

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.153 of 2014

Indu Devi @ Indu Kumari Devi Daughter of Late Ram Kishore Lal, wife of Suraj Keshwar Sahai @ Chunmun Lal Resident of Mohalla - Tari Mohalla, Police Station - Ara Town, District - Bhojpur, At present resident of Chitragupta Nagar, Near Registry Office, Bikramganj, District - Rohtas.

..... Plaintiff Appellant

.... Appellant

Versus

1. Mithleshwari Kuer Daughter of Late Raj Kishore Lal, wife of Late Pandey Vishwanath Sharan resident of Mohalla - Ramgarhia, Police Station - Ara town, District - Bhojpur. Defendant Respondent 1st set
2. Annapurna Devi wife of Kameshwar Prasad Resident of Village - Biranipur, Police Station - Koelwar, District - Bhojpur.
..... Defendant Respondent 2nd set

.... Respondents

Appearance :

For the Appellant/s : Mr. S.S.Dwivedi, Sr. Advocate
Mr. Ranjan Kumar Dubey, Advocate
Mr. Parth Gaurav, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-11-2016

Heard Mr. Parth Gaurav, learned Counsel for the appellant.

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

3. The matrix of facts discloses that admittedly there were three sisters. One of the sisters namely Indu Devi (appellant in this appeal) filed T.S. No. 206 of 2002 for partition of the suit property. The another sister namely Mithleshwari had earlier filed T.S. No. 14 of 1997 claiming



rights under Section 4 of the Partition Act. This suit, after transfer from the court of Sub Judge, was numbered as T.S. 520 of 2004. The remaining sister Anapurana Devi was defendant in both the suits. Both the suits were tried analogously and were dismissed by the common judgment by the trial court. No appeal was filed by the plaintiff of T.S. No. 520 of 2014. However, the plaintiff of T.S. No. 206 of 2002 filed appeal assailing the judgment and decree dismissing T.S. No. 206 of 2002. The appellate court below by the impugned judgment and decree has concurred with the findings of fact recorded by the trial court whereby no unity of title and jointness of possession between the parties with regard to the suit property was found, and has dismissed the appeal by the impugned judgment and decree.

4. The fact has not been disputed on behalf of the appellant during course of submission that the present appellant, who was plaintiff in T.S. No. 206 of 2002, was defendant in T.S. No. 520 of 2004 and had filed her written statement in the said suit resisting the claim of the plaintiff in the suit filed under Section 4 of the Partition Act on the ground that there had already been partition with regard to the suit property.

5. Mr. Parth Gaurav, learned Counsel for the appellant has strenuously submitted that the court below has committed error in taking into notice the admission made by the plaintiff-appellant in T.S. No. 520 of 2004 with regard to the previous partition. It has been canvassed that as no appeal was preferred against the dismissal of the said suit and as the records were not before the appellate court, the statements made in the pleading of that suit thus could not have been taken into consideration. On the strength of the provisions of Section 145 of the



Evidence Act, it has been further contended that the plaintiff-appellant was not cross-examined by the defendant and she was not confronted during the deposition with regard to the submission made in the pleading of T.S. No. 14 of 1997/520 of 2004. The learned Counsel has further also submitted that the appellate court below has committed error of record in stating that the other defendants have also admitted the previous partition. No other submission has been made on behalf of the appellant.

6. After perusal of the judgments of both the courts below and considering the submission it is pellucid that the present appellant was plaintiff in T.S. No. 206 of 2002 but prior to that the defendant No. 1 of the present suit had filed T.S. No. 14 of 1997/520 of 2004 under Section 4 of the Partition Act and in that suit the present plaintiff-appellant had filed a written statement stating that there had already been partition between the parties. Without cavil, this is a judicial admission by the plaintiff-appellant and Section 145 of the Evidence Act in such a case does not require a party to the suit to be confronted with the such admission in view of the principle as enunciated by their lordships in the case of ***Bishwanath Prasad & ors. vs Dwarka Prasad (Dead) & ors.*** ***AIR 1974 SC 117.***

7. Both the courts below after considering the evidence which were acceptable and could have been relied upon, have come to the concurrent finding of fact that the plaintiff has failed to establish by cogent evidence the unity of title and jointness of possession of the parties in the suit property. It is well settled by now that the weakness in the case of the defendant will not enure to the benefit of the plaintiff who has to succeed or fail on the strength of his own case. After going



through the findings of fact recorded by both the courts below this Court has not been persuaded to find the same to be perverse or unreasonable in any manner.

8. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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