

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.232 of 2013

=====

1. Rajendra Sao.
2. Sharwan Sao both Son Of Sonelal Sao Resident Of Village - More English, P.S. Mokama, District - Patna

.... Appellant/s

Versus

1. Jagdish Sao.
2. Baban Sao.
3. Bharat Sao.
4. Shatrughan Sao all Son Of Kameshwar Sao Resident Of Village - Mor English, P.S. Mokama, District - Patna
5. Kishuni Devi Wife Of Late Nand Lal Sao.
6. Gopal Sao Son Of Late Nand Lal Sao all 5 to 6 Resident Of Village - More English, P.S. Mokama, District – Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shailendra Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 04-04-2016 Heard the learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance.

The suit has been filed for partition by the plaintiffs. The defendants filed their written statement contesting the case of the plaintiffs and asserted that there had been previous partition in the family with regard to the family property. The parties in the suit led their oral and documentary evidence. The trial court

returned the findings on the issue of previous partition against the defendants and granted the decree as prayed by the plaintiffs. In appeal by the defendants, the appellate court below on reappraisal of the evidence has concurred with the findings of the trial court and dismissed the appeal.

The learned counsel for the appellants has submitted that both the courts below have not properly considered the Ext. B/2 which is the sale deed executed by the father of the plaintiff namely Kameshwar Sao (defendant 2nd set) in favour of the father of the contesting defendant namely Sonelal Sao. It is the submission on behalf of the appellants that the said sale deed is sufficient proof of partition of the suit property between the parties. The learned counsel has also contended that if the findings of fact recorded by the courts below are in ignorance of evidence, the same can be a substantial question of law under the second appeal. The learned counsel has placed reliance upon a judgment reported in the case of **Rajasthan State Road Transport Corporation Vs. Bajrang Lal, 2014 (4) SCC 693** in support of the submission.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the suit was filed for partition and the defendants' case was of the previous

partition. The basis and the sole evidence of the defendants in respect of partition was the sale deed (Ext. B/2) dated 17.07.1957 said to have been executed by the father of the plaintiffs in favour of the father of the contesting defendants. It appears from the judgments of both the courts below that the entire oral and documentary evidence including the sale deed (Ext. B/2) have been elaborately discussed by both the courts below and thereafter the effect of the sale deed (Ext. B/2) has been found not sufficient to dispel the presumption of jointness in the Hindu family. In this backdrop, the submission on behalf of the appellants that both the courts below have ignored the sale deed (Ext. B/2) has got no substance. Even otherwise also it is already settled by three Judge Bench of the Apex Court in the case of **S.R. Tewari Vs. Union of India, 2013 (6) SCC 602** that in case the finding of fact is based on some evidence on record which is acceptable and could have been relied upon such finding would not be treated to be perverse and cannot be interfered in the second appellate jurisdiction. Recently in the decision in the case of **Damodar Lal Vs. Sohan Devi, 2016 (3) SCC 78**, the Apex Court has reiterated the aforesaid principle and has laid down that in such a circumstance where inference on facts is reasonable, interference in concurrent finding would be wholly unwarranted apart from being

impermissible under 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)

Devendra/-

U			
---	--	--	--