

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.328 of 2013

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Sheo Bachan Singh S/O Late Shri Singh Resident Of Village And P.O. -
Kirkiri, P.S. - Azimabad, District - Bhojpur

.... Appellant/s

Versus

1. Gauri Shankar Singh S/O Late Shri Singh Resident Of Village - Kirkiri,
P.O. - Kirkiri, P.S. - Azimabad, District - Bhojpur
2. Ram Narayan Singh S/O Late Shri Singh Resident Of Village - Kirkiri,
P.O. - Kirkiri, P.S. - Azimabad, District - Bhojpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 11-02-2016 Heard Mr. Anish Chandra Sinha, learned counsel
appearing on behalf of the appellants.

2. The plaintiff in the suit is the appellant in this appeal against the judgment and decree of reversal. The plaintiff filed a suit for declaration that the properties acquired by him by the sale deeds (Exhibit-1 & Exhibit 1/A) between the year 1972-1979 to 1983 were his self acquired properties and that the defendants have got no concern with the same. The case of the plaintiffs was that there had been partition in the joint family property between the plaintiffs and defendants in the year 1969 and the plaintiff acquired the properties in question out of his own earning by cattle business and by salary from service. The

defendants in the written statement denied the assertion of the plaintiff of the partition in the year 1969 and came out with case that in fact there was previous partition in the year 1992 wherein the joint family property was partitioned among the co-sharers.

3. The trial court returned the findings in favour of the plaintiff and granted decree to the plaintiff as prayed. In appeal, the appellate court below, on reappraisal of evidence, has reversed the findings and set aside the judgment and decree of the trial court by the impugned judgment and decree.

4. Mr. Sinha, learned counsel appearing for the plaintiff appellants has submitted that the appellate court below has not properly appreciated the evidence led by the parties and has wrongly overturned the findings recorded by the trial court ignoring material evidence. It has been canvassed that the appellate court below has not considered the deposition by the plaintiff and his son in support of the fact that the suit properties were self acquired properties of the plaintiff, and has also further pointed out that the depositions of the three witnesses of the plaintiff have also not been considered by the appellate court. It has, however, been accepted that no documentary evidence has been led on behalf of the appellant to establish his assertion that he has got adequate source of income out of which the suit

properties were acquired by him. No further submission has been made on behalf of the appellants.

5. After perusal of the judgment of both the courts below and considering the submissions, it is manifest that the appellate court below has come to the specific finding that the plaintiff has failed to establish the partition of the joint family property in the year 1969. This finding has been given by the appellate court below on scrutiny of the evidence on record including the depositions of the close relatives of the parties as well as the documentary evidence. Further the appellate court below has also recorded the finding that the plaintiff was acting as Manager of the family being the senior member in absence of the father who was in service and therefore, the heavy burden was upon the plaintiffs to establish the fact of self acquisition. The findings recorded by the appellate court below does not appear to be unreasonable or perverse in any manner as the same has been recorded on the basis of evaluation of the evidence led by the parties. The submission by the learned counsel for the appellant regarding non consideration of the depositions of the plaintiff and his son as well as the deposition of the three witnesses of the plaintiff will also not help the appellant as the plaintiff and his son are obviously interested persons and the

three witnesses of the plaintiff whose depositions are said to have been not considered by the appellate court below have been found by the appellate court below to be the advocate's clerk. The fact has not been denied on behalf of the appellants that no close relative of the family or any co-villager has been examined on behalf of the plaintiff to support the case of partition and self acquisition.

6. The Apex Court in the case of **Damodar Lal vs Sohan Devi & Ors**, reported in **AIR 2016 SC 262**, has also held that in order to become a substantial question of law: *the wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises, and inadequacy of evidence or a different reading of evidence is not perversity.*"

7. In view of the aforesaid reasons and discussions, 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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