

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.125 of 2005

- =====
1. Sayeeda Khatoon, W/o Wasi Ahmad Sah for self and as mother, guardian, well wisher and next friend of minor sons.
 2. Iftakhar Ahmad Sah Nawaz (Minor)
 3. Isteyaque Ahmad Aurangzeb (Minor)
 4. Jalalluddin Akbar (Minor)
 5. Zulfikar Ahmad Mohsin, all sons of Wasi Ahmad Sah, resident of Village Farha Rahimabad, P.S. Akbarpur, District Nawadah
- Plaintiffs Appellants

.... Appellants

Versus

1. Smt.Sonmanti Devi, W/o Hiralal Choudhary
 2. Hira Lal Choudhary, S/o Late Latan Choudhary
 3. Most. Zarina Khatoon, widow of Late Mumtaz Sah
 4. Md. Imteyaz
 5. Md. Mokhtar
 6. Md. Zainul Abdin, all sons of Late Mumtaz Sah
- All , resident of Village Farha, P.S. Akbarpur, District Nawadah
- Defendants Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Manoj Kumar Ambastha
Mr. Arunjay Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-02-2017

Heard learned Counsel for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit filed by the plaintiffs.

3. The matrix of facts discloses that Wahdu Sah had a son Karim Sah, who died during the life time of his father Wahdu Sah, but left behind two sons Qasim Sah and Mumtaz Sah. The plaintiffs who is the son of Karim Sah has claimed exclusive title over the suit property on the basis of oral gift by Wahdu Sah in favour of his grand-son Qasim



Sah. The defendants resisted the assertions of the plaintiff and denied the fact of oral gift as set up by the plaintiff.

4. Both the courts below recorded the concurrent findings of fact that the plaintiff has failed to establish the fact of oral gift of the suit property by Wahdu Sah in favour of his grand-son Qasim Sah. The suit was dismissed and thereafter in the appeal filed by the plaintiff the appellate court below on reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

5. Learned Counsel for the appellants has submitted that the findings by both the courts below are vulnerable inasmuch as the learned courts below have proceeded to decide the matter on the basis of principle of inheritance and have not considered the material evidence produced on behalf of the plaintiff. The learned Counsel has also placed the parts of the judgments of both the courts below in order to substantiate his submissions.

6. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that the plaintiff's claim of title in the suit property is based upon the fact of gift of the suit property by Wahdu Sah in favour of his grand-son Qasim Sah. The genealogy is not in dispute. It is also transparent that if there would have been no oral gift the defendants would also be entitled to have share in the property of Wahdu Sah in accordance with the principle of Mohammedan Law. Learned Counsel for the appellants has not disputed the fact that the date of oral gift has not been mentioned by the plaintiff in the plaint and the fact regarding the offer by Wahdu Sah for making the oral gift of the



suit property in favour of his grand-son has also not been mentioned. The courts below have taken into notice the oral and documentary evidence including the deposition by PW 3, who has accepted that the defendants are also entitled to the suit property and Ext. ‘A’ which is sale deed executed by Qasim Sah in favour of Meena Devi, where he has accepted that he has got half share in the property by partition. The findings by both the courts below have been recorded on elaborate analysis of the evidence adduced on behalf of the parties and this Court has not been persuaded to come to the conclusion that the findings on the basis of those evidences could not have been recorded. This Court has not been persuaded to find that the conclusions by both the courts below are perverse or unreasonable in any manner.

7. 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.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	13.2.2017
Transmission Date	N/A

