

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.158 of 2014

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Mahesh Chandra Goshwami, Son of Late Shankar Giri Goswami, Resident of
Village- Chhatiya, P.S.-Sadar, P.O. & District- Purnia.

.... Appellant

Versus

1. Smt. Harni Devi @ Harini Devi, Wife of Hare Ram Goshwami, Resident of
village- Manna, P.S.- Sarsi, P.O.-District-Purnia, wrongly given address in
plaint at village-Chhatiya, P.S.-Sadar, District-Purnia.
2. Dinesh Kumar Goshwami, Son of Sri Mahesh Chandra Goshwami.
3. Suresh Kumar Goshwami, Son of Mahesh Chandra Goshwami, Resident of
Village-Chhatiya, P.S. -P.O.-Sadar, District-Purnia.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Arbind Kumar Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-09-2016

Heard the learned counsel for the appellant.

The defendant is the appellant in this appeal
against the judgment and decree of affirmance.

The plaintiff filed the suit for partition of half
share in the suit property described in Schedule-A and B of the plaint.

The fact is not in dispute that the plaintiff and
the defendant are brother and sister being son and daughter of Shankar
Giri Goswami.

Both the courts below have come to the
concurrent finding that at the time of his death Shankar Giri Goswami
had title and possession over the suit property described in Schedule
A and B. This finding has been recorded on the basis of pleading of



the defendant and evidence on behalf of the parties. As there is also no dispute as to fact that the plaintiff and the defendant were the only heirs of Shankar Giri Goswami at the time of his death in the year 1966, they would be entitled to half share each in the property left behind by their deceased father and accordingly they came in joint possession over the same. The defendant, however, came out with the case of exclusive title over the property described in Schedule-B of the plaint in the proceeding under Section 48D of Bihar Tenancy Act.

Both the courts below have found that the defendant has failed to establish the acquisition of exclusive title over the sikmi land which was in possession of his father at the time of his death. It has also been noticed that the defendant has not produced the order by which he was declared Raiyat by the revenue authorities.

The learned counsel for the appellant has submitted that in view of Section 23 of Hindu Succession Act the plaintiff being the married daughter of the family could not be entitled to her share in the suit properties which are mostly the homestead properties. It has, however, been not disputed that Section 23 has been deleted from the Hindu Succession Act, 1956. Even otherwise also as laid down by the apex court in the case of *Srilekha Ghosh (Roy) Vs. Partha Sarathi Ghosh*, AIR 2002 SC 2500 Section 23 did not



obliterate the share of the daughter in the property of her father.

Both the courts below recorded their findings on the issues arising between the parties on the basis of evidence, which were acceptable and could have been relied upon and this Court has not been persuaded to find any perversity or unreasonableness in the findings in any manner.

In result, this Court does not find that any substantial question of law is arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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