

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.320 of 2013

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Shila Kuer Widow Of Lav Kumar Pandey Resident Of Village Manjhauri,
Police Station Bihea, District Bhojpur.

.... Appellant/s

Versus

1. Kalawati Kuer Widow Of Harihar Pandey Resident Of Village
Manjhauri, Police Station Bihea, District Bhojpur.

2. Sarojni Devi W/O Pradip Kumar Resident Of Village Ojha Ke Semaria,
Police Station Shahpur, District Bhojpur.

.....Respondents 1st Set

3. Timpa Devi D/O Late Lav Kumar Pandey

4. Nidhi Devi D/O Late Lav Kumar Pandey

5. Aarti Devi minor daughter of Late Lav Kumar, under the guardianship of
her mother Shila Devi.

All 3 to 5 are resident of village Manjhauri, P.S. Bihea, district Bhojpur.

6. Mots. Rina Devi wife of late Kush Pandey.

7. Saneya Kumari

8. Tanya Kumari

Both 7 and 8 are the minor daughter of Late Kush Pandey and under the
guardianship of mother Rina Devi.

9. Aditya Pandey minor son of Kush Pandey, under the guardianship of
mother Most Rina Devi.

All 6 to 9 are the resident of village Roza Bazar, P.S. Bihea, district
Bhojpur.

.... Respondents-IIInd Set.

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Appearance :

For the Appellant/s : Mr. T.N. Maitin, Sr. Adv, Mr. Rajeev
Kumar Sinha, Adv & Mr. Maya Shankar
Mishra, Adv

For the Respondent/s : Mr. K.N. Choubey, Sr. Adv & Mr. Arun
Kumar Pandey, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

5 01-02-2016 Heard Mr. T.N. Maitin, learned senior counsel for the

appellants and Mr. K.N. Choubey, learned senior counsel for the

respondents.

2. The plaintiff is the appellant in this appeal against
the judgment and decree of reversal.

3. The plaintiff filed a suit for partition of the



properties mentioned in Schedule-1 of the plaint and also for permanent injunction. The facts which are not in dispute is that the suit property was the property acquired in the name of late Harihar Pandey. The plaintiff claimed partition of her share in suit property on the premises that the plaintiff and the defendants belonged to the joint family being the descendants of Jhingur Pandey and the suit property was joint family property. It was the case of the plaintiff that on 21.02.1978 (Exhibit-2), some of the joint family properties were sold for the purpose of acquiring another property and by the sale deed dated 08.08.1978, the suit property was acquired. It was also the case of the plaintiff that as the suit property was acquired in the name of Harihar Pandey alone though out of the joint family property and so Harihar Pandey had executed the deed of Ekrarnama on 13.07.1979 (Exhibit-1), wherein, he had stated that his remaining four brothers would have share in that property acquired in his name.

4. During the course of submission and also after perusal of judgments of the courts below, it becomes manifest that the suit property has been transferred by way of registered gift deed by the defendant no. 1, Kalawati Kuer in favour of defendant no. 2, Sarojini Devi, who was her daughter. Though the plaintiffs in their deposition as PW-4 and PW-5 have clearly



stated that the present suit has been filed for setting aside the deed of gift executed by Kalawati Devi in favour of her daughter, Sarojini Devi, but no relief has been claimed in the suit against the said gift deed. The appellate court has taken notice, in particular, of this fact before coming to the conclusion that the plaintiffs were required to seek further relief against the gift deed in order to get the relief for partition. It has also been found in evidence and accepted by the plaintiffs in their deposition that there was a partition of the joint family property in the year 1983 before the Assistant Consolidation Officer, who passed the order on 21.08.1983. Accordingly, the appellate court has also taken into notice these admitted facts of partition of the joint family property between the parties in the year 1983, and the further fact that the suit property was not made subject matter of that partition. The appellate court below has also come to the finding that there has been no explanation on behalf of the plaintiffs as to why the suit property was not included in the said partition comprising of the entire joint family property. It has also come on record that after the execution of the gift deed by Kalawati Kuer in favour of her daughter Sarojini Devi, the dispute between the parties arose with regard to mutation, wherein, some of the plaintiffs contested the matter before the revenue authorities. The

fact therefore becomes explicit that the gift deed was in the knowledge of the plaintiffs in the year 1996-1997, itself.

5. The appellate court below has also considered the Ekrarnama (Exhibit-1) dated 13.07.1979, which was the sheet anchor of the case of the plaintiffs and has come to the finding that the said Ekrarnama does not disclose the fact that the property has been acquired from the joint family property, but Mr. T.N. Maitin, learned senior counsel appearing on behalf of the appellant has strenuously submitted that the appellate court below has wrongly interpreted the Ekrarnama (Exhibit-1) and has ignored the fact that there was no evidence that the property was the self acquired property of late Harihar Pandey. Though the learned senior counsel has also accepted that the plaintiffs have not averred in the plaint regarding blending of the suit property with the joint family property but has submitted that from the facts, it appears that the suit property was thrown in common hotch pot. It has also been submitted that simply because there had been partition in the year 1983, wherein, the suit property was not included, still the nature of the suit property as joint family property would not be altered. It has, however, been accepted by the learned senior counsel appearing on behalf of the appellant that no relief with regard to the gift deed has been

sought by the plaintiff in the present suit. No other submission has been made on behalf of the appellant.

6. In view of the aforesaid findings and considering the submissions, this court comes to the conclusion that the appellate court below has in its elaborate judgment considered the material evidence on record on behalf of the parties before reversing the findings by the trial court and has recorded its own findings on the basis of appreciation of evidence. It is not the case on behalf of the appellant that the appellate court below has not considered any of the material evidence adduced on behalf of the parties rather the entire submissions on behalf of the appellant have centered around re-appreciation of evidence, which is not permissible at the stage of second appellate jurisdiction unless the findings are shown or established to be perverse in any manner. This Court has not been persuaded to find perversity in any manner or illegality in the findings recorded by the appellate court.

7. 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)

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