

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

**Second Appeal No.147 of 2014**

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1. Bijay Kumar  
2. Ajay Kumar @ Ajay Prasad  
3. Madhuri @ Madhuri Devi  
4. Sudha @ Sudha Devi All Sons and daughters of Late Ayodhya Prasad  
5. Sundari Devi wife of Late Ayodhya Prasad All resident of Mohalla- Golghar,  
P.S.- Budh Colony, District-Patna.

.... .... Appellants

Versus

1. Shanti Devi Wife of Late Ram Dayal Prasad @ Munna Jee  
2. Sharvan Kumar  
3. Dharambir Kumar Both Sons of Late Ram Dayal Prasad @ Munna Jee  
4. Ponam Devi Wife of Late Nand Kishore Prasad  
5. Putul Devi Wife of Sri Mukesh Prasad  
6. Sushama Kumari  
7. Pinki Kumari  
8. July Kumari  
9. Khushbu Kumari  
10. Ruchi Kumari 6 to 10 are daughters of Late Ram Dayal Prasad @ Munna Jee  
All resident of Mohalla- Golghar, P.S.- Budh Colony, District- Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ravindra Kr Sinha No.2

For the Respondent/s : Mr.

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

**ORAL JUDGMENT**

**Date: 10-08-2016**

**V.Nath, J.**

Heard Mr.Ganpati Trivedi, learned senior counsel

appearing for the appellants.

The defendants are the appellants in this appeal  
against the judgment and decree of reversal granting the decree for  
partition to the plaintiff.

The suit was filed for a decree of partition of the  
suit property as described in Schedule-I of the plaint for half share

therein.

The plaintiff's case was that though the parties were residing separately and messing separately but there was no partition by metes and bounds of the suit property. The relief therefore was sought for partition of the suit property with regard to the half share of the plaintiff.

The defendants came out with specific case that there had been partition through Panchayati on 09.09.1990 and the parties were no more joint thereafter with regard to the suit property. Both the courts below have come to the concurrent finding of fact that the defendants have failed to establish the case of partition as pleaded. The suit was decreed and thereafter appeal filed by the defendants has been dismissed by the impugned judgment and decree.

Mr. Trivedi, learned senior counsel has submitted that the courts below have wrongly construed the evidence on behalf of the parties and therefore the findings are perverse. It is however not the case on behalf of the appellants that any material evidence on behalf of the defendant-appellants has been ignored or omitted from consideration by both the courts below. The learned senior counsel has taken the court through the details of the pleading and the portions of the impugned judgments of both the courts below in order to persuade this Court to find that the findings as recorded by both the

courts below are not legally sustainable. No other submission has been made on behalf of the appellants.

After considering the submissions and the perusal of the judgments of both the courts below, it is manifest that the defendants have categorically pleaded that the partition of the suit property therefore Panchayti was done on 09.09.1990 between the parties and thereafter there is no joint property left between the parties. It has also been pleaded that the Schedule-I property of the plaintiff was partitioned half and half between the plaintiff and the defendants. In his deposition as D.W.7 the defendants have also precisely stated the fact of partition having taken place on 09.09.1990 in presence of the parties and neighbours of the mohalla at the instance of the Panches. It has also been deposed that a Panchnama was prepared and the copy of the same was handed over to both the parties. The courts below however have found that the said Panchnama has not been marked as exhibit in evidence though filed on behalf of the defendants. Both the courts below have elaborately scrutinized the oral and documentary evidence on behalf of the parties and thereafter have disbelieved the case of partition as pleaded by the defendants. Much emphasis has been laid by learned senior counsel on behalf of the appellants regarding the separate assessment of the part of the suit properties in the names of the plaintiffs and the

defendants and separate mutation in the revenue records. However, no explanation could be furnished on behalf of the appellants as to how, when according to them the partition took place on 09.09.1990, their case to be in separate possession of their shares prior to that could have been believed.

The entire submission on behalf of the appellants has centered around reappreciation of evidence but the same cannot be done in second appellate jurisdiction, unless the findings are shown to be perverse or unreasonableness in any manner. This Court finds that the conclusions have been arrived by the courts below are based upon evidence which were acceptable and could have been relied upon.

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)**

Nitesh/-

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