

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.80 of 2014

Kanchan Singh Son Of Yadunandan Singh Resident Of Village - Nathanpura,
Police Station - Gautam Budhnagar, District – Siwan

..... Plaintiff Appellant

.... Appellant

Versus

1. Suresh Singh
2. Deonath @ Deonandan Singh Both Sons Of Late Rajeshwar Singh Resident Of Bishunpura, Police Station - Jamo Bazar, District - Siwan
1. 3. Most. Shanti Kunwar Wife Of Late Ramajee Mahto Resident Of Village - Sheodah, Police Station - Gautam Budh Nagar, District - Siwan
3. Nirmala Devi Wife Of Shri Krishna Singh Resident Of Village - Sheodah, Post Office Madhopur, Police Station - Gautam Budh Nagar, District - Siwan
4. Lallan Singh Son Of Late Mahanth Singh Resident Of Village - Teen Bheria, Police Station - Barhariya, District - Siwan
5. Lilwati @ Leelwati Devi Wife Of Rajendra Singh Resident Of Village - Dindayalpur, Police Station - Gautam Budh Nagar, District - Siwan
6. Lal Babu Singh Son Of Late Nathuni Singh Resident Of Village - Sheodah, Post Office Madhopur, Police Station - Gautam Budh Nagar, District - Siwan
7. Nand Kishore Singh @ Braj Kishore Singh Son Of Wakil Singh
8. Jagarnath Sah Son Of Late Kashi Sah
9. Sunil Sah Son Of Surya Sah
10. Ramyas Barai Son Of Bal Govind Singh
11. Shanti Devi Wife Of Late Chandrama Tiwari
12. Renu Devi Daughter Of Chandrama Tiwari
13. Fateh Mian @ Saheb Jada Son Of Sahdul Mian 8 To 14 All Resident Of Village - Shivdah, Police Station - J.V. Nagar, District - Siwan
14. Prabhawati Devi Wife Of Ganesh Singh Resident Of Bagra Police Station J.V. Nagar, District - Siwan
15. Punam Devi Wife Of Manoj Singh Resident Of Gopalpur, Police Station - Panchrukhi
16. Dharmshila Wife Of Braj Kishore Singh Resident Of Village - Sheodah, Police Station - Gautam Budh Nagar, District - Siwan
17. Pramila Devi Wife Of Biajnath Singh Resident Of Jasauli, Police Station - Panchrukhi, District – Siwan

..... Defendants Respondents

.... Respondents

Appearance :

For the Appellant/s : Mr. Anil Singh
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-05-2016

Heard Mr. Anil Singh, learned Counsel appearing for the appellant.

2. The plaintiff is the appellant in this second appeal against the judgment and decree of affirmance dismissing the suit filed by the plaintiff for partition.

3. From perusal of the judgments of both the courts below it transpires that in the suit for partition filed by the plaintiff the core issue, in view of the case of the defendants, was limited to the status of the plaintiff as a member of the family of Pitambar Singh, whose property had been sought to be partitioned. Both the parties adduced documentary as well as oral evidence on the said issue. Both the courts below have returned the finding on the said issue against the plaintiff holding that the plaintiff has failed to establish that he is descendent of Pitambar Singh. The suit was dismissed and thereafter the appeal filed by the plaintiff has also been dismissed by the impugned judgment and decree.

4. Mr. Singh, learned Counsel appearing for the appellant, has submitted that both the courts below have not properly considered the documentary evidence (Ext. 2) which supports the case of the plaintiff that he is one of the members of the family of Pitambar Singh. It has been contended that Ext. 2 has been issued by the Sarpanch of the concerned Gram Panchayat and is a decision in the proceeding before the Gram Kutchery. No other submission has

been made on behalf of the appellant.

5. As mentioned above, the spinal issue was the status of the plaintiff to be descendent of Pitambar Singh and in support of the same the plaintiff has produced the documentary evidence being the decision in the proceeding by the Gram Kutchery. It, however, transpires that the said document has been considered by both the courts below and in particular by the appellate court below at page 11 of its judgment, wherein it has been found that though the said document (Ext. 2) is said to be a decision by the Gram Kutchery, but it does not bear any case number. It has also been found that in view of the complicated question of title involved there was also no order for transfer of the proceeding before the competent court. It is thus evident that the said document has been considered by the courts below along with other oral and documentary evidence adduced by the parties and thereafter the conclusion has been arrived that the plaintiff has failed to establish his relationship in the family of Pitambar Singh. It is well settled that the civil disputes are decided on the basis of preponderance of probability and in the present case it is not the submission on behalf of the appellant that the findings have stemmed out of non consideration of evidence or are based upon only surmises and conjectures. Even if the finding of fact is wrong but if it is based upon some evidence which is acceptable and could have been reliable the same will not give rise to a substantial question of law as held by the Apex Court in the case of ***Damodar Lal vs Sohan Devi, AIR 2016 SC 262.***

6. Ex consequenti, this Court does not find any

substantial question of law arising in this appeal for consideration,
which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.05.2016
Transmission Date	