

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

**Second Appeal No.122 of 2014**

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Balmiki Ojha, son of Late Ganga Deyal Ojha, resident of Village Paharpur, P.O. Umraonganj, P.S. Bihia, District Bhojpur at Ara

..... Plaintiff ..... Appellant

.... .... Appellant

Versus

1. Rabindra Kumar Ojha @ Munni Ojha, son of Late Ganga Deyal Ojha, .....  
Defendant 1st set ..... Respondent

2. Ram Suresh Dubey, son of Sudama Dubey, ..... Defendant 2<sup>nd</sup> set .....  
Respondent

3. Sri Kant Ojha, son of Late Bhagwat Ojha

4. Mithilesh Ojha @ Bir Bahadur Ojha

5. Santosh Ojha, both sons of Sri Kant Ojha .... Defendant 2<sup>rd</sup> set ....  
Respondent

6. Ram Pujan Ojha

7. Rama Kant Ojha

8. Birendra Ojha, all sons of Latge Sheo Murat Ojha ..... Defendant 4<sup>th</sup> Set .....  
Respondent

All residents of Village Paharpur, P.O. Umraonganj, P.S. Bihia, District Bhojpur at Ara

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ras Bihari Thakur

For the Respondent/s : Mr.

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

**ORAL JUDGMENT**

**Date: 29-08-2016**

Heard Mr. Ras Bihari Thakur, learned Counsel appearing for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The plaintiff filed the suit for declaration that the sale deed dated 30.7.2003 executed by defendant No. 3 in favour of defendant No. 2 was inoperative and ineffective and not binding upon the plaintiff with further relief for partition of the share of the plaintiff in the suit property.

4. The courts below have taken into notice the fact that during

pendency of the suit itself the plaintiff purchased a part of the suit property from defendant No. 1 by getting a sale deed executed by him. It has also been taken into notice that the said fact has been accepted by the plaintiff in para 27 of his deposition.

5. The appellate court below has also taken into notice that the suit has not been filed with regard to the entire family property and, therefore, a conclusion has been arrived that the suit was bad for partial partition. The conclusion drawn by both the courts below that there has been previsions partition between the parties is evidenced by the inter se dealing of the properties by the parties and their evidence. This Court has not been persuaded to find any perversity or unreasonableness in the findings of the courts below which are based upon evidence which could have been relied upon.

6. Mr. Thakur, learned Counsel for the appellant has submitted that both the courts below have not property considered the evidence on record. However, during course of submission such allegation of improper consideration could not be established.

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

(V. Nath, J.)

Snkumar/-

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