

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.331 of 2014

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Mahabir Sharma son of Ramjee Sharma resident of village - Udhopatti, P.S. -
Bishanpur, District - Darbhanga. Appellants

Versus

1. Ramashish Sharma son of Late Muneshwar Sharma
2. Ram Bharos Yadav, Son of Late Hiranman Yadav.
3. Khurkhur Yadav
4. Lothe Yadav
5. Baidyanath Yadav
6. Jagdish Yadav All respondent nos. 3 to 6 are sons of Late Sanichar Yadav
7. Ashok Yadav son of Sanichar Yadav
8. Shatrughan Yadav son of Mishrilal Yadav
9. Nand Kishore Yadav
10. Awadhesh Yadav
11. Nagendra Yadav All sons of Late Kishun Yadav
12. Parwati Devi D/o of Late Kishun Yadav All residents of Village - Bhart Nagar,
P.S. - Gaighat, District - Muzaffarpur.
13. Panchu Yadav son of Late Tilak Yadav
14. Naresh Yadav son of Late Bhutta Yadav
15. Santosh Yadav son of Nathuni Yadav All residents of Village - Udhopatti, P.S.
- Bishanpur, District - Darbhanga.
16. Shatrughan Sahni
17. Bharat Sahni
18. Hira Sahani All Sons of Late Udho Sahni resident of Village - Baluaghat, P.S. -
L.N.M. 4, District - Darbhanga. Respondents

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Appearance :

For the Appellant/s : Mr. Baidya Nath Thakur, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-03-2017

Heard Mr.Thakur, learned counsel appearing for
the appellant.

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

The plaintiff filed the suit for declaration of title
and confirmation of possession over 1/3rd share in Schedule-I land and



further for declaration that the sale deed dated 21.11.1992 by defendant 2nd set in favour of defendant 1st set was illegal , invalid and without consideration and also not binding upon the plaintiff.

The matrix of facts discloses that in earlier T.S.No.108/1954 filed for partition by one co-sharer against the other co-sharers including the predecessor-in-interest of the plaintiff, the suit property (Schedule-I land) was also the subject matter of said suit and there had been a preliminary decree for partition was passed in the year 1951. The plaintiffs are purchasers form the descendants of the two co-sharers namely Raghubanshi Sahni and Bachu Sahni whereas defendant 2nd set is the descendant of remaining another co-sharer and defendant 1st set are purchasers by sale deed dated 21.11.1992 from the defendant 2nd set. Both the courts below, after scrutiny of evidence, have come to the concurrent finding of fact that the decree passed in Partition Suit No.108/1954 would be binding upon the parties including the predecessor-in-interest of the vendor of the plaintiffs and therefore both the courts below have concurrently come to the conclusion that the issue that the suit property exclusively belonged to the predecessor-in-interest of the vendor of the plaintiff now cannot be gone into. Both the courts below have also come to the conclusion that the plaintiff has got no right, title and interest over the entire suit land and he is not entitled to the decree as prayed.



During the course of submissions, the fact that the suit property had been subject matter of partition in earlier T.S.No.108/1954 (Partition) has not been denied. It has also been not denied that a final decree was prepared in the said suit.

After considering the submissions and perusal of the judgments of both the courts below, this Court has not been persuaded to find that the conclusions by both the courts below are perverse or unreasonable in any manner. Both the courts below have elaborately considered the decree passed in T.S.No.108/1954 with regard to the suit property as well and on that basis they have non-suited the plaintiff.

It also transpires that the trial court has further come to the conclusion that the plaintiff had the knowledge of the sale deed dated 21.11.1992 but has chosen to file the suit in the year 1999 and therefore the suit was also barred by law of limitation.

Ex consequenti, this Court does not find that any 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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