

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.274 of 2010

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1. Most. Nirmala Devi wife of late Rajpati Sangahi.
 2. Ganga Prasad Sangahi, son of late Rajpati Sangahi.
 3. Jamuna Sangahi, son of late Rajpati Sangahi, all resident of village-
Amarpur, P.S. Bihpur, District-Bhagalpur.
 4. Smt. Sintu Devi daughter of late Rajpati Sangahi, wife of Anmol Prakash,
resident of village-Jairampur, P.S. Bihpur, District-Bhagalpur.

.... Appellant/s

Versus

Ram Nagina Sangahi, son of late Bengali Sangahi, resident of village-
Amarpur, P.S. Bihpur, District-Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Indrajeet Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 11-01-2016

Heard Mr. Jha, the learned counsel for the appellants.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit of the plaintiffs.

The suit was filed by the plaintiffs for declaration that the suit properties were the joint family properties of the plaintiffs and the defendants having half share each, and the survey entry regarding the suit properties inconsistent with this fact was wrong. The defendant contested the claim of the plaintiffs on the plea that there had already been partition of the suit properties in the year 1961 and therefore the plaintiffs were not entitled to the

reliefs, as prayed.

The trial court, after scrutiny of evidence, returned the finding that the plaintiffs had failed to establish the joint status with regard to the suit properties as claimed. It was further held that the suit was barred by limitation. The appellate court, in appeal by the plaintiffs, on reappraisal of evidence, has affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr. Jha, the learned counsel for the appellants, while criticizing the impugned judgment and decree, has canvassed that the plaintiffs and the defendants are admittedly brothers and therefore there is strong presumption of jointness in between them. It has, therefore, been submitted that the learned courts below ought to have approached the evidence adduced by the parties keeping in view the presumption of jointness between the parties with regard to the suit property. It has been posited that both the courts below have not approached the matter in correct perspective by wrongly placing the burden of proof on the plaintiffs. It has also been submitted that both the courts below have not correctly appreciated the evidence led by the parties.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the



plaintiffs have filed the declaratory suit for obtaining the declaration of jointness of the suit property between the plaintiffs and the defendant having half share each and also for declaration of the survey entry of the suit land to be incorrect. Both the parties have admittedly led their evidence on the issues arising in the suit. As such, the question of burden of proof would not be the material criteria for determining the issues because in a suit when both the parties lead evidence on the issues arising therein, it is the appreciation of the evidence which becomes material and the question of burden of proof loses importance as laid down by the Apex Court in the case of **Arumugham Vs. Sundarambal, A.I.R. 1999 SC 2216**. It appears from the findings by both the courts below that both oral and documentary evidence adduced by the parties have been considered by the courts below before coming to the conclusion that there had already been partition of the suit properties as claimed by the defendant.

The courts below have also taken into notice the fact that the plaintiffs had already filed an objection in the year 1973 under Section 106 of the B.T. Act against the survey entry for the suit property which was rejected. In this backdrop, the conclusion inevitably follows that the right to sue definitely arose to the plaintiffs for filing the present suit for the declarations as prayed

upon the rejection of the said objection. The suit filed in the year 2001 as such was definitely be barred by limitation under Article 58 or the residuary Article 113 of the Limitation Act and the courts below have rightly held so. This Court has also not been persuaded to find unreasonableness or perversity in the findings recorded by both the courts below on the basis of appraisal of evidence and in accordance with the settled principle of law.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal which is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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