

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.522 of 2011

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1. Devi Deyal Sah S/O Late Sheo Shankar Sah.
 2. Hariom Prasad S/O Devi Deyal Sah.
 3. Ajit Kumar S/O Devi Deyal Sah.
 4. Ramjit Sah @ Anand Navin S/O Devi Deyal Sah.
 5. Santlal Sah @ Sonu Arya S/O Devi Deyal Sah.
 6. Bhagvati Prasad @ Raman Prasad S/O Devi Deyal Sah all R/O Mohalla Masumganj, P.O. Bhagwan Bazar, Post Manjhi, P.S. Bhagwan Bazar, Distt. Saran.

.... Appellant/s

Versus

1. Omprakash Prasad.
2. Mayashankar Prasad @ Sahab.
3. Udai Prakash @ Saroj.
4. Arun Kumar Sinha.
5. Bharat Bhusan Bihari all S/O Ram Kumar Sah @ Ram Kumar Prasad By Caste Teli, Profession Cultivation and Business all R/O Mohalla Masumganj, P.O. Bhagwan Bazar, P.S. Bhagwan Bazar, Perg. Manjhi Circle Office Chapra Sadar, District Saran.
6. Mangal Chand Sah S/O Sheoshanker Sah.
7. Rabindra Prasad Sah S/O Mangal Chand Sah.
8. Vijay Kumar Gupta S/O Late Ramprit Prasad.
9. Shakuntala Devi W/O Hiralal Sah all by Cast Teli, B/Profession Cultivation And Business, Village Masumganj, P.S. Bhagwan Bazar, P.O. Bhagwan Bazar, Prag. Manjhi, Circle Office, Chapra Sadar, District Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. J.K. Verma, Adv.
Mr. Ram Kishun Prasad, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT



Date: 19-04-2017

Heard Mr. J.K. Verma, learned counsel for the appellants.

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

The plaintiffs filed the suit for declaration of their title over the suit land detailed in schedule I of the plaint and for recovery of possession over the same besides ancillary reliefs.

The matrix of facts discloses that the plaintiffs and the contesting defendants are the descendants of one Gauri Sah who according to the plaintiffs died leaving behind six sons but according to the defendants he died leaving behind seven sons. The plaintiffs claim the suit property in plot no. 1108 and 1109 on the basis of partition in the manner as stated in the plaint. The plaintiffs' specific case in the plaint is also that their dispute is only with the descendants of the branch of Nawal Sah (one of the six sons of Gauri Sah) with whom there was a proceeding under Section 145 Cr.P.C. in respect of the suit plots. The defendants contested the assertions of the plaintiffs and denied the case and manner of partition of the property of Gauri Sah as propounded by the plaintiffs. The defendants also claimed their exclusive possession over the suit property refuting the allegation of the plaintiffs with



regard to their dispossession by the defendants. The defendants also pleaded that the recent survey entry with regard to the suit plots were wrong.

Both the courts below have concurrently decided the issues in favour of the plaintiffs and granted the reliefs to the plaintiffs as prayed for. The suit was decreed and the appeal thereafter by the defendants has been dismissed by the impugned judgment and decree.

Mr. Verma, learned counsel for the appellants while assailing the impugned judgment of the courts below has firstly submitted that both the courts below have erred in law in ignoring the fact that in the facts and circumstances of the case and the nature of the reliefs claimed in the suit, the other co-sharers (remaining descendants of Gauri Sah) were necessary parties to the suit which could not have been decreed in their absence. It has been next contended that both the courts below have further wrongly placed reliance upon the recent survey entry in the Khatiyani with regard to the suit plots and have wrongly disbelieved the case of the defendants on that score. Elaborating the submissions, it has been canvassed that the entry in a survey Khatiyani cannot be conclusive evidence to form the base of the finding in a civil suit and more so when there was no other cogent evidence on record except the gift



deed which was also a third party document. It has been finally submitted that the findings by both the courts below suffer from misreading and misinterpreting the material evidence on behalf of the defendants. 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 plaintiffs have claimed the relief for declaration of title and recovery of possession over the suit plots on the basis that the same have been allotted in the share of their predecessor in interest in partition. The suit plots are the parts of the property belonging to the common ancestor Gauri Sah is not in dispute. After considering the evidence on record, the courts below have come to the conclusion that the genealogy set up by the plaintiffs of the family of Gauri Sah is the correct genealogy and have found that the assertion of the contesting defendants to the contrary could not be substantiated by the evidence on record. The appellate court below has taken the detailed notice of the statements made by the defendant himself as D.W. 4 and after juxtapositioning the same with the documentary evidence on record has come to the conclusion that the entry in the R.S. Khatiyan (Ext. 8 and 8A) is correct entry with regard to the suit plots supporting the manner and partition of the properties as claimed by the plaintiffs.



The appellate court below has further taken into notice the gift deed (Ext. 7) executed by the widow of Munilal Sah in favour of her Bhagina Anant Sah and also the deeds of sale (Ext. 5 and 5/A) by the said donee Anant Sah of the gifted property wherein Shiv Shankar Sah predecessor of the defendants has appeared as witness. The findings by both the courts below have been recorded on the basis of evidence which were acceptable and could have been relied upon. As the suit is for declaration of title and recovery of possession against the contesting defendants alone with specific allegations against them, this Court does not find substance in the submission on behalf of the appellants that the suit was not maintainable in absence of other co-sharers as parties. It also does not appear that the findings by both the courts below are based upon the survey entry alone and in view of the statement made in the deposition by D.W.4 (one of the defendants), this Court again find no substance in the contention as put forth on behalf of the appellants that reliance upon the survey entry by the courts below is misplaced in any manner. This Court thus finds no perversity or unreasonableness in the findings by both the courts below which have been recorded on the basis of evidence and in accordance with the principles of law.

In result, it is held that there is no substantial question



of law arising for consideration in this appeal which is, accordingly,
dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.05.2017
Transmission Date	

