

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.276 of 2013

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1. Satendra Mour S/o Late Umesh Chand Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.
 2. Upendra Mour S/o Late Umesh Chand Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.
 3. Pramod Mour S/o Late Umesh Chand Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.
 4. Mintu Mour S/o Late Umesh Chand Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.
 5. Pabati Kuer W/o Late Umesh Chand Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.

(Defendants-Respondents in the courts below).... Appellants
Versus

1. Ramesh Chand Mour S/o Late Ram Ekbal Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara... Resp. 1st Set.
2. Lalan Mour S/o Nathuni Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.
3. Damodar Mour S/o Lakshmi Mour Resident of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara. Resp. 2nd Set.
4. Lalita Devi W/o Uma Kant Tiwary Resident Of Village- Khadawan Chaturbhuj, P.S- Sahar, District- Bhojpur at Ara.

.... Respondents 3rd set

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Appearance :

For the Appellants : Mr. RAS BIHARI THAKUR

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-10-2015

Heard Mr. Ras Bihari Thakur, learned counsel
appearing for the appellants.

2. The defendants in the suit are appellants in this
appeal against the judgment and decree of reversal.

3. The plaintiff filed the suit assailing the deed of
exchange executed by the defendant 1st set in favour of the defendant

2nd set for Schedule-I property and further for partition of his share in the property mentioned in Schedule-II of the plaint.

4. The plaintiff and defendant no. 1 are admittedly brothers. They jointly acquired the property by sale deed dated 22.9.1975 in their names. Thereafter the deed of exchange was executed by defendant no. 1 alone in favour of the defendant 2nd set. The plaintiff has claimed to be entitled to the relief against the deed of exchange and also for partition of half share in the property mentioned in Schedule-II of the plaint.

5. The defendant no. 1 did not contest the suit by filing written statement even after appearing in the suit and allowed the same to proceed ex parte. The suit was contested by defendant 2nd set only by filing written statement denying the claim of the plaintiff. However, it was pleaded by the defendant 2nd set that there had been partition in between the plaintiff and defendant no. 1 in the year 1970 itself.

6. The trial Court after scrutiny of evidence returned the findings against the plaintiff and dismissed the suit. The appellate Court on appeal by the plaintiff on reappraisal of evidence has over turned the findings of the trial court and granted the decree to the plaintiff.

7. The learned counsel for the appellants has

submitted that the appellate court below has not properly considered the evidence on record and the judgment of reversal is vulnerable due to misappreciation of facts and pleadings. No other submission has been made on behalf of the appellants.

8. After perusal of the findings of both the courts below and considering the submissions, it is apparent that the defendant no. 1 (since deceased through L.R.) had not chosen to contest the claim of the plaintiff and the relief prayed for by him. It is not the case of the defendant no.1/ appellants that they had no knowledge of the suit filed by the plaintiff, rather the defendant no. 1 appeared in the suit at one stage and thereafter left appearing in the suit without filing any written statement. From the pleadings and evidence on record, it is evident that the status of the plaintiff and defendant no. 1, who were joint till 1978, is an admitted fact and it is further also admitted that the property, which is subject-matter of exchange in favour of the defendant 2nd set, was acquired in the year 1975 in the joint names of both the brothers.

9. In that view of the matter, there is no error in the findings of the appellate court below that the defendant no. 1 alone could not have alienated the said property in favour of defendant 2nd set by exchange. Further also in view of the fact that defendant No. 1 has not chosen to contest the assertion made by the plaintiff, this

Court does not find error in the judgment of the appellate court below in recording the findings in favour of the plaintiff and granting decree of reversal. It is manifest that the appellate court below has considered the evidence on record at length before reaching to the conclusions and this Court does not find any perversity or unreasonableness in its findings.

10. 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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