

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.110 of 2014

=====

Shree Pasi, son of Late Baisakhi Pasi, resident of Village Bahera, P.S. Warisaliganj,
District Nawadah Plaintiff Appellant

.... Appellant

Versus

1. Lakhan Pasi, son of Late Baisakhi Pasi
2. Anil Choudhary
3. Rajendra Chaudhary
4. Binod Chaudhary
5. Yogendra Chaudhary, all sons of Lakhan Pasi @ Lakhan Choudhary
6. Kanchan Devi @ Shanti Devi, wife of Anil Chaudhary
7. Gayatri Devi, wife of Binod Chaudhary
8. Sunita Devi, wife of Yogendra Chaudhary
9. Shanti Devi
10. Basanti Devi
11. Kanti Devi
12. Ruby Devi, all daughters of Lakhan Pasi

All residents of Village Bahera, P.S. Warisaliganj, District Nawadah
..... Defendants Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Parashuram Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-09-2016

Heard Mr. Parashuram Singh, 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 for partition.

3. The plaintiff and the defendant No. 1 are own brothers both
sons of Baisakhi Paswan. It was the case of the plaintiff that after the
death of the father Baisakhi Paswan, who was working in the **Colliery**,
the defendant No. 1, who was the step brother of the plaintiff, got
employment on compassionate ground and became the Karta and
Manager of the joint family. It was the further case of the plaintiff that



defendant No. 1, however, from the joint family fund acquired suit properties in his name, in the name of his wife and in the name of his sons and later on he also transferred some of the properties in the name of his daughters. The contesting defendants filed written statement resisting the claim of the plaintiff and asserted that the suit properties were self acquired property of defendant No. 1. They also denied the assertion of the plaintiff that the defendant No. 1 got employment on compassionate ground after the death of his father Baishakhi Paswan.

4. Both the courts below have given concurrent finding on the material issues against the plaintiff holding that the suit property is not the joint family property as alleged by the plaintiff. The suit was dismissed and thereafter the appeal has also been dismissed.

5. Mr. Singh, learned Counsel appearing for the appellant, has submitted that the judgments passed by both the courts below are not legally sustainable and are also wrong. It has been contended that there are sufficient evidence on record to show that the suit property was joint family property which has been acquired by the defendant No. 1 as Karta and Manager of the joint family out of the joint family fund in his name and in the name of his wife and sons. The learned Counsel, however, has accepted during course of submission that wife of defendant No. 1 has not been made party in the suit though some of the suit properties have been acquired by sale deed in her name by defendant No. 1. It has, however, been emphasised that the acquisition made by defendant No. 1 even in the name of his wife was out of joint family fund and, therefore, the same can be proceeded against as joint family property. 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 submissions, it is demonstrably clear that the crucial issue arising between the parties in the suit was the nature of the acquisition of the suit property either as self acquired property of defendant No. 1 or as property acquired out of the joint family fund. Both the courts below have come to the concurrent finding upon elaborate scrutiny of evidence on record that the plaintiff has failed to establish the existence of nucleus which could have supported the acquisition of the suit property. Though some of the witnesses examined on behalf of the defendants have supported the case of the plaintiff, but both the courts below have considered those evidences as well and thereafter have come to the findings on the issues against the plaintiff. During the course of submission before this Court, it has transpired that the wife of defendant No. 1, in whose name some of the suit property stand, has not been made party. Learned Counsel for the appellant has fairly accepted the said fact.

7. The civil litigations are decided on the principle of preponderance of probability and this Court finds that the learned Courts below after considering the entire evidence of the parties have come to the conclusion that the suit properties are self acquired properties of defendant No. 1. The findings are based upon evidence, which were acceptable and could have been relied upon. This Court therefore does not find any perversity or unreasonableness in the findings by the courts below.

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
Uploading Date	06.12.2016
Transmission Date	N/A

