

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.184 of 2014

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1. Rakesh Sah

2. Rajesh Sah Both sons of Late Ramdeo Sah Both Resident of Village -
Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur

.... Appellant/s

Versus

1. Sri Chhitanu Sah

2. Sri Bhukhalu Sah

3. Sri Prabhu Sah All sons of Late Raghu Sah

4. Ram Autar Sha Son of Late Karnal Sah

5. Ram Rati Devi Daughter of Late Karnal Sah, Wife of Harish Chandra Sh All
resident of village - Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District -
Muzaffarpur

6. Lila Devi Daughter of Late Karnal Sah, Wife of Jai Siya Ram Sah Resident of
Village - Dadar (Bairiya), District - Muzaffarpur

7. Shila Devi Daughter of Late Karnal Sah, Wife of Deep Narain Sah Resident of
Village - Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur

8. Jagarnath Sah Son of Late Saryug Sah Resident of Village - Shantipur, P.O. &
P.S. - Bochaha, District - Muzaffarpur

9. Rekha Devi

10. Krishna Devi

11. Radha Devi

12. Seema Devi All daughters of Late Ramdeo Sah

13. Sri Jagdeo Sah

14. Sri Sukhdeo Sah Both sons of Late Sukhai Sah All resident of Village -
Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur

15. Jagarnath Sah Son of Not Known

16. Lakshmi Sah

17. Lakshman Sah

18. Bharat Sah

19. Shatrughan Sah All sons of Jagarnath Sah

20. Doli Devi

21. Dodiya Devi Both daughters of Jagarnath Sah All resident of Village -
Mohamadpur, P.S. - Mushari, District - Muzaffarpur

22. Mishrilal Mahto

23. Ramoo Mahto Both sons of Late Chalitar Chaudhary All resident of Mohalla -
Sikandarpur near Prabhat Jarda Factory, P.S. - Town, District - Muzaffarpur

24. Kapildeo Rai Son of Late Faturi Rai

25. Ajay Rai

26. Dilip Rai Both sons of Late Lakhan Rai

27. Chandra Devi Daughter of Late Lakhan Rai All resident of Village & P.S. -
Ahiyapur, P.O. - Bhikhanpur, District - Muzaffarpur

28. Mithileshwar Singh Son of Late Ramsakal Singh Resident of Village & P.O. -
Katra, District - Muzaffarpur

29. Bindeshwar Rai Son of Late Babulal Rai Resident of Village - Ragho
Manjhauli, P.O. & P.S. - Bochaha, District - Muzaffarpur

30. Deep Narain Sah Son of Late Sitaram Sah Resident of Village - Kathariya, P.O.
- Rajgoolin Patti, District - Muzaffarpur



31. Harishchandra Sah Son of Late Uchit Sah Resident of Village - Parati, at present resident of Village - Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur
32. Deeplal Rai Son of Late Jaikishan Rai Resident of Village - Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur
33. Chandeshwar Sahni Son of Late Sri Sukhan Sahni Resident of Village - Khanpur @ Baidhnathpur, P.S. - Ahiyapur, District - Muzaffarpur
34. Smt. Binaka Kumari Daughter of Late Brajesh Kr. Singh Resident of Mohallah - Newarea Sikandarpur, P.S. - Town District - Muzaffarpur
35. Kapildeo Sah Son of Late Ramdeo Sah Resident of Village - Ganeshpur, P.O. - Bhikhanpur, P.S. - Ahiyapur, District - Muzaffarpur
36. Sanjeet Kumar Son of Sri Mithileshwar Singh
37. Kumari Archana Daughter of Sri Mithileshwar Singh Both resident of Village - Katra, P.O. & P.S. - Katra, District - Muzaffarpur

.... Respondents

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-10-2016

Heard Mr. Anish Akhthar, learned counsel
appearing for the appellants.

The plaintiffs are the appellants in this appeal
against the judgment and decree of reversal.

The plaintiffs filed the suit for partition with regard
to the property mentioned in the schedule of the plaint.

The factual exposes' are that the common ancestor
of the parties was Chitar Sah who had two sons Raghu Sah and
Sukhai Sah. The plaintiffs are the descendants of Sukhai Sah whereas
the defendants are the descendants of Raghu Sah. It was the specific
case of the plaintiff as made out in the plaint that Chitar Sah shifted to



another village and he acquired the suit property in village-Ganespur where he shifted as well as in village Nazirpur. It was the further case of the plaintiff that the property in village-Ganeshpur was required in the name of his son Raghu Sah whereas the property in Village-Nazirpur was acquired in the names of his two sons Raghu Sah and Sukhai Sah. The suit was filed by the plaintiff with regard to the property village-Ganeshpur standing in the name of Raghu Sah stating that the plaintiffs have got a share in as it was a joint family acquisition. The defendants contested the assertions of the plaintiff and came out with the case that the suit property was acquired by Raghu Sah and it was his self-acquired property. The defendants denied the share of the plaintiffs in the same property.

The trial court returned the findings on the issues in favour of the plaintiff and granted the decree. In appeal by the defendants, the appellate court, on reappraisal of evidence, has reversed the findings of the trial court, set aside the judgment and decree and allowed the appeal by the impugned judgment and decree.

After considering the submissions and perusal of the judgments of both the courts below, it is evident that the suit for partition has been filed by the plaintiff claiming the share in the suit property on that base that the suit property was acquired by the father of Raghu Sah and Sukhai Sah in the name of Raghu Sah alone and



both the brothers were minor when the suit property was acquired. The appellate court below has taken into notice the statement made by the plaintiff examined as P.W.9 in his deposition and thereafter has come to the finding that Raghu Sah and Sukhai Sah were not minors when the suit property was acquired or when their father Chitar Sah shifted to village-Ganeshpur. Examining the documentary evidence on behalf of the parties, the appellate court below has further come to the finding that there had been inter se transaction between Raghu Sah and after his death his widow on the one hand and Sukhai Sah on the other with regard to the part of the suit property. The averments made in the plaint, however, do not explain away the said inter se transaction. The appellate court below has further also taken into notice the deposition of the plaintiff (P.W.9) where he had changed his stand regarding the acquisition of the property by the father of Raghu Sah and Sukhai Sah to the stand that the acquisition of the suit property was made by two brothers i.e. Raghu Sah and Sukhai Sah in the state of jointness.

The learned counsel for the appellants has placed emphasis on the findings recorded by the trial court in order to strengthen his submissions that the findings recorded by the appellate court are vulnerable. However, this Court has not been persuaded to come to the conclusion that the appellate court has recorded the



findings ignoring the material evidence on behalf of the parties or against the settled principles of law. To the contrary, it is demonstrably clear that the findings by the appellate court below have been recorded after scrutiny of the evidence which were acceptable and could have been relied upon. As such, this Court finds no perversity or unreasonableness in the same. The possibility of another view on the same set of evidence cannot be a substantial question of law unless it is shown or established that the findings have stemmed out of total non-consideration of material evidence or on the basis of application of wrong principles of law.

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)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2016
Transmission Date	

