

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.329 of 2013

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Baliram Tiwari S/O Kapildeo Tiwari Resident Of Village- Takkipur, P.S-
Maharajganj, District- Siwan. Defendant Appellant

.... Appellant

Versus

1. Kamlakar Tiwari S/O Kapildeo Tiwari Resident Of Village- Takkipur,
P.S- Maharajganj, District-Siwan.
2. Dinesh Tiwari S/O Kamlakar Tiwari (Wrongly Shown In The Decree
As Son Of Kapildeo Tiwari) Resident Of Village- Takkipur, P.S-
Maharajganj, District- Siwan.
..... Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Hareram Singh
Mr. Virendra Kumar
For the Respondent/s : Mr. Umesh Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

8 03-02-2016 Heard learned Counsel for the appellant.

2. The defendant in the suit is the appellant in this appeal against the judgment and decree of affirmance. The crucial issues in the suit were as to whether the suit property was the self acquired property of the plaintiffs and the gift deed executed by the plaintiffs in favour of their son was valid.

3. Both the courts below after considering the evidence adduced on behalf of the parties have come to the concurrent findings of fact that the suit property is the self acquired property of the plaintiffs.

4. Assailing the judgments of both the courts below, learned Counsel for the appellant has submitted that the fact of partition in the family in the year 1980 as evidenced by registered family arrangement (Ext. 'E') has not been correctly interpreted by both the



courts below and the fact that the said partition was acted upon later on and admitted in the written statement filed by the father as well as plaintiff No. 1 and defendant in another suit, have been ignored. The learned Counsel has put emphasis on the said aspect and has submitted that the suit property was included in the said partition and, therefore, the plaintiff No. 1 could not have claimed exclusive title over the same. It has further been submitted on behalf of the appellant that the said property has been acquired in the year 1944, though in the name of plaintiff No. 1, but he was minor at that time and the said property was acquired by father of plaintiff No. 1 and the defendant. No other submission has been made on behalf of the appellant.

5. After considering the submissions and perusal of the impugned judgments of both the courts below, it is manifest that both the courts below have come to the finding that the said family arrangement (Ext. 'E') has been executed by Kapildeo Tiwary, father of plaintiff No.1 alone and does not bear the signature either of plaintiff No. 1 or the defendant. The courts below have also taken into notice the fact that some of the property had also been acquired by the plaintiff No. 1 in his name near about 1944 and further plaintiff No. 1 alone sold part of the property acquired by him in the year 1944 by registered sale deed. There is no evidence or any explanation on behalf of the appellant as to why no objection was raised to the said transfer of part of the property acquired in the year 1944 by plaintiff No. 1 alone if the same was joint family property according to the defendant-appellant and admittedly father of plaintiff No. 1 and

defendant was alive at that time. The submission on behalf of the appellant that the plaintiff No. 1 had transferred by sale deed some property allotted in his share in the year 1980 to the wife of the defendant also cannot enure to the benefit of the defendant because that fact alone could not change the nature of the acquisition of the suit property. There is also no documentary evidence led on behalf of the defendant that plaintiff No. 1 was minor in the year 1944. The findings of fact have been recorded by the courts below on the basis of scrutiny of evidence and this Court has not been persuaded to find unreasonableness or perversity in any manner with the same. In view of the principles laid down by the Apex Court in the case of Damodar Lal vs. Sohan Devi (AIR 2016 SC 262) as the findings by the courts below are based upon the evidence on record, the same cannot be taken to be perverse.

6. 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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