

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.61 of 2008

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Ram Niwas Sharma son of Sri Tulsi Sharma, residents of village-Mokari,
P.S. Bhabhua, District-Kaimur.

.... Appellant/s

Versus

1. Badami Devi wife of Sri Ram Awadh Sharma, daughter of late Phool Kunwar and sri Doma Sharma, resident of village-Gopalpur, P.S. Shiv Sagar, District-Rohtas.
2. Prabhawati Devi wife of late Gorakh Lohar, R/o-Jehanabad, Kudra, P.S. Kudra, District-Kaimur.
3. Radhika Sharma.
4. Sharda Devi.
5. Bijali Devi, all daughters of late Sita Ram Sharma.
6. Raghunath Lohar son of late Ram Dayal Lohar.
7. Bihari Lohar.
8. Ram Chandra Lohar.
9. Subhash Sharma.
10. Ram Sharan Sharma, all sons of late Sita Ram Lohar.
11. Ram Dular Sharma
12. Shiv Dular Sharma, sons of Sri Raghunath Sharma, residents of village Jehanabad Kudra, P.S.-Kudra, District-Kaimur.
13. Geeta Kumari.
14. Neetu Kumari.
15. Santosh Kumar,
16. Gosali Sharma, sons of Sri Ram Niwas Sharma, all residents of village-Mokari, P.S. Bhabhua, District-Kaimur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Avanish Kumar Singh
Mr. Ratneshwar Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 15-02-2016

Head Mr. Singh learned counsel appearing for the

appellant in this appeal against the judgment and decree of reversal granting the decree to the plaintiff, as prayed.

The suit was filed by the plaintiff for partition of 5/92 share in Schedule-K properties and 5/24 share in Schedule-Kha properties described in the plaint. The defendants filed contesting written statement mainly questioning the status of the plaintiff as the daughter of Gudari Lohar and sister of Gorakh Lohar (defendant no. 1). The trial court returned the finding that the plaintiff failed to prove her claim to be daughter of Gudari Lohar and sister of Gorakh Lohar. The suit was, accordingly, dismissed. In appeal, however, the appellate court, on reappraisal of evidence, has reversed the finding of the trial court and has held that the plaintiff is the daughter of Gudari Lohar and sister of the defendant no. 1 Gorakh Lohar.

Learned counsel for the appellant has made singular submission that the appellate court has not considered the reasonings assigned by the trial court while reversing the finding on the seminal issue of the status of the plaintiff as the daughter of Gudari Lohar and sister of Gorakh Lohar. It has been submitted that by now it is well settled that the appellate court is required to consider the reasonings of the trial court before reversing its findings and as the same has not been done, the impugned

judgment has become vulnerable. It has thus been propounded that the substantial question of law arises in this appeal for consideration.

After the perusal of the judgments of both the courts below and considering the submission, it is pellucid that the core issue between the parties in the suit was the status of the plaintiff to be daughter of Gudari Lohar and sister of Gorakh Lohar as claimed by her. It is also manifest that none of the parties has adduced any documentary evidence in support of the genealogy set-up by them and the findings by the courts below in this regard are based upon the appreciation of the only oral evidence adduced by the parties. The trial court on the basis of the scrutiny of the oral evidence on record has concluded that the claim of the plaintiff to be the daughter of Gudari Lohar and sister of Gorakh Lohar was not established. But the appellate court on reappraisal of the oral evidence on record has not agreed with the finding recorded by the trial court on the issue and has held that the evidence on record establish the claim of the plaintiff to be daughter of Gudari Lohar and sister of Gorakh Lohar. It is not the submission on behalf of the appellant in this appeal that the finding by the appellate court has stemmed out of non consideration of evidence or is unreasonable or perverse in any

manner.

The only illegality, according to the learned counsel for the appellant, committed by the appellate court is that it has not considered the reasonings of the trial court before reversing its finding.

The Apex Court in the case of **Arumugham vs Sundarambal** reported in **AIR 1999 SC 2216** has laid down as follows:-

*“From the aforesaid judgment of the three Judges Bench in **Rama Chandra Aiyysars (AIR 1963 Sc 302)**, it is clear that this Court held that second appellate court cannot interfere with the judgment of the first appellate court on the ground that first appellate court had not come to close grips with the reasonings of the trial court. It is open to the first appellate court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate court to interfere such findings of the first appellate court only on the ground that the first appellate court has not come to the grips with the reasoning given by the trial court.”* (emphasis supplied)

The dictum by the Apex Court as averred is complete

answer to the sole submission made on behalf of the appellant.

This Court, therefore, comes to the conclusion that the submission made on behalf of the appellant does not raise substantial question of law for consideration in this appeal. This appeal is, accordingly, dismissed.

(V. Nath, J)

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