

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.276 of 2010**

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1. Chapu Besra
  2. Tewari Besra
  3. Mangal Besra, all sons of Late Budhu Besra
  4. Tevlo Devi, wife of Late Arjun Hembram, daughter of Late Budhu Besra, resident of Village Lalmatia, P.O. Beldiha, P.S. Belhar, District Banka
  5. Mako Devi, wife of Late Churka Kisku, daughter of Late Budhu Besra, resident of Village Dorhabari, P.S. and District Banka
  6. Maku Devi, wife of Late Fuchu Besra
  7. Jetha, Besra
  8. Guru Besra, both sons of Late Fuchu Besra
  9. Hapani Devi, wife of Late Shamu Besra
  10. Babulal Besra, son of Late Shamu Besra
  11. Anil Besra, son of Late Shamu Besra,
  12. Jhumri Devi @ Jhuma Devi, wife of Ganga Tudu, daughter of Late Fucho Besra, resident of Viullage Narkatta, P.S. Amarpur, District Banka
  13. Nayka Besra, son of Late Churka Besra, all by cdaste Santhal, resident of Village Ledma, P.O. Tetaria, P.S. Fullidumar and District Banka ....  
Defendant ..... Appellant Ist party
  14. Lakho Manjhian, wife of Late Jitto Besra
  15. Guru Besra
  16. Dhiba Besra
  17. Kailash Besra
  18. Manki Devi
  19. Huro Kumari, all sons and daughters of late Jitto Besra, All residents of Village Ledma, P.O. Tetaria, P.S. Fullidumar, District Banka .....  
Defendant ..... Appellant

.... .... Appellants

Versus

1. Gulo Besra, son of Late Jitan Manjhi
2. Akal Besra, son of Late Barhu Manjhi, both residents of Village Ledma, P.O. Tetaria, P.S. Fullidumar, District Banka .... Plaintiff ....  
Respondents

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Rajib Rajan Jha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL ORDER**

4      22-12-2015

Heard learned Counsel for the appellants.

2. The defendants are the appellants in this Second Appeal against the judgment and decree of affirmance in a suit for partition.



3. The plaintiffs filed the suit for decree for partition claiming 1/3<sup>rd</sup> share in the suit property. The defendants contested the prayer of the plaintiffs mainly on the ground that the plaintiffs were stranger to the family of the defendants. The crucial issue in the suit, therefore, was whether Jitto Manjhi had three sons namely Rijha, Raghu and Jolha Manjhi or only two sons Raghu and Jolha, as according to the case of the plaintiffs Jitto Manjhi had three sons, whereas according to the case of the defendants Jitto Manjhi had two sons.

4. The trial court after considering the pleadings and evidence of the parties returned the finding on the crucial issue in favour of the plaintiffs holding that Jitto Manjhi had three sons Rijha, Raghu and Jolha. In appeal, filed by the contesting defendants, the appellate court on reappraisal of evidence has concurred with the findings of the trial court and has dismissed the appeal by the impugned judgment and decree.

5. Mr. Jha, learned Counsel for the appellants, has submitted that both the courts below have erred in law in relying upon the affidavits (Ext. 3 and 3/a) said to have been sworn by Guru Besra and Dhiba Besra as an affidavit can not to be accepted as evidence. It has further been canvassed by the learned Counsel for the appellants that even the deposition by PW 3 who has been said to be the material grand son of Jitto Manjhi was also not admissible as the plaintiffs have not disclosed the existence of daughter of Jitto Manjhi in the plaint. It has been also propounded that both the courts below have not properly considered the objections raised by the contesting defendants and also the material evidence adduced on their behalf.



6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the decision in the suit was dependant upon the crucial issue as to whether Rijha Manjhi was one of the sons of Jitto Manjhi. This issue of fact has been decided by both the courts below on appreciation and analysis of oral and documentary evidence led by the parties. The courts have also taken into particular notice in this regard the statement made by PW 3 in his deposition where his identity as maternal grand son of Jitto Manjhi was not challenged by the contesting defendants, that Jitto Manjhi had three sons Rijha, Raghu and Jolha Manjhi. The submission on behalf of the appellants that as the existence of the PW 3 or his mother was not disclosed by the plaintiffs in the plaint and therefore his evidence was not admissible is not sustainable in view of the fact that the contesting defendants had also chosen not to question the identity of PW 3. The courts below have also taken into notice the other evidence led by the parties on the issue and this Court has not been persuaded to hold that the findings and conclusions reached by the courts below on the basis of those evidence are unreasonable or perverse in any manner. In fact entire submission on behalf of the appellant has centered around reappraisal of evidence which is not permissible at the second appellate stage unless the findings are shown to be perverse. The possibility of a second view on the basis of appraisal of evidence also cannot be a ground for interfering with the concurrent finding of fact in a Second Appeal.

7. Ex consequenti, this Court does not find any

substantial question of law arising in this appeal for consideration,  
which is, accordingly, dismissed.

**(V. Nath, J.)**

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