

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.629 of 2011

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1. Muso Yadav
2. Gulli Yadav
Both are sons of Late Bhuneshwar Yadav
Both are residents of village Mahapur Tola Nawadih Helajote, Police Station
Jhajha, District Jamui

.....Plaintiffs /Appellants/Appellants

Versus

1. Bideshi Yadav, son of Late Huro Yadav
2. Rewa Yadav, son of Late Huro Yadav
3. Bachu Yadav, son of Late Huro Yadav
All are residents of village Mahapur Tola Nawadih Helajote, Police Station
Jhajha, District Jamui

.....Defendant 1st Set/Respondent 1st Set/Respondent 1st Set.

4. Lakhan Yadav.

5. Yugal Yadav

6. Dwarika

7. Prabhu Yadav

All are sons of Late Rohan Yadav, all are residents of village Mahapur Tola
Nawadih Helajote, Police Station Jhajha, District Jamui.

.....Defendant 2nd Party/Respondent 2nd Set/ Respondent 2nd Set.

8. Jhaman Yadav, Son of Late Ayodhya Yadav.

9. Tilak Yadav, son of Late Ayodhya Yadav

All are residents of Mahapur Tola Nawadih Helajote, Police Station Jhajha,
District-Jamui.

.....Defendant 3rd Set/ Respondent 3rd Set/ Respondent 3rd Set.

10. Anandi Devi, W/o Late Shiv Narayan Yadav.

11. Nitu Kumari, D/o Late Shiv Narayan Yadav minor under the guardianship of
Anandi Devi

12. Rubi Devi, W/o Huro Yadav, D/O Late Shiv Narayan Yadav

13. 13. Dhiban Yadav, S/o Late Bhuneshwar Yadav

14. Shyam Yadav, S/o Late Heera Yadav

All are residents of village- Mahapur Tola Nawadih Helajote, Police Station
Jhajha, District Jamui.

.....Plaintiff/Appellant/Respondent 4th set

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ABHISHEK, ADV.
MR. PRABHAT KR. DIPAK, ADV.
For the Respondent Nos. 8 & 9 : Mr. NITYANAND MISHRA, ADV.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-03-2015

Heard learned counsel for the appellants.

Plaintiffs are the appellants in this second appeal against the judgment and decree of affirmance, dismissing the suit.

The plaintiffs filed the suit praying for a preliminary decree of partition of 5/24 share in the suit property mentioned in the schedule. The plaintiffs after mentioning the genealogy of the family and stating the relevant facts have come out with the case of unity of title and possession with the defendants with regard to the suit property. The defendants in the suit contested the case of the plaintiffs specifically asserting that there had been previous partition and there was no unity of title and jointness of possession between the parties with regard to the suit properties.

Both the courts below have recorded the concurrent finding that the plaintiffs have failed to establish the unity of title and jointness with the defendants with regard to the suit properties.

The learned counsel for the appellants has made the solitary submission that both the courts below have failed to appreciate that none of the defendants and witnesses have disclosed the date of partition as claimed by them nor any partition deed or cogent evidence in that regard has been adduced. It has, therefore, been propounded that the finding regarding previous partition, as recorded by both the courts below, is perverse.

After perusal of the judgment of both the courts below and considering the submission, it is pellucid that the only

material issue between the parties before the Court was the existence of unity of title and jointness of possession between the parties with regard to the suit property. The courts below have scrutinized the evidence and thereafter have reached to the conclusion that there has been previous partition between the parties in the suit property which is no more joint between them.

It is well settled that in order to establish the partition between the co-sharers, their status in separation in mess and residence for a long time, independent transaction of the properties, separate possession and enjoyment of the properties are relevant factors. Though these factors individually do not constitute the evidence of partition, but the cumulative effect of them can be that there has been partition among the co-sharers. In the present case, the transfer of the suit property by the plaintiffs themselves, as evidenced by Exhibit-A series, as well as the oral evidence with regard to separate mess, residence and possession have been scrutinized by both the courts below. In his deposition, the P.W. 4 (plaintiff no. 1) has accepted the transfer of some of the properties by the defendants in favour of the stranger to the family and the later purchase of those properties by the plaintiffs themselves. There is no explanation with regard to this conduct whereby the plaintiffs themselves have purchased their alleged own property, which had been transferred by the defendants. The descriptions of the lands

sold by the plaintiffs and defendants also demonstrate their separate possession and support the case of partition.

In this view of the matter, this Court does not find substance in the submission of the plaintiffs-appellants that the failure of the defendants to disclose the date of partition or to bring in evidence the partition deed will itself be sufficient to disbelieve the case of the partition emerging from the evidence on record. The evidence on record are not compatible with the case of jointness as pleaded by the plaintiffs. The findings of facts by the courts below have been recorded on the basis of consideration of the evidence and at the second appellate stage, there is no scope for re-appreciating the evidence for the purpose of interdicting those findings unless the perversity in any manner is established. This Court has not been persuaded to conclude unreasonableness or perversity in any manner in the findings of facts as recorded by the courts below.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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