

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.241 of 2014

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Smt. Koushalia Devi wife of Sri Ashok Poddar resident of village - Pothiya, P.S. Falka, Distt. – Katihar

..... Plaintiff Appellant

.... Appellant

Versus

1. Smt. Malti Devi wife of Anup Lal Mandal
2. Sharun Yadav daughter of Shiv Narain Yadav Both resident of village - Ruchodeo, Simaria, P.S. Falka, Distt. - Katihar
3. Shobha Pandit son of Late Moushkil Pandit resident of village - Pothia, P.S. Falka, Distt. - Katihar
4. Munga Devi wife of Late Banni Mandal
5. Lutni Devi daughter of Banni Mandal, wife of Ram Chandra Mandal Both resident of village - Rupouli Tolwa, P.S. Rupouli, Distt. – Purnea
6. Natho Devi, wife of Late MKadho Mandal
7. Jai Prakash Mandal, son of Late Madho Mandal, both resident of village - Pothia, P.S. Falka, Distt. – Katihar

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Vivekanand Vivek

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-01-2017

Heard Mr. Vivekanand Vivek, learned Counsel appearing for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The suit was filed by the plaintiff for declaration of title and confirmation of possession. The matrix of facts discloses that the plaintiff's claim of title and possession over the suit property was based upon two crucial facts, firstly that one of the recorded tenants out of three had relinquished his share in the suit property and had also executed a



deed of ***ladabinama***, and secondly on the basis that the predecessor in interest of his vendor was adopted by the co sharer and in that manner therefore his share in the property was increased. The defendants denied the assertion of the plaintiff and resisted the relief as sought by the plaintiff in the suit.

4. Both the courts below have come to the concurrent findings of fact on the issues arising between the parties and after holding that the plaintiff has failed to establish the case by cogent evidence, the suit and the appeal have been dismissed.

5. Mr. Vivek, learned Counsel appearing for the appellant, has submitted that both the courts below have wrongly gone into the question of adoption when no issue in this regard was framed and secondly that the defendant Nos. 1 and 3 have not been examined in the suit and, therefore, also the judgments of both the courts below are vitiated.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the findings of fact have been recorded by both the courts below after detailed scrutiny of pleadings and evidence on behalf of the parties. It is not the case on behalf of the appellant that the findings by the courts below have been stemmed out of non consideration of evidence or de hors established principles of law. Reappreciation of evidence at the second appellate stage cannot be done unless the findings are shown or established to be perverse or unreasonable in any manner. This Court has not been persuaded to come to the conclusion that the findings 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	
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