

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.223 of 2014**

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1. Rajendra Prasad Son of Late Jai Govind Sah
  2. Rameshwar Sah @ Rameshwar Prasad Son of Late Jai Govind Sah Both Resident of Village-Muradabad Kala, P.O.-Muradabad, P.S.-Sasaram, District-Rohtas (Sasaram).
  3. Narendra Prasad @ Narendra Kumar Gupta Son of Late Sheo Gobind Prasad Resident of Village-Muradabad Kala, P.O.-Muradabad, P.S.-Sasaram, District-Rohtas (Sasaram) at Present 3-D, Ram Narayan Motilal Lane Kolkata & 700014.

.... .... Appellants

Versus

1. Jai Kumar Gupta
2. Vijay Gupta Both Sons of Late Ram Nandan Prasad @ Rama Nand Gupta Resident of Village-Muradabad, P.O.-Muradabad, P.S.-Sasaram, District-Rohtas (Sasaram) at Present 5/c, Sheotala Lane, Kolkata-15.
3. Arti Gupta D/o-Late Ram Nandan Prasad @ Ramanand Gupta Resident of-D.R.L.R. Railway Quarter No.20, Jaki Bigha, P.S.-Dehri, P.O.-Dehari, District-Rohtas (Sasaram).
4. Ram Bihari Prasad
5. Krishna Prasad
6. Prem Nath Prasad All Sons of Late Sarjoo Sah Resident of Village-Muradabad Kala, P.O.-Muradabad, P.S.-Sasaram, District-Rohtas (Sasaram).

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Bhubneshwar Prasad, Adv.  
For the Respondent/s : Mr. Kamal Nayan Choubey, Sr.Adv.  
Mr.Ritu Priyadarshni, Adv.  
Mr.Yogendra Kumar Dwivedy, Adv.  
Homa Yunus, Adv.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 21-11-2016**

Heard Mr. Bhubneshwar Prasad, the learned  
counsel appearing for the appellants and Mr. K.N.Choubey, learned  
senior counsel appearing for the respondents.

The defendant 1<sup>st</sup> set are the appellants in this  
appeal against the judgment and decree of affirmance.

The plaintiffs filed the suit for declaration of their title and confirmation of possession over the suit land described in Schedule-I of the plaint and in the alternative have also prayed for recovery of possession.

After considering the submissions and from the matrix of facts as appearing from the judgments of both the courts below, it is pellucid that the title and possession of the original heir Harbanshi Kuwar over the suit plot is admitted. The plaintiffs claimed their title and possession over the suit land through registered sale deed executed by Harbanshi Kuwar. The plaintiffs have also claimed to have redeemed the mortgage over the suit land. The contesting defendants (defendant 1<sup>st</sup> set) came out with the case of oral sale by Harbanshi Kuwar in favour of mortgagee Ganga Ram and further oral sale of the suit land by Ganga Ram in favour of defendant 1<sup>st</sup> set. The courts below have taken into notice the deposition of the defendant examined as D.W.1 wherein he has accepted that he has got no proof of oral purchase of the suit land nor any corroborative evidence with regard to the said oral purchase as well as no information regarding the entry in the survey khatian with regard to the suit land. Both the courts below after analysis of the evidence on record have come to the conclusion that the plaintiffs and defendant 2<sup>nd</sup> set have got title and possession over the suit land. The findings have been recorded on the

basis of evidence which were acceptable and could have been relied upon.

Mr. Bhubneshwar Prasad, learned counsel for the appellants has submitted that the suit was hit by the provisions of Section 4(B) and 4(C) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1986. During the course of submission, however, the learned counsel has expressed his inability to point out the relevant date of notification under the said Act and has also accepted that no such prayer was ever made in the suit or the appeal. The learned counsel has further submitted that the report of the pleader commissioner has not been considered by both the courts below but during the course of submission he has failed to explain the relevancy of the said report and drive home the point that non-consideration of the said report has material effect on the findings of the courts below.

In result, this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Nitesh/-

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