

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.61 of 2014**

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1. Rahim Bux Son Of Late Suba Mian  
2. Mohammad Ali Son Of Mohammad Ilias Both Are Resident Of Village-  
Bishunpur Gidha, P.S- Maniyari, Sub- Division, Muzaffarpur ( West), District-  
Muzaffarpur.

.... .... Appellants

Versus

1. Abdul Khalique  
2. Abdul Malique  
3. Abdul Barique  
4. Abdul Sadique  
5. Abdul Rajique All Are Sons Of Mohammad Idris ( Deceased) All Are Resident  
Of Village Bishunpur Gidha, P.S- Manihari, Sub- Division, Muzaffarpur ( West),  
District- Muzaffarpur.

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. JITENDRA PRASAD SINGH

For the Respondent/s : Mr.

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

**ORAL JUDGMENT**

**Date: 08-12-2016**

Heard Mr.Jitendra Kumar Singh, learned counsel  
appearing for the appellants.

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

At the outset, the learned counsel appearing for  
the appellants has submitted that the claim for partition as made in the  
plaint is not being pressed and the relief with regard to the declaration  
of title and recovery of possession over the Plot No.668 area 2



decimal is only pressed in this appeal. The fact is not in dispute that the present plaintiff no.1 Rahim Bux was the brother of Md. Idris. The property in Plot No.668 was admittedly purchased in the name of Md.Idris. However, it was the case of the plaintiff that Md. Idris was the karta of the family and the property was purchased on behalf of the appellants out of a joint family fund by the joint family in the name of karta. It was also the case of the plaintiff that in the year 1970 there was partition in which the plaintiff was allotted 2 decimal land of Plot No.668 which is under dispute at present. The plaintiff alleged that he was dispossessed in the year 1985 and after the proceedings before the criminal courts, the suit has been filed by him in the year 1994.

The defendants contested the case of the plaintiff and claimed their exclusive title and possession over the Suit Plot No.688 area 2 decimal.

Both the courts below have returned the findings on the issues against the plaintiff and ultimately the suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

Mr.Singh, learned counsel appearing for the appellants has made the solitary submission relying upon Section 57 of the treatise “ Mulla principles of Mohemmadan Law” and has



submitted on that basis that though the suit property was purchased in the name of Karta Md.Idris but in the revenue records the entry of the name of Md. Idris alongwith the name of the plaintiff no.1 has been made which fact clearly goes to show that the plaintiffs have got right, title and interest in the suit property. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the impugned judgment, it transpires that both the courts below on the basis of consideration of evidence have come to the conclusion that the plaintiffs have failed to establish firstly their claim of title over the suit land and further their dispossession as alleged to be in the year 1985, by leading cogent evidence. Section 57 of the Mulla principles on Mohemmadan Law is also not attracted in the facts and circumstances of the present case as both the courts below have concurrently found that the plaintiffs have failed to substantiate the acquisition of the suit land by the family out of joint family fund in the name of Karta Md.Idris which fact is also apparent when the plaintiff no.1 has claimed to have contributed Rs.600/- towards the consideration money but the said fact has also been found to be wrong as the total consideration money mentioned in the sale deed was only Rs.100/-. Further the plaintiffs also failed to lead cogent evidence to establish their dispossession in the year 1985 and their



whole case was based upon the entries in the survey khatian which according to the well settled principles do not confer or extinguish right, title and interest over the property. During the course of submissions, this Court has not been persuaded to hold that the conclusions arrived by the courts below are perverse and unreasonable in any manner. This Court finds that the courts below, before recording the findings, have relied upon the evidence which were acceptable and the inference drawn on the basis of the same cannot be said to be unreasonable in any manner.

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

**(V. Nath, J)**

Nitesh/-

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