

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.11 of 2014

1. Sri Ram Ojha
2. Ram Ishwar Ojha, Both Sons Of Late Indradeo Ojha Resident Of Village Mahuli, P.S. Udwant Nagar, Gajrajganj, O.P., District Bhojpur.

..... Defendants Appellants

.... Appellants

Versus

1. Abhitabh Dubey @ Amitabh Dubey W/O Late Bhola Nath Dubey
2. Renu Devi D/O Late Bhola Nath Dubey
3. Avinash Dubey S/O Late Bhola Nath Dubey All Resident Of Akawana, P.S. + Anchal + P.O. Barhara, District Bhojpur.
4. Sushila Devi Alleged D/O Late Triveni Ojha R/O Village Birampur, P.S. Koilwar, District Bhojpur. All Are Alleging Resident Of Village Mahuli, P.S. Udwant Nagar, Gajrajganj O.P., District Bhojpur. Plaintiffs
Respondent 1st set
5. Babban Ojha S/O Late Sant Belas Ojha Null
6. Binod Ojha S/O Lalan Ojha Both Resident Of Village Mahuli, P.S. Udwant Nagar, Gajrajganj O.P., District Bhojpur. Defendants
Respondent 2nd set

.... Respondents

Appearance :

For the Appellant/s : Mr. RANJAN KUMAR DUBEY

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-04-2016

Heard Mr. Ranjan Kumar Dubey, learned Counsel for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree as prayed by the plaintiffs. The suit was filed by the plaintiffs for declaration that they were heirs of Late Triveni Ojha and were entitled to share in the suit property by partition on the basis of their claim for the same through gift deed executed by the widow of Late Triveni Ojha.

3. The facts in detail need not be expounded in view of the appeal



being second appeal. Suffice it to state that admittedly there were three brothers namely; Triveni Ojha, Indradeo Ojha and Sant Vilas Ojha and according to the plaintiffs there had been partition of the family property between the three brothers. The plaintiffs are the daughters of one brother Triveni Ojha and have claimed entitlement of share allotted to Triveni Ojha on the basis of gift dated 22.7.1982 by Mostt. Keshari Devi, widow of Triveni Ojha in favour of the plaintiffs. The defendants, on the other hand, in their written statement have challenged the status of the plaintiffs as daughters of Triveni Ojha and also the status of Mostt. Keshari Devi as widow of Triveni Ojha and have come out with the case that there had been no partition amongst the three brothers and after the death of Triveni Ojha unmarried and issueless, his share in the property devolved by the survivorship on the remaining two brothers. The spinal issue in the suit, therefore, was the status of Mostt. Keshari Devi as widow of Late Triveni Ojha and the status of the two plaintiffs as daughters of Late Triveni Ojha.

4. The trial court returned the findings on these issues in favour of the plaintiffs and granted the decree as prayed. In the appeal by the defendants, the appellate court reappraised the evidence and concurred with the findings of the trial court by the impugned judgment and decree.

5. Mr. Dubey, learned Counsel appearing for the appellants, has submitted that both the courts below have committed error in law in laying stress upon the lacunae and weakness in the case of the defendants without considering that the plaintiffs have failed to establish their case with cogent evidence. Elaborating his submissions, it has been contended that the plaintiffs have produced the voters list of one year in



support of their case, but have deliberately not produced the voters list of other years in this regard. It has also been submitted that the defendants in their written statement have stated that the mutation proceeding for the suit property in the name of the plaintiffs had also been carried out without the knowledge or notice to the defendants. However, the learned Counsel has accepted that the defendants have not chosen to challenge the gift deed dated 22.7.1982 executed by Mostt. Keshari Devi in favour of the plaintiffs. No other submission has been made on behalf of the appellants.

6. After perusal of the judgments of both the courts below and considering the submissions, it is limpid that the plaintiffs have produced oral and documentary evidence in support of their case that Triveni Ojha died leaving behind his widow Mostt. Keshari Devi and two daughters, who are the plaintiffs. The defendants, on the other hand, have examined only one witness i.e. defendant No. 2 himself and no other oral or documentary evidence has been produced on their behalf. On the basis of oral and documentary evidence produced on behalf of the plaintiffs and also after consideration of the deposition of defendant No. 2, both the courts below have come to the concurrent finding of fact that the plaintiffs are daughters of Late Triveni Ojha and have also got title over his share in the joint family property on the basis of registered gift deed dated 22.7.1982 executed by his widow Mostt. Keshari Devi in favour of the plaintiffs. These findings have been recorded on the basis of evidence on record which are acceptable and have the potency to support the finding. This Court has not been persuaded, during the course of submission, to find perversity or unreasonableness in the concurrent

findings of fact of both the courts below.

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

(V. Nath, J.)

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