

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.425 of 2014

In
S.A. 229 of 2002

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Narendra Prasad Singh

.... Petitioner/s

Versus

Ram Ashish Singh & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

9 22-06-2016 Heard learned counsel for the parties.

2. This review application has been filed praying for review of the judgment and order dated 28.02.2014 passed in S.A. No. 229 of 2002 dismissing the appeal at the stage of hearing under Order 41 Rule 11 C.P.C after holding that no substantial question of law arose for consideration in the appeal.

3. It transpires that the petitioner filed petition for special leave to appeal (C)...C.C. No. 18557 of 2014 before the Hon'ble Supreme Court and by order dated 21.11.2014 the special leave petition was disposed of granting liberty to the petitioner to file an application for review of the aforesaid judgment and order and accordingly the present application

for review has been filed.

4. The learned senior counsel appearing for the review petitioner has submitted that the effect of the unregistered award whereby the arbitrators divided the joint family properties between the parties has not been considered by this Court in dismissing the second appeal although the said question was a substantial question of law. The learned counsel has further contended that the appellant in the second appeal has raised the said question in the grounds of appeal while assailing the findings of the courts below holding the same to be not an award but only a memorandum of partition. Elaborating his submissions it has been propounded that the plaintiff's claim of title over the suit property is squarely based upon the said award and both the courts below after wrongly holding the same to be a document of family arrangement or memorandum of partition have granted the relief to the plaintiff. It has therefore been submitted that the prayer for review of the judgment and order dismissing the appeal is fit to be allowed as admissibility of the unregistered award as the basis of the title of the plaintiff is a substantial

question of law.

5. The learned senior counsel appearing for the opposite parties in reply however has submitted that the issue regarding the nature of the document (award) has been considered by both the courts below and it has been rightly held that the same is not an award but a memorandum of partition of the family properties between the parties. It has been canvassed that the concurrent finding of fact in this regard by both the courts below are based upon scrutiny of evidence on record and cannot be termed to be perverse. It has also been argued that on behalf of the appellant this question was not raised when the appeal was being heard at the stage of hearing under Order 41 Rule 11 C.P.C and therefore, the present prayer for review has got no merit.

6. After considering the submissions as well as the materials on record including the judgment and order passed in the second appeal under review, it is manifest that the plaintiffs filed the suit for declaration of title over the suit land and also for declaration that the deed of gift dated 12.08.1991 in favour of the defendant no. 1 was illegal, null and void and



not binding upon the plaintiffs. Admittedly the suit property was initially the part of the joint family property of the plaintiff and the defendants and it was the case of the plaintiffs that the suit property was allotted exclusively to the plaintiff no. 1 in partition. In support of the said fact the plaintiff adduced evidence and relied upon the document (Exhibit-4) evidencing the allotment of the suit property to the plaintiff no. 1. The contesting defendant however denied the genuineness of the said document (Exhibit-4) and also assailed the same on the ground that the said document being an award of partition of the family properties was not registered nor made the rule of the court. Both the courts below however have recorded the finding that the said document (Exhibit-4) was not a partition deed or award rather it was a memorandum of the partition recording the fact of partition which had taken place between the parties a day before. It is thus evident that interpretation of the said document (Exhibit-4) either as memorandum of partition or award of partition was one of the crucial issues which arose in the suit between the parties. Though both the courts below

have considered the said issue and interpreted the said document as only a memorandum of partition but in view of the observations of the Apex Court as aforementioned and after considering the submissions, this Court is inclined to allow the prayer for review of the judgment and order as prayed by the petitioner.

7. Accordingly, this review application is allowed and the judgment and order dated 28.02.2014 passed in S.A. No. 229 of 2002 is hereby recalled. The S.A. No. 229 of 2002 is directed to be placed for hearing under Order 41 Rule 11 C.P.C appropriately and expeditiously.

(V. Nath, J)

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