

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.207 of 2013

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1. Satyanarain Singh S/O Surya Deo Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
 2. Parmanand Singh S/O Surya Deo Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.

.... Appellant/s

Versus

1. Vidya Devi D/O Late Yamuna Singh And W/O Banshidhar Sharma Resident Of Village- Dumrawan, P.S- Pakaribrawan, District- Nawadah.
2. Bibha Kumari D/O Late Yamuna Singh And W/O Sri Rabindra Singh Resident Of Village- Nima, Post And P.O- Daudnagar, District- Aurangabad.
3. Ramcharitra Singh S/O Yamuna Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
4. Shaligram Singh S/O Yamuna Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
5. Tarni Singh S/O Yamuna Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
6. Ramlagan Singh S/O Yamuna Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
7. Sunita Kumari W/O Ramanand Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
8. Rambadan Singh S/O Yamuna Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.
9. Uma Devi D/O Late Surajdeo Singh Resident Of Village- Rebara Jagdishpur, P.S- Warsaliganj, District- Nawadah.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. RANJAN KUMAR DUBEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-03-2015

Heard Mr. Ranjan Kumar Dubey, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance.

3. The plaintiffs filed the suit for partition stating that the suit property was joint family property of the plaintiffs and the defendants.

Defendant nos. 1 to 7 filed a written statement contesting the claim of the plaintiffs and asserted that there had been previous partition in the year 1988 with regard to the suit property and there was now no unity of title and possession between the parties for the suit properties.

4. Both the courts below have concurrently held that there has been previous partition in the year 1988 as claimed by the contesting defendants. The suit was, therefore, dismissed and the appeal thereafter has also been dismissed.

5. Mr. Dubey, learned Counsel appearing for the appellants has submitted that the judgment passed by both the courts below is vitiated for want of framing of point for determination in the appeal as required by provisions of order 41 Rule 31 CPC. It has also been submitted that the appellate court below has not applied its independent mind to the facts and circumstances of the case and has merely followed and affirmed the judgment rendered by the trial court. It has also been canvassed by the learned Counsel that the evidence led by the plaintiffs have not been properly considered.

6. After perusal of the impugned judgments and considering the submissions, it is manifest that the centrirorial issue between the parties is the previous partition of the suit properties. The defendants have claimed that there had been complete partition in the year 1988 and a memorandum of partition (**Akhauta**) duly signed by the parties and the witnesses was also prepared. The defendants have also brought in evidence the said memo of partition as Ext. B/1. The defendants have also brought in evidence the order (Ext. M) passed in the mutation proceeding on the basis of the compromise petition filed by the parties



whereby the Jamabandi was bifurcated in accordance with the partition done in the year 1988. The other documents (Ext. J and N) wherein the plaintiffs have accepted the partition of the year 1988, have also been adduced in evidence by the defendants. The defendant no. 8, who was the father of the plaintiffs, and who also filed written statement in support of the plaintiffs, did not appear in the witness box to deny the previous partition and his signature on the memorandum of partition (Ext. B/1).

7. Both the courts below after elaborate scrutiny of the evidence of the parties have arrived at the finding that there had been previous partition in the year 1988 between the parties and the suit property is no more joint between the parties to the suit as claimed by the plaintiffs.

8. Learned Counsel for the appellants though has submitted that the appellate court below has failed to frame points for determination in the appeal, but simultaneously has failed to establish as to in which manner any prejudice has been caused to the appellants by non-framing of the points for determination. It is well settled by now that the provision to frame the points for determination is only directory and non framing of points for determination by the appellate court below will not vitiate the judgment unless it is shown that the appellate court below has failed to consider the material facts and evidence or has failed to address to the crucial issues. Learned Counsel has also submitted that the evidence of the plaintiffs have not been considered in proper perspective. However, during course of submission this Court has not been persuaded to conclude any perversity or unreasonableness in the finding by the courts below. As the judgment passed by the appellate court below is the judgment in affirmance, no elaborate independent reasonings were

required to be given by the appellate court. This Court thus does not find merit in the submission on behalf of the appellants that the appellate court below has failed to give independent reasonings. The civil disputes are decided on the parameter of preponderance of probability and the impugned judgments of the courts below exposit the application of this parameter correctly.

9. In the aforesaid premised reason 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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