

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.233 of 2014

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1. Md. Lal Babu .
 2. Fulbabu.
 3. Md. Meraz Ali.
All sons of Late Md. Islam, Resident of Village-Barahi, P.O.-Barahi, P.S.-Kewati, District-Darbhangha.
 4. Roushan Khatoon, Wife of Nizam, D/o Late Md. Islam, resident of village-Milki Chowk, P.S.-Bahadurpur, District-Darbhangha.
 5. Kaushar Khatoon, Wife of Md. Shamim, D/o Late Md. Islam, resident of village-Banka, P.S.-Bishapi, District-Madhubani.
 6. Gulsan Khatoon, Wife of Md. Murtaza, D/o Late Md. Islam, resident of village-Milki Chowk, P.S.-Bahadurpur, District-Darbhangha.
 7. Rukshana Khatoon, D/o Late Md. Islam, resident of village- Barahi, P.O.-Barahi, P.S.-Kewati, District-Darbhangha

.... Appellants

Versus

1. Hasim Nadaf.
2. Mustaque Nadaf.
Both sons of Late Moti Nadaf, Resident of Village- Barahi, P.O.-Barahi, P.S.-Kewati, District-Darbhangha.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Jitendra Kumar Giri

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-11-2016

Heard the learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of reversal, granting the decree for partition, as prayed by the plaintiffs.

The matrix of fact reveals that in the suit filed by the plaintiffs for partition, the contesting defendants challenged the genealogy set up by the plaintiffs asserting that the plaintiffs did not belong to the family of the defendants. The issue was framed in that



regard in the suit and the trial court after considering the pleadings and evidence of the parties, returned the finding on the said issue against the plaintiff. However, in appeal by the plaintiff, the appellate court below on reappraisal of evidence has reversed the said finding of the trial court and after deciding other issues as well in favour of the plaintiff, has allowed the appeal and granted the decree to the plaintiff as prayed.

Mr. Giri, learned counsel appearing for the appellants has submitted that the appellate court below has not considered the material evidence on behalf of the appellants and therefore the impugned judgment is vulnerable. During the course of submission, however, it could not be pointed out that the cogent evidence has been led on behalf of the defendants to rebut the entry in the records of right for the suit land jointly in the names of the predecessor of the plaintiffs and the predecessor of the defendants. The appellate court below has also considered the fact that at one stage the defendants had challenged the said entry but the said proceeding was dismissed by order (Ext.1) for default. It could not be shown on behalf of the appellants during the course of submission that any step further was taken by the defendant-appellants against the entries made in the survey khatian with regard to the suit land. It also transpires from the impugned judgment by the appellate court below that the



material oral and documentary evidence have been considered before recording the conclusions on the issues arising in the suit between the parties. This Court has not been persuaded to come to the conclusion that the findings as recorded by the appellate court below are perverse or unreasonable in any manner. It is demonstrably clear that the findings of fact have been recorded by the appellate court below on the basis of evidence, which were acceptable and could have been relied upon. This Court, therefore, does not find any substance in the submission on behalf of the appellants that the appellate court below has not considered any evidence on behalf of the defendant-appellants. No other submission has been made on behalf of the appellants.

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)

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