

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.219 of 2013

- =====
1. Chandra Pato Devi W/O Late Ajitan Choubey Resident Of Village -
Chamarpur, P.S. - Shahpur (Bahoranpur), District - Bhojpur (Ara)
 2. Rama Shanker Choubey Son Of Late Ajitan Choubey Resident Of Village -
Chamarpur, P.S. - Shahpur (Bahoranpur), District - Bhojpur (Ara)
 3. Basant Choubey Son Of Late Ajitan Choubey Resident Of Village - Chamarpur,
P.S. - Shahpur (Bahoranpur), District - Bhojpur (Ara)
- Plaintiffs Appellants

.... Appellants

Versus

1. Most. Gyanti Kuer W/O - Late Mahendra Choubey Resident Of Village -
Chamarpur, At Present Vill. - Bahoranpur, P.S. - Shahpur, Distt. - Bhojpur
..... Defendant 1st set Respondent 1st set
2. Ramdeo Rai Son Of Late Bishwanath Rai Resident Of Village - Bahoranpur,
P.S. - Shahpur, District - Bhojpur
3. Sheo Deo Rai Son Of Late Bishwanath Rai Resident Of Village - Bahoranpur,
P.S. - Shahpur, District - Bhojpur
..... Defendant 2nd set Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. AWADHESH KUMAR PANDIT
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-10-2016

Heard Mr. Ajay Kumar Singh, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The plaintiffs filed the suit for declaration that the sale deed dated 21.9.2007 executed by defendant No. 1 in favour of defendant second set with regard to the suit properties was not a valid document and not binding upon the interest of the plaintiffs. During pendency of the appeal, however, a prayer for amendment was made on behalf of the plaintiffs and allowed by the court incorporating the relief for recovery of possession over the suit property.



4. The plaintiffs' case in short was that the property was acquired by the predecessor Ajeetan Choubey out of his own income and, therefore, the descendents of the three brothers including defendant No. 1 acquired no interest in the same. It was also the plea of the plaintiffs that there had earlier been separation among the four brothers and at the time of acquisition of the property on 17.2.1973 Ajeetan Choubey was separate from his brothers. The defendants contested the assertion of the plaintiffs and came out with a case that the suit property was the joint family property of Ajeetan Choubey and his brothers, and defendant No. 1 had got the suit property in her share which she finally transferred in favour of defendant 2nd set by executing registered sale deed.

5. Both the courts below have recorded the concurrent finding of fact on the material issues against the plaintiffs after scrutiny of the pleading and evidence of the parties. The suit was dismissed and thereafter the appeal filed by the plaintiffs has also been dismissed by the impugned judgment and decree.

6. Mr. Singh, learned Counsel appearing for the appellant, has at the outset submitted that though there is presumption that a Hindu family is joint but there is no presumption that the joint family also possesses joint property. It is propounded that Ajeetan Choubey, the predecessor in interest of the plaintiffs, had acquired the property through his exclusive income in the year 1973 in the state of separation from his brothers and, therefore, the findings of fact by both the courts below that his brothers or the descendents could have share in the same cannot be legally sustained in absence of any plea of existence of nucleus in the joint family out of which the suit property could have been acquired. It



has been further canvassed that both the courts below have adopted hypertechanical view in ignoring the orders passed by the consolidation authorities as evidenced by Ext. 3 and 3/1. It has been contended that the consolidation authorities on the prayer of the plaintiffs directed for preparation of records of right of the suit property in exclusive name of the plaintiff after rejecting the claim of the defendant No. 1 and therefore both the courts below ought to have placed reliance upon those orders and recorded a finding in favour of the plaintiffs. The learned Counsel has also placed the finding by both the courts below in detail in order to substantiate his stand. No other submission has been made on behalf of the appellants.

7. After perusal of the judgments of both the courts below and considering the submission, it is evident that the suit property was acquired by Ajeetan Choubey by sale deed dated 17.2.1973 in his name. However, it is also not in dispute that the said Ajeetan Choubey was the eldest brother amongst his three more brothers. The defendant No. 1 is the descendent of one of the brothers of Ajeetan Choubey. On behalf of the defendants the earlier order passed by the Consolidation Officer has been brought on record as Ext. 'C'. Both the courts below after scrutiny of Ext. 'C' have come to the finding that the said order was passed by the consolidation authority on the basis of petition filed by Ajeetan Choubey praying for recording of the names of his brothers along with him in the consolidation records with regard to the property purchased by him by sale deed dated 17.2.1973. It has been further found by both the courts below that the said order was not challenged by Ajeetan Choubey or by the plaintiffs at any stage and there was no explanation by the plaintiffs either in the plaint or in any other proceeding as to under which

circumstance Ajeetan Choubey filed the said petition. The learned courts below have further scrutinized the pleadings of the plaintiffs along with the subsequent orders of the consolidation authorities (Ext. 3 and 3/1) and have come to the conclusion that the plaintiffs have wrongly pleaded that the appeal before the Deputy Director was preferred against the order passed in Case No. 4496 of 1976 rather it was an appeal filed against the order passed in case No. 157/84-85. The courts below have also concluded that the plaintiffs have not come before the court with clean hands. On behalf of the appellants it could not be established that the findings recorded by both the courts below are perverse or unreasonable in any manner or are de hors the established principle of law.

8. After careful consideration of the findings of both the courts below this Court is of the opinion that the findings by the courts below have been recorded on the basis of evidence which were acceptable and could have been relied upon. The issues of fact have been finally determined between the parties by concurrent finding of fact which are, in the facts and circumstances, binding upon the second appellate court.

9. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

Snkumar/-

(V. Nath, J.)

AFR/NAFR	
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