

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.268 of 2014

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1. Prakash Kumar son of Late Fudan Kumar
2. Punit Kumar, son of Prakash Kumar Both residents of village khagra, P.S.
Parbatta, District Bhagalpur

.... Appellants

Versus

Narayan Kumar son of Late Jai Nath Kumar, resident of village- Khagra, P.S.-
Parbatta District- Bhagalpur

.... Respondent

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Appearance :

For the Appellant/s : Mr. Laxmi Narayan Das

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-03-2017

Heard Mr. Das, learned counsel appearing for the
appellants.

The defendants are the appellants in this appeal
against the judgment and decree of reversal granting the decree to the
plaintiff as prayed.

The plaintiff filed the suit for declaration that the
plaintiff had got title over the entire roof top of the house by virtue of
the partition dated 09.06.1985 and had prayed for permanent
injunction against the defendants from damaging the boundary wall of
the roof top. It was the case of the plaintiff that there was partition
among the four brothers who were sons of late Jainath Kumar with
regard to the family property by execution of the Panchnama dated



09.06.1985. It was the case of the plaintiff that in the said Panchnama all the four brothers were allotted their separate shares and the plaintiff was allotted the old house alongwith the roof top. The contesting defendant in his written statement though has accepted that there was Panchnama dated 09.06.1985 but has asserted that the said Panchnama was never acted upon. The defendant thus resisted the relief as prayed by the plaintiff.

The trial court returned the findings on the issues against the plaintiff holding that the Panchnama dated 09.06.1985 as propounded by the plaintiff was not legal, valid and admissible document and after taking into notice the fact that the said Panchnama was unregistered document and the suit was filed after 17 years of the execution of the said Panchnama and therefore it was held to be barred by limitation. The suit was accordingly dismissed. However, in appeal, the appellate court below, on reappraisal of the evidence on record, has reversed the findings of the trial court, allowed the appeal and granted the decree to the plaintiff as prayed by the impugned judgment and decree.

After considering the submissions by Mr.Das, learned counsel for the appellants and perusal of the judgments of both the courts below, it is manifest that the execution of the Panchnama dated 09.06.1985 has been accepted by both the parties.



However, it is the case of the contesting-defendants that the said Panchnama was never acted upon whereas the plaintiff has asserted that according to the partition as recorded in the said Panchnama the plaintiff has been allotted the old house alongwith roof top which is the suit property. The appellate court below has considered in detail the submissions made by the contesting defendant no.1 Prakash Kumar in his deposition and has noticed the admissions made by him with regard to Panchnama and also with regard to partition on the basis of said Panchnama dated 09.06.1985. It has also been found that the contesting defendant has admitted in paragraph-39 and 40 of the deposition the fact to be true that on the basis of partition dated 09.06.1985, the descendants of the four brothers are residing according to their share as per the Panchnama dated 09.06.1985. The appellate court below has also further relied upon the Panchnama (Ext.1) as brought on record by the plaintiff and the Panchnama of the same date (Ext.A/1) brought on the record by the contesting defendants and it has been found that both the documents are same up- till page No.2 and the discrepancies are there, after that page. It has further been found by the appellate court below that the fact regarding the disputed roof of the building has been mentioned in Page-2 of the said Panchnama itself in both the Exts-1 and A/1. On that basis, the learned court below has come to the conclusion that the



plaintiff is entitled to the relief as prayed. It has also been held by the appellate court below that the filing of the copy of the Panchnama (Ext.A/1) by the defendant itself amounts to admission of its existence. The findings of fact by the appellate court below has been recorded after elaborate consideration of evidence, which were acceptable and could have been relied upon and this Court has not been persuaded to find any perversity or unreasonableness in those findings.

In the ultimate eventuate, 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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