

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.8 of 2014

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1. Kalika Rai Son Of Late Chandrika Rai
 2. Kalpnath Rai Son Of Late Chandrika Rai
 3. Prabhunath Rai Son Of Late Chandrika Rai
 4. Shambhunath Rai Son Of Late Chandrika Rai All Resident Of Village - Sangrampur, P.S. - Mirganj (Fulwariya), District - Gopalganj
 5. Santi Devi Daughter Of Late Chandrika Rai, W/O Jitundra Rai Resident Of Village - Semariya, P.S. - Kateya, Distt. - Gopalganj
 6. Kaushalya Devi W/O Late Laxmi Rai
 7. Bhrigunath Rai S/O Late Laxmi Rai
 8. Basanti Devi W/O Dinesh Rai And Daughter Of Late Laxmi Rai
 9. Awadh Kishore Rai S/O Inderdeo Rai
 10. Harendra Rai Son Of Inderdeo Rai
 11. Narendra Rai Son Of Inderdeo Rai All Are Resident Of Village - Sangrampur, P.S. - Mirganj (Fulwariya), District - Gopalganj

.... Appellant/s

Versus

1. Suryadeo Rai S/O Late Ramanand Rai
2. Dharamnath Rai S/O Suryadeo Rai
3. Raghunath Rai S/O Suryadeo Rai
4. Yadunath Rai S/O Suryadeo Rai All Are Resident Of Village - Sangrampur, P.S. - Mirganj (Fulwariya), District - Gopalganj

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jyotindra Pratap Singh, Adv & Mr. Dhananjay Kumar Tiwary, Adv

For the Respondent/s : Mr. Binay Kant Mani Tripathi, Adv, Mr. Ajay Kumar Mishra, Adv and Miss. Ajita, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

4 06-04-2016

Heard Mr. J.P. Singh, learned counsel appearing for the appellants and learned counsel for the respondents.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance. The plaintiffs have filed the suit for declaration that they have got title and possession over the half share in the suit property and the other half belongs to the defendants with further relief that the claim of the defendants over the entire suit property is illegal.

3. Necessitous facts are that admittedly the suit property originally belonged to Haridwar Rai. According to both the parties the suit property was the self acquired property of Haridwar Rai who died in the year 1933 leaving behind his widow Most. Matirani Kuwar. The said Most. Matirani Kuwar besides the property inherited by her after the death of her husband had also got property by way of gift from her parents side. Most. Matirani Kuwar transferred her properties by way of gifts in favour of several persons including the predecessor of the defendant namely Most. Chauraso Kuwar in 1954. The properties subject matter of this gift deed is the suit property. The defendants have denied the case of the plaintiffs and asserted their independent right title interest and possession of the suit property on the basis of the said gift deed by Most.

Matirani Kuwar in favour of Most. Chauraso Kuer.

4. Both the courts below have come to the concurrent finding that after the death of the admitted original owner Haridwar Rai, his estate was exclusively inherited by his widow Most. Matirani Kuwar. It has been further also held by the courts below that Most. Matirani Kuwar had executed the gift deed in favour of the predecessor of the defendants in the year 1954 and the said gift deed was legal and valid. Finding the claim of the plaintiffs as made out in the suit to be not established, the suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

5. Mr. Singh, learned counsel appearing for the appellants while criticizing the judgment of both the courts below has submitted that after the death of Haridwar Rai in the year 1933, his widow would not be entitled to inherit his estate and this aspect has been wrongly ignored by both the courts below. It has also been contended that both the courts below have wrongly placed reliance upon the report of the handwriting expert which is only opinion evidence in view of the provision of Section 45 of the Indian Evidence Act and therefore also the findings are vitiated. It has also been canvassed by the learned counsel for the appellants that both the courts below have not



considered the material oral and documentary evidence adduced on behalf of the appellants and the findings recorded by them suffer from non application of mind. On the basis of these submissions it has been prayed that substantial questions of law arise for consideration in this appeal.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the suit property was admittedly the self acquired property of Haridwar Rai who died in the year 1933 issueless but leaving behind his widow namely Most. Matirani Kuwar. As it was admittedly the self acquired property of Haridwar Rai the same was inherited by his widow Most. Matirani Kuwar and the contention on behalf of the plaintiff-appellants in this regard that Most. Matirani Kuwar was only a maintenance holder from the estate of Haridwar Rai, in this fact situation is clearly misconceived. On perusal of the judgments of both the courts below, it transpires that the findings have been recorded not only on the basis of the opinion of the handwriting expert but after consideration of all material oral and documentary evidence on record. Both the courts below have elaborately scrutinized the evidence on behalf of the parties and thereafter have recorded their conclusions. Law is now well settled that even if the

finding of fact is wrong but based upon evidence which is acceptable and could have been relied upon, that by itself will not constitute a question of law. Inadequacy of evidence or possibility of another view on the same set of evidence is also not a substantial question of law.

7. This Court has not been persuaded during course of submission to find unreasonableness or perversity in any manner in the findings recorded 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)

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