

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.505 of 2013

In

SA 432 of 2010

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Smt. Sita Devi @ Sitli Devi & Ors.

.... Petitioner/s

Versus

Binda Devi & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kanti Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

8 06-07-2015

Heard the learned counsel, Mr. Madhav Roy

appearing on behalf of the petitioners.

This review application has been filed by the petitioners for review of the order dated 07.08.2013 passed by this Court in Second Appeal No.432 of 2010 whereby the Second Appeal was dismissed at the stage of admission under Order 41 Rule 11 C.P.C.

It appears that the plaintiffs-appellants-appellants-petitioners had filed the title suit No.24 of 2000 claiming partition of the suit property claiming 1/3rd share. The plaintiffs filed the aforesaid suit alleging that the property of Jalim Mandal is still joint between the heirs of his three sons and there had been no partition.

The defendants 1st party-respondents-respondents-

opposite parties appeared and filed contesting written statement alleging that there had already been partition between the three sons of Jalim Mandal in the year 1930.

The trial court on the basis of evidences recorded the finding that there had already been partition in the year 1930 and accordingly, dismissed the plaintiff's suit. On appeal filed by the plaintiffs, the lower appellate court also dismissed the appeal and confirmed the trial court judgment. Against that appellate judgment, the plaintiffs filed Second Appeal No.432 of 2010. Under Order 41 Rule 11 C.P.C., this Court after hearing the appellants on 07.08.2013, by the order under review, dismissed the Second Appeal finding that finding of previous partition is a pure question of fact.

The learned counsel, Mr. Madhav Roy submitted that the trial court or the appellate court did not consider Exhibit B/7 and B/8, the two registered sale deeds which were executed by Tanuk Mandal in the year 1936 in favour of strangers wherein he along with the minor sons of the other two brothers were also executant with Tanuk Mandal which clearly indicates that the properties were joint. Therefore, Tanuk Mandal for self and on behalf of minors sold the property but the courts below did not consider these exhibits which resulted in wrong finding that there



had already been partition in the year 1930. Secondly, the learned counsel for the petitioners submitted that issue no.6 was framed to the effect that whether the sale deed executed by Most. Liliya in favour of defendant Nos.2 and 3 is effective or not and after appreciation of evidence, the court below recorded the finding that the defendants failed to prove that Most. Liliya was the step mother of the plaintiff, therefore, the case of the defendants regarding previous partition was also not proved. According to the learned counsel, this is one of the grounds taken by the defendants in the pleading in support of their case that there had already been partition in the year 1930.

Perused the record and the order passed by me which is under review. From perusal of the order, it appears that while passing the order, this Court has taken into account the case pleaded by both the parties and the findings of both the courts below that there has already been partition between the parties in the year 1930. So far this finding is concerned, it is pure finding of fact. Now, therefore, the question is whether on the ground raised by the petitioners, this finding of fact can be said to be erroneous or is a mistake apparent on the face of the record.

It is settled principles of law that the inference of fact drawn from a document is not a substantial question of law. The

question of law relating to interpretation of law with regard to nature of document is only a substantial question of law. Therefore, the submission made by the learned counsel for the petitioner is not at all a substantial question of law.

It is further settled principles of law that if on the basis of the evidences available on record, the courts below arrived at a finding of partition and in Second Appeal, the appreciation of evidence is required for questioning the finding of fact, it will never be a substantial question of law as in Second Appeal, appreciation of evidence is not permitted unless it is shown that the finding of fact is perverse.

So far the second submission of the learned counsel for the petitioners that issue no.6 that the case of the defendants was not proved is concerned, it may be mentioned here that the main issue was whether there had been partition or no partition, whether Liliya Devi was the step mother of the plaintiff or not and whether the sale deed executed by her is of the share of plaintiff or not was not the issue involved between the parties because it will be apparent from the pleadings of the parties that the plaintiffs never challenged the sale deed executed by Most. Liliya Devi. If there had already been partition between the parties in the year 1930 then in such circumstances, the plaintiff was not entitled to a

share in the property even if it is held that Liliya Devi was not the step mother of plaintiff. Moreover, this is not a ground for review.

So far the order under review is concerned, the learned counsel for the petitioners has not pointed out any error apparent on the face of the record. The Hon'ble Supreme Court in the case of **Kamlesh Verma v. Mayawati & Ors., A.I.R. 2013 Supreme Court 3301** has held that "the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review."

In view of my above discussion, I find no merit in this review application and accordingly, this review application is dismissed.

(Mungeshwar Sahoo, J)

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