

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.233 of 2004

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1. Smt.Sona Devi, Daughter of Late Surya Narain Mishra Wife of Ram Suresh Tiwary, Resident of Village-Majhwalia, P.S.-Durauli, District-Siwan at present residing at village-Karmaha, P.S.-Darauli, District-Siwan.
 2. Smt. Vindhyawasini Devi, Daughter of Late Surya Narain Mishra Wife of Ramanuj Dixit, Resident of Village-Majhwalia, P.S.-Durauli, District-Siwan at present residing at Rampur , P.O.-Pratappur, P.S.-Panakta, District- Deoriya, U.P.
 3. Bhupendra Mishra, Son of Surya Narayan Mishra Resident of Village-Majhwalia, P.O.-Karome, P.S.-Durauli, District-Siwan..... Appellants

Versus

1. Awadhesh Mishra.
 2. Subas Mishra.
 3. Ashok Mishra.
- All sons of Narbadeshwar Mishra.
All resident of Village-Majhwalia, P.O.-Karome, P.S.-Darauli, District-Siwan.
4. Yugal Dubey.
 5. Devendra Dubey.
- Both Sons of Beni Madhav Dubey.
Both residents of Village- Majhwalia, P.O.-Karome, P.S.-Darauli, District-Siwan .
6. Smt. Jyotsana Mishra @ Jyotishna Mishra, Wife of Harendra Mishra, D/o Padmnathpati Tripathi, Resident of Satna, P.O.-Satna, P.S.-Satna, District-Satna, Madhya Pradesh.
 - (i) Smt. Alka Mishra, Wife of Shashi Mishra, D/o Padmnathpati Tripathi, Resident of Satna, P.O.-Satna, P.S.-Satna, District-Satna, Madhya Pradesh.
 - (ii) Deepika Pandey, Wife of Sunil Pandey, Resident of Village-Sahdol, P.S.-Sahdol, District-Sahdol, Madhya Pradesh.
 - (iii) Smt. Chandrika Shukla, Wife of Sri Vijay Shukla, D/o Padmnathpati Tripathi, Resident of Village-Jabalpur, P.S.-Jabalpur, District-Jabalpur, Madhya Pradesh.
 7. Panna Devi Wife of Ramashankar Tripathi, Resident of Village-Barauli, P.S.-Andar, District-Siwan at present Samaya Press Sahdol, P.S.Sahdol, District-Sahdol, M.P.
 8. Vidyawati Devi, W/o Shivjee Tiwary, Resident of Village-Barauli, P.S.-Andar, District-Siwan.
 9. Brij Raj Dubey, Son of Late Shyam Bihari Dubey, Resident of Village-Majhwalia, P.O.-Karome, P.S.-Darauli, District-Siwan.
 10. Anirudh Mishra Son of Surya Narain Mishra, Residents of Village-Majhwalia, P.O.-Kzarome, P.S.-Darauli, District-Siwan. Respondents
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Appearance :

For the Appellant/s : Mr. GHANSHYAM MISHRA
Mr. Rajnish Kumar
Mr. Binay Kant Mani Tripathi

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT



Date: 17-01-2017

Heard Mr. Binay Kant Mani Tripathi, the learned counsel appearing for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree in part to the plaintiff.

The plaintiff filed the suit for partition of the suit property described in four schedules i.e. Schedule-Ka, Kh, Ga and Gh. In Schedule-Ka property, the plaintiff claimed $\frac{3}{4}$ share and in the remaining property of three schedules the plaintiff claimed to have half share. The defendant-appellants appeared in the suit and asserted that the plaintiff got half share in Schedule-Ka, Kh and Gh but had got no share in Schedule-Ga property which the defendant-appellants claimed to be their exclusive property acquired by their own earning. The trial court decreed the suit allowing half share to the plaintiffs in the properties described in the four Schedules. The plaintiffs did not file appeal against the said judgment and decree. However, it was the defendant-appellants who had filed the appeal questioning the legal sustainability of the decree passed by the trial court allowing half share to the plaintiff in the Schedule-Ga property. The appellate court below on reappraisal of evidence however has concurred with the findings of the trial court and has come to the conclusion that the



defendant-appellants have failed to establish by cogent evidence that the property of Schedule-Ga of the plaint was their self-acquired property. The appeal has been dismissed accordingly by the impugned judgment and decree.

Mr. Tripathi, learned counsel appearing for the appellants has emphatically submitted that the judgments of both the courts below are vitiated for non-consideration of the documentary evidence on behalf of the defendant-appellants. Elaborating his submissions, it has been contended that the defendant-appellants throughout have maintained and established that the property described in Schedule-Ga of the plaint is their self-acquired property which they acquired out of their earning from business. The learned counsel, therefore, has submitted that the findings by both the courts below in this regard are vulnerable and a substantial question of law arises for consideration in this appeal.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the plaintiffs' case with regard to unity of title and jointness of possession over the properties of the three schedules i.e. Schedule-Ka, Kh and Gh has been accepted by the defendants and it is only with regard to Schedule-Ga property that the defendants have contested the claim of the plaintiff on the basis that it was their self-acquired property. Both



the courts below in this view of the matter have rightly come to the finding that the nucleus in the family for acquisition of the property in Schedule-Ga is established. But in such a circumstance, the burden of proof has shifted upon the defendant-appellants to establish their case of self-acquisition of the property in Schedule-G by leading convincing evidence in this regard. The learned counsel for the appellants has submitted that the defendant-appellants have produced rent receipts, sale deeds and Zerpeshgi deeds in support of their claim that the property in Schedule-Ga has been acquired out of their own earning. In this regard the statement made in the depositions by the defendant Surya Narain Mishra (predecessor of the present appellants) has been taken into notice by the courts below where it has been stated that he had separated from his brother Jamuna Mishra but there was no separation from his father Bodhn Mishra @ Jodhan Mishra. The husband of the vendor of the defendant-appellants has also been examined as P.W.1 on behalf of the plaintiff who has stated in his deposition that the property in Schedule-Ga was sold by his wife Logan to Jodhan and it was purchased in the name of Surya Narain Mishra. It is also further stated that the payment of the consideration money was made by Jodhan Mishra and there is also specific statement that the defendant Surya Narain Mishra did not pay the consideration money. Moreover there is also no cogent evidence on



behalf of the defendant-appellants to establish the income of the defendant no.1 Surya Narain Mishra through which the property in Schedule-Ga could have been acquired. As the sale deed stood in the name of the defendantno.1 Surya Narayan Mishra, the rent receipts or the sale deed and Zerpeshgi deed adduced in evidence on behalf of the defendant-appellants would not have much bearing upon the issue as to whether the property in Schedule-G was the self acquired property of the defendant no.1 or the joint family acquisition. Both the courts below have taken into consideration the evidence on record particularly the oral evidence including the deposition of the defendant no.1 himself and thereafter have come to the conclusion that the defendant-appellant has failed to establish his case of self acquisition of the property in Schedule-Ga. The findings in this regard have been arrived by both the courts below on the basis of evidence which were acceptable and could have been relied upon. This Court , therefore, is not inclined to align with the submission on behalf of the appellants that the non-consideration of the aforementioned documentary evidence on behalf of the appellants would have turned the table in favour of the defendant-appellants. This Court, therefore, does not find any perversity or unreasonableness in any manner in the concurrent findings by the courts below.

Ex consequenti, it is held that there is no substantial question of law arising for consideration in this appeal,



which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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