

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.80 of 2010

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Babulal Singh, son of Late Sukhdeo Mahto, resident of Village Batan Bigha, PS Karpi, District Arwal

..... Plaintiff Respondent

.... Appellant

Versus

Mukesh Prasad @ Sri Bhagwan Singh, son of Late Balgovind Mahto, resident of Village Batan Bigha, PS Karpi, District Arwal.

..... Defendant Appellant

.... Respondent

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Appearance :

For the Appellant/s : Mr. T. N. Maitin, Sr. Advocate
 Mr. ASHOK KUMAR
 Mr. Sheel Bnadra Jha
 Mr. Shyam Bihari Singh

For the Respondent/s : Mr. Surendra Kumar Singh, Sr. Advocate
 Mr. Sunil Srivastava
 Mr. Praveen Prakash

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-04-2015

Heard Mr. T. N. Maitin, learned Senior Counsel appearing for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of reversal. The suit has been filed by the plaintiff primarily for declaration that Late Brahamdeo Singh had no right to execute a will in respect of the above land and that the plaintiff is entitled to have the land which were inclusive to the share of Late Brahamdeo Singh listed in the will in question. The genealogy of the family of the parties is not in dispute, from which it will transpire that Fagu Singh had



three sons namely Sukhdeo Singh, Bal Govind Singh and Brahamdeo Singh. The plaintiff Babu Lal Singh is the son of Sukhdeo Singh. Brahamdeo Singh has executed the will in question in favour of Sri Bhagwan Singh, son of Bal Govind Singh. It transpires from perusal of the judgments of both the courts below that the case of the plaintiff precisely is that Brahamdeo Singh has executed the will in excess of share of his land. It has been found by the appellate court below that the execution of the will and the legality of this execution has not been assailed by the plaintiff. The appellate court has further found, after considering the deposition of the plaintiff Babu Lal Singh, that he had been carrying the impression that this was the suit for partition.

3. In view of the aforesaid deposition by the plaintiff and also in view of the fact that it is not the case of the plaintiff that there had been partition among the three sons of Fagu Singh by metes and bounds and Brahamdeo Singh had executed the will in excess of his share, to be precise 8 Katha more land of his share, cannot be believed and in this backdrop the appellate court has come to the finding that the plaintiff cannot be granted the relief as prayed and, therefore, after reversing the judgment of the trial court the appeal has been allowed and the suit has been dismissed.

4. Mr. Maitin, learned Senior Counsel, has submitted that the appellate court has not properly considered the pleadings and evidence.

5. However, during course of submission this Court has not been persuaded to take a view that the findings and the conclusion arrived by the appellate court below can be said to be unreasonable or

perverse.

6. Ex consequenti, this Court finds that no substantial question of law is arising for consideration in this appeal, which is accordingly, dismissed.

(V. Nath, J.)

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