

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.292 of 2013

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1. (A) Rikhdeo Mishra.
(B) Bishundeo Mishra, both sons of Late Binda Mishra.
(C) Saroj Kumar Mishra son of Late Beyash Mishra. All are R/o village-Khamauri, P.S.- Gautambudh Nagar (Tarwara), P.O.-Rajpur, District-Siwan.
(D) Indu Devi, Wife of Late Rakesh Pandey, R/o Village-Zamapur, P.S.- Zeeradei, District-Siwan.
(E) Bidyawati Devi, Wife of Bidya Bhushan Pandey R/o Village-Bhalua, P.S.- Barharia, District-Siwan.
(F) Suchinta Devi, Daughter of Late Beyash Mishra, Wife of Ishwar Chandra Tiwari, R/o Village-Khaki Baba ke pipra, P.S.-Goreyakothi, District-Siwan.
(G) Neelam Devi D/o Late Beyash Mishra Wife of Rajesh Tiwari, R/o Village-Pachrukhiya, P.S.-Barauli, District-Siwan.
(H) Poonam Devi, daughter of Late Beyash Mishra Wife of Vikash Dubey, R/o Village-Panjawar, P.S.- Raghunathpur, District-Siwan. Appellants
- Versus

1. Akhilesh Mishra.
2. Narshingh Mishra. Both son of late Singhasan Mishra.
3. Gautam Devi Wife of Late Rameshwar Pandey.
4. Bhagwan Mishra Son of Late Lalji Mishra.
5. Vijay Nath Mishra.
6. Narendra Mishra @ Bhola Mishra, both son of late Dharam Nath Mishra.
7. Parasuram Mishra.
8. Triloki Mishra both son of late Gopaljee Mishra.
9. Most. Chinta Kunwar Wife of Gorakh Mishra.
10. Ram Naresh Mishra Son of Late Gorakh Mishra.
11. Shanty Devi Wife of Bartak Dubey D/o Gorakh Mishra.
12. Dhrup Mishra Son of Late Manan Mishra.
All r/o Village-Khamauri, P.S.- G.B. Nagar (Tarwara)P.O.-Rajpur District-Siwan. Respondents
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Appearance :

For the Appellant/s : Mr. CHANDRA KANT
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-11-2016

Heard learned counsel for the appellant.

The plaintiff (now deceased through L.R.)is the
appellant in this appeal against the judgment and decree of
affirmance, dismissing the suit for partition.



The genealogy of the family as given by the plaintiff has not been disputed by the defendant. However, the plaintiff came out with the case that though there had been partition between the plaintiff and defendant who were descendants of two full brothers but the suit property was left joint between them while other properties had been partitioned. The defendant denied the assertions and claim of the plaintiff, with definite case that there had been partition of the entire family properties between the parties and there was no unity of title and jointness of possession with regard to the suit property as claimed by the plaintiff.

Both the courts below have recorded the concurrent finding of fact that there has been no unity of title and jointness of possession between the parties with regard to the suit property. The suit was dismissed and thereafter the appeal by the plaintiff has also been dismissed by the impugned judgment and decree.

The learned counsel for the appellants has submitted that both the courts below have committed error of law in ignoring the fact that the defendants could not have set up the defence that the suit was bad for partial partition on the one hand and on the other that there was no unity of title and jointness of possession between the parties with regard to the suit property. It has been contended that the appellate court below has committed error of law in not considering



the oral evidence adduced on behalf of the parties which support the case of the plaintiff. It has been submitted that the trial court has wrongly relied upon the remark column entry of possession in the survey khatian as evidence of partition and the appellate court below in particular has abdicated its duty as an appellate court in not considering the settled principles of law in this regard. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the case of the plaintiff that the suit property was only left joint while other properties were partitioned has been specifically denied by the defendant. In support of the case of previous partition, as pleaded, the defendants adduced in evidence the registered exchange deed dated 25.04.1974 executed by the plaintiff no.1 in favour of defendants. There was no explanation furnished on behalf of the plaintiff with regard to this documentary evidence nor there was any challenge to its legal validity. During the course of submission, it could not be further pointed out on behalf of the appellants that any reason or explanation has been furnished as to why the suit property was only left joint between the parties while other properties had been partitioned. This Court does not find substance in the submission on behalf of the appellants that the courts below have relied upon only the remark



column entry in the survey khatian recording the separate possession of the parties. The findings have been recorded by the courts below after consideration of the evidence which were acceptable and could have been relied upon. In view of the dictum laid down by three Judges Bench of the apex court in the case of ***Santosh Hazari Vs.Purushottam Tiwary, 2001(3)SCC 179*** that in a case of judgment of affirmance, the duty of the Court is lighter and it is not required to restate effect of evidence or reiterate reasons. Moreover, no oral evidence adduced on behalf of the plaintiff could be pointed out, which, if considered would have nullified the conclusions on the basis of documentary evidence and could have turned the table in favour of the plaintiff. This Court therefore does not find itself persuaded to find perversity or unreasonableness in the concurrent findings of fact by the courts below.

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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