

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.12 of 2014

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Hareshwar Tiwari S/O Late Rambachan Tiwari Resident Of Village Khudra, P.S. Mairwa, At Present Village, P.S. And P.O. Nawatan, Pargana Chaubar, District Siwan.

..... Plaintiff Appellant

.... Appellant

Versus

1. Moti Tiwari S/O Late Bishwanath Tiwari
2. Sarshwati Devi D/O Late Bishwanath Tiwari
3. Gauda W/O Late Jagarnath Tiwari
4. Uma Tiwari S/O Late Jagarnath Tiwari
5. Arun Dhati D/O Late Jagarnath Tiwari
6. Taleshwar Chaudhary S/O Late Jaleshwar Chaudhari All Resident Of Village Khudra, P.S. Mairw At Present Resident Of Village + P.O. + P.S. Nawatan, District Siwan.
7. Ramnath S/O Saryug Chaudhary Resident Of Village Chhotpur, P.S. Siwan Muffasil, District Siwan.

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. SUDHIR RANJAN

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-04-2016

Heard Mr. Bishwanath Choudhary, learned Counsel appearing for the appellants.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit filed by the plaintiff.

3. The plaintiff filed the suit for declaration of title and recovery of possession over the suit property which has been described fully in the plaint comprising of 10 dhurs of land. According to the case of the plaintiff, the suit land was allotted in partition to the share of Kauleshwar Ahir, whereas according to the defendants the suit land area 10 dhurs



was allotted in the share of Sheo Ahir, who sold the same to the defendants. It is thus evident that the spinal issue between the parties was the manner of partition and allotment of properties. Both the parties led evidence and after considering the evidence the trial court came to the finding that the plaintiff has failed to establish the case as pleaded by him. It has been found by the learned trial court that in support of the manner of partition the plaintiff has examined three witnesses i.e. PW 4, PW 10 and the plaintiff himself. The trial court has discussed the evidence of those witnesses in detail before reaching to the conclusion that the plaintiff has failed to establish his case. The appellate court in its judgment of affirmance has also taken into notice the facts of the case and the evidence adduced by the parties.

4. Mr. Choudhary, learned Counsel appearing for the appellant, has made the singular submission that the trial court has reached to the conclusion after misinterpreting the evidence adduced on behalf of the plaintiff. It has been further submitted that the appellate court in its short judgment has not discussed the evidence adduced on behalf of the plaintiff in detail and there is also misinterpretation of evidence.

5. After perusal of the judgments of both the courts below and considering the submission, it is pellucid from the judgment of the trial court that the evidence adduced on behalf of the parties have been considered in detail. The submission on behalf of the appellant with regard to misinterpretation, has, in fact, centered around the contention that another view was also possible from the evidence on record but the courts below have failed to take that view. It is therefore apparent that it is not a case of non consideration and the findings have been arrived at

by the courts below on the basis of scrutiny of evidence. It is well settled even if the finding of fact is wrong but is based upon some evidence which is acceptable then the said finding would be binding upon the second appellate court. The possibility of another view on the evidence on record cannot be a ground for interference at the second appellate stage after embarking upon reappreciation of evidence and thereafter reaching to a different conclusion.

6. For the aforesaid reasons and discussions, 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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