

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.190 of 2014

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Madhav Chandra Singh Son of Late Shiv Bachan Singh R/o Village Babhangama,
Tole Gamhariya, P.S. Mejarganj, District Sitamarhi

.... Appellant/s

Versus

1. Lalan Singh Son of Late Singhasan Singh R/o Village Babhangama, Tole Gamhariya, P.S. Mejarganj, District Sitamarhi.
2. Baijnath Singh Son of Late Kalika Singh.
3. Raj Kishore Singh.
4. Ram Kishore Singh.
5. Awadha Singh respondent nos. 3 to 5 Sons of Late Raghu Singh.
6. Shiv Shankar Singh
7. Ram Shankar Singh
8. Shyam Shankar Singh respondents 6 to 8 Sons of Late Ram Kumar Singh
9. Jagarnath Singh
10. Kedar Singh respondents 9 to 10 Sons of Late Raghunath Singh All R/o Village Babhangama, Tole Gamhariya, P.S. Mejarganj, District Sitamarhi
11. Triloki Choudhary Son of Ishwarnath Choudhary
12. Bigan Baitha son of Ramyad Baitha
13. Shiv Balak Singh Son of Shubh Narayan Singh
14. Shiv Shankar Singh Son of Jagdish Singh respondents 11 to 14 R/o Village Sinduriya, P.O. and P.s. Bairgania, District Sitamarhi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vaidehi Raman Prasad Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-12-2016

Heard Mr. V.R.P. Singh, learned counsel for the appellant.

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



The plaintiff filed the suit praying for partition of his 1/6th share i.e. four and half decimal land in the property as mentioned in schedule-I. It has been the case of the plaintiff that his co-sharers have transferred the property to the purchasers. During the course of submission, Mr. Singh, learned counsel for the appellant has submitted that the other co-sharers have transferred the property which was more than their share and those transfers also included the property of the share of the plaintiff. It has, however, also been accepted that no relief against those transfers and recovery of possession against the purchasers have been prayed in the suit by the plaintiff.

Both the courts below have come to the concurrent finding that the plaintiff's suit for partition is not maintainable as there had already been partition. Further it has also been held that according to the case of the plaintiff himself, in absence of unity of title and jointness of possession also, the suit for partition was not maintainable as no reunion was pleaded or established on behalf of the plaintiff.

After considering the submissions and perusal of the judgments of both the courts below, this Court finds that once after admitting the fact that the property of the share of the plaintiff has also been transferred by his co-sharers and the purchasers are in possession, a simple suit for partition would not be maintainable in



absence of the relief for recovery of possession or against the alienation beyond their shares alleged to have been made by other co-sharers. The learned courts below have recorded their conclusions on the basis of the evidence which were acceptable and could have been relied upon and this Court has not been persuaded to find perversity or unreasonableness in the same 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)

Devendra/-

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