

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.146 of 2014

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1. Lakshman Mahto Son of Late Muneshwar Mahto Resident of Village-Narayanpur, P.S.-Jagdishpur, District-Bhojpur.

.... Appellant/s

Versus

1. Balmiki Mahto Son of Late Muneshwar Mahto Resident of Village-Narayanpur, P.S.-Jagdishpur, District-Bhojpur
2. Manoj Kumar Son of Late Ramji Mahto
3. Jitendra Kumar Son of Late Ramji Mahto
4. Harendra Kumar Son of Late RAMji Mahto
5. Dharmendra Kumar Son of Late Ramji Mahto All Residents of Village-Narayanpur, P.S.-Jagdishpur, District-Bhojpur.
6. Badamo Devi Wife of Hari Narayan Mahto, Resident of Village+P.S.-Tiar, District-Bhojpur.
7. Phula Devi Wife of Birbal Mahto Resident of Village+P.S.-Shahpur, District-Bhojpur.
8. Vijay Singh son of Sri Harkha Singh Resident of Village-Narayanpur, P.S.-Jagdishpur, District-Bhojpur
9. Raja Ram Singh son of Late Lakhan Singh Resident of Village-Narayanpur, P.S.-Jagdishpur, District-Bhojpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

7 28-09-2016

Heard learned counsel for the appellant.

The plaintiff in the suit is the appellant in this appeal against the judgment and decree of reversal.

The suit property, admittedly, belonged to two brothers, namely, Ram Nagina Mahto and Muneshwar Mahto. The plaintiff, who is descendant of Muneshwar Mahto filed the suit for partition of the family property. The contesting defendant came out with the case that there had been partition in between



Ram Nagina Mahto and Muneshwar Mahto and thereafter Ram Nagina Mahto had transferred the property allotted in his share in partition to the defendant by registered gift deed and it was contended that the said property could not be subject matter of partition. In view of the rival claims of the parties, the material issue arising in the case was the validity of the gift deed executed by Ram Nagina Mahto with regard to his share in the family property in favour of contesting defendant. The trial court returned the findings in favour of the plaintiff and granted the decree. The appellate court below, on reappraisal of the evidence, however, has reversed the finding of the trial court with regard to validity of the gift deed but sustained the decree for partition in favour of the plaintiff only with regard to the property which was in the share of Muneshwar Mahto.

Learned counsel for the appellant has submitted that the findings by the appellate court below are based on non-consideration of the evidence and therefore the same are perverse. It has been contended that the trial court has correctly appreciated the evidence and granted the decree as prayed by the plaintiff but the appellate court below did not consider the evidence in correct perspective and has wrongly overturned the findings of the trial court with regard to the gift deed, which is said to have been

executed by Ram Nagina Mahto with regard to the share allotted to him in partition. Learned counsel for the appellant has put much emphasis on the findings by the trial court in order to sustain his contentions.

After considering the submissions and perusal of the judgment of both the courts below, it is manifest that Ram Nagina Mahto and Muneshwar Mahto were two brothers and the plaintiff who is one of the sons of Muneshwar Mahto has filed the suit for partition of the property alleging jointness with regard to the same. The contesting defendant, on the other hand, has claimed his title over the property of the share of Ram Nagina Mahto on the basis of gift deed executed by him alleging previous partition. The appellate court below on the basis of appreciation of evidence including the pleadings and depositions by Ram Nagina Mahto himself has come to the conclusion that the gift deed executed by Ram Nagina Mahto in favour of contesting defendant is legally valid. The findings by the appellate court are based on evidence which are acceptable and could have been relied upon. The submission on behalf of the appellant that the appellate court below has misconstrued the evidence on record does not appear to have substance after the perusal of the reasonings by the appellate court below. The possibility of another view on the same set of

evidence cannot be a substantial question of law. The findings of fact by the appellate court below are binding on the second appeal unless the same are shown to be perverse in any manner. This Court is not persuaded to hold the findings by the appellate court below to be perverse or unreasonable.

In the result, it is held that no substantial question of law is arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J)

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