal by the impugned judgment and decree.

Mr. Tribhuwan Narayan, the learned counsel for the appellants has submitted that the learned courts below in view of the stand of the contesting defendants that they had no objection to the partition with regard to the properties other than the properties as mentioned in schedule-Ka and Kha of the property, should have granted the decree to the plaintiffs as prayed for those properties. Elaborating his submissions, Mr. Narayan has pointed out the genealogy of the family of the parties and thereafter has submitted that the reliance by the trial court on the deed of partition of the year 1974 as produced by the defendants was not warranted by law. It has further been also submitted that both the courts below have not properly considered the evidence led on behalf of the plaintiffs and have wrongly dismissed the suit.

After perusal of the judgments of both the courts below and considering the submissions, it is limpid that the plaintiffs have filed the suit for partition claiming their 1/4th share in the suit property. The defendants have resisted the claim of the



plaintiffs with regard to the properties as mentioned in schedule-Ka and Kha of the written statement (also included as suit property) claiming the same to be their self acquired properties. The parties led their evidence and both the courts below after scanning the evidence have reached to the concurrent findings of fact that the properties mentioned in schedule-Ka and Kha of the written statement are the self acquired property of the defendants. During the course of submission on behalf of the appellants, no illegality or perversity in any manner could be established in the findings by both the courts below in this regard and in fact the submission on behalf of the appellants have centered around re-appreciation of evidence for interdicting the concurrent findings of fact. Such course is not permissible in the second appellate court jurisdiction unless the findings are shown to be perverse or unreasonable in any manner. The appellate court below while dealing with point nos. 2 and 3 has taken into notice the case of the defendants that they have no objection in grant of the decree for partition with regard to the ancestral properties and their objection is confined to the properties mentioned in schedule-Ka and Kha of the written statement. However, the appellate court below has further found that the plaintiffs' suit suffers from non-joinder of necessary parties and there is also defect of partial

partition as the plaintiffs have omitted the properties mentioned in R.S. Khatiyani (Ext.-1) which are also joint family properties. On behalf of the plaintiffs no cogent explanation appears to have been furnished. As such there is no illegality in these findings by the appellate court below.

Ex consequenti, this Court does not find any substantial questions of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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