

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.25 of 2011

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1. Dindayal Singh, son of Late Ram Nagina Singh
 2. Rita Devi, wife of Dindayal Singh
 3. Amarjit Singh @ Babu Amarjit Singh, son of Dindayal Singh

All residents of Village Fouzdari, PS Pirpainty, District Bhagalpur
..... Plaintiffs Appellants

.... Appellants

Versus

Lakhichand Mahto, son of Ayodhya Mahto, resident of Village Fouzdari, PS
Pirpainty, District Bhagalpur

..... Defendant Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. ANIL KUMAR SAXENA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2015

Heard learned Counsel for the appellants.

2. Taking exception to the judgment and decree passed by the appellate court affirming the dismissal of the suit filed by the plaintiffs the present Second Appeal has been filed.

3. The admitted facts are that the plaintiffs and the defendant are decedents of common ancestor. The present suit has been filed by the plaintiffs for declaration of their title and confirmation of possession over the suit land on the basis that there had earlier been partition between the two brothers (plaintiffs and defendant) and in that partition the suit property was allotted in the exclusive share of the plaintiffs. It is the case of the plaintiffs that since thereafter the plaintiffs have been coming in exclusive possession over the same.

4. The defendant denied the averments and resisted the claim of the plaintiffs.

5. The trial court on scrutiny of evidence and pleadings of the parties has come to the finding that the plaintiffs themselves had filed another Title Suit in the year 1989 for partition of the suit properties including the present suit properties and on the said basis the trial court has come to the finding that the suit filed by the plaintiffs was barred by *res judicata*. The trial court further, after considering the materials, recorded the finding on other issues also against the plaintiffs. In appeal, the appellate court on reappraisal of evidence has overturned the finding of the trial court on the bar of *res judicata* but concurred with the other findings of the trial court. It has been categorically held by the appellate court below that by filing the suit for partition in the year 1989, the plaintiffs' case, that there had already been partition for the suit land in the year 1986 through panchnama, stood belied.

6. After perusal of the judgments of both the courts below and considering the submissions on behalf of the appellants it is limpid that the claim of the plaintiffs for exclusive title and possession over the suit land was based upon the earlier partition in the year 1986. However, the fact remains uncontroverted that the plaintiffs filed a suit for partition in the year 1989 for the suit property also. In this backdrop the conclusion drawn by both the courts below that the foundational fact, on the basis of which the plaintiffs have claimed the relief, have vanished as the two stands of the plaintiffs have been held to be contradictory. The appellate court below has elaborately considered the pleadings and evidence and this Court has not been persuaded to find illegality, unreasonableness

and perversity in the same.

7. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this Second Appeal which is accordingly dismissed.

(V. Nath, J.)

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