

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.279 of 2014

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Siddh Nath Mishra Son of Late Ram Dutt Mishra Resident of Village- Kalyanpur,
P.O.- Berath, P.S.- Charpokhari, District- Bhojpur.

..... Plaintiff Respondent

.... Appellant/s

Versus

1. Sri Bhagwan Mishra Son of Late Satya Narayan Mishra.
2. Renu Devi Wife of Sri Bhagwan Mishra. Both resident of Village- Kalyanpur,
P.O.- Berath, P.S.- Charpokhari, District- Bhojpur.

..... Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Pathak

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-01-2017

Heard learned Counsel for the appellant.

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

3. The plaintiff filed the suit only for the relief that the gift deed dated 30.8.2000 executed by defendant No. 1 in favour of defendant No. 2 is forged, fabricated, inoperative and executed without title. Demonstrably there was no relief prayed by the plaintiff for declaration of his title over the land, subject matter of gift deed.

4. The matrix of fact also discloses that the plaintiff and the defendants belong to one family and the suit land, subject matter of the gift deed, was at one point of time the joint family property. The plaintiff claimed that in partition the said land was allotted in his share. The defendants though admitted the partition of the suit property but came out with a different case and manner of allotment of the land in question.



The defendants also resisted the assertion of the plaintiff and the relief prayed by the plaintiff.

5. The trial court decreed the suit. The appellate court below on reappraisal of evidence has reversed the findings of the trial court and dismissed the suit by the impugned judgment and decree.

6. Learned Counsel for the appellant has strongly submitted that the fact of partition was admitted fact between the parties but the appellate court below has wrongly come to the conclusion that the partition could not be proved by the plaintiff, as claimed. It has been further also contended that the appellate court below has wrongly come to the conclusion, in view of the admitted fact of partition, that there was no partition but only family arrangement. Learned Counsel has also canvassed that there was fatbandi case between the parties which support the case of the plaintiff of partition. Learned Counsel, however, has accepted that there was no relief for declaration of title claimed by the plaintiff. No other submission has been made on behalf of the appellant.

7. After considering the submission and perusal of the judgments of both the courts below it is manifest that the plaintiff has assailed the gift deed dated 30.8.2000 executed by defendant No. 1 in favour of defendant No. 2 with regard to the suit property. The plaintiff's ground of assail was that the suit property did not belong to defendant No. 1 and was allotted in the exclusive share of the plaintiff in partition. The appellate court below after considering the oral and documentary evidence adduced on behalf of the parties has come to the conclusion that the plaintiff has failed to establish his case that the suit property



(subject matter of the gift deed) was allotted exclusively in the share of the plaintiff. Though initially learned Counsel for the appellant has tried to make out a case of non consideration of evidence but during the course of argument the said submission could not be substantiated. The findings by the appellate court below have been recorded on the basis of consideration of evidence, which were acceptable and could have been relied upon. It is well settled by now that the second appellate jurisdiction is not a jurisdiction of a third appeal on facts. It is not the case on behalf of the appellant that the findings as recorded by the appellate court below have stemmed out of non consideration of evidence or are de hors settled principle. As such, this Court comes to the conclusion that the findings recorded by the appellate court below are not perverse or unreasonable.

8. 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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