

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.241 of 2013

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Shriman Chaubey @ Shriman Narayan Choubey S/o Late Ramnath Choubey
resident of village AND P.O- Babhnaul, P.S- Dawath, District- Rohtas.
..... Defendant Respondent

.... Appellant

Versus

Shridhar Narayan Chaubey S/o Late Rangnath Chaubey Resident of Village AND
P.O- Bhabhnaul, P.S- Dawath, District- Rohtas.
..... Plaintiff Appellant

.... Respondent

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Appearance :

For the Appellant/s : Mr. RANJEET CHOUBEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-08-2016

Heard Mr. W. Rahman, learned Counsel appearing for the
appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of reversal, granting decree to the plaintiff for
declaration of title over the suit land and for permanent injunction against
the defendant.

3. The plaintiff claimed his title over the suit land on the basis of
sale deed dated 26.6.1962. It is the case of the plaintiff that he
purchased the suit property out of his own income and own resources.
The defendants, who are cousins of the plaintiff, have claimed the suit
property to be the joint family property and have asserted that the same
has been acquired out of the joint family income.

4. The trial court returned the finding against the plaintiff and
dismissed the suit. In appeal by the plaintiff, the appellate court on
reappraisal of evidence has reversed the finding of the trial court and

allowed the appeal by the impugned judgment and granted the decree to the plaintiff, as prayed.

5. Mr. Rahman, learned Counsel for the appellant, has strenuously argued that the appellate court below has ignored the requirement of Order 41 Rule 31 CPC and it has omitted to consider each and every issue arising between the parties in the suit. It has been next contended that the contesting defendants had pleaded in the written statement that the joint family of the plaintiff and the defendants had sufficient land and from the income out of which the suit property could have been purchased. It has also been propounded that the reasons assigned by the trial court have also not been considered by the appellate court below and, therefore, the findings by the appellate court are vulnerable.

6. After considering the submission and perusal of the judgments of the courts below, it is pellucid that the sale deed dated 26.6.1962 stands exclusively in the name of the plaintiff. The legal presumption which follows has been tried to be contradicted by the defendants with the submission that the said sale deed has been obtained out of the joint family income. The appellate court has come to the finding that no evidence has been adduced on behalf of the defendants to establish that the nucleus was in the hands of the family out of which the property, the subject matter of the sale deed dated 26.6.1962, could have been purchased. The learned Counsel for the appellant has placed reliance upon the survey khatian to show that the family of plaintiff and the defendants possessed sufficient landed property, but still no evidence could be pointed out to show that the said property yielded sufficient usufruct which could have created

the nucleus or the family fund. The plaintiff has also pleaded that there had been partition in the family and has also produced Ext. 2, which is a sale deed executed by the defendants in favour of the plaintiff. The appellate court below has found that the defendants could not give satisfactory explanation regarding the aforesaid deed which shows inter se transaction. The appellate court below has further also considered the oral and documentary evidence before coming to the conclusion on the points formulated for determination. It does not appear from the judgment of the appellate court below that any of the material issues arising between the parties has been omitted from consideration causing failure of justice.

7. In this view of the matter, this Court is not inclined to align with the submission on behalf of the appellant that the appellate court has failed to consider all the issues arising between the parties. The findings recorded by the appellate court are based upon evidence which are acceptable and could have been relied upon. This Court does not find any perversity or unreasonableness in the findings of the appellate court below.

8. Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Snkumar/-

(V. Nath, J.)

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