

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.274 of 2014**

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1. Manoj Kumar  
2. Raj Kumar Mistry  
3. Ranjeet Kumar  
4. Sanjeet Kumar  
5. Manjeet Kumar All sons of Late Ghanshyam Mistry, Appellant No. 1 and 2 are sons from first wife most. Puniya Devi and Appellant No. 3 to 5 are sons from second wife Shakuntala Devi All residents of village cum Town: Roh, Post Office : Roh, P.S. Roh, Dist.-Nawadah

.... .... Appellants

Versus

1. Mishri Yadav  
2. Ramashish Yadav  
3. Umesh Yadav All sons of Basudeo Yadav All residents of Village - Banshicka, Polcie Station Roh, Post Office Roh, Samaharigarh, Dist.-Nawadah

..-Respondents

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**Appearance :**

For the Appellant/s : Mr. Rekha Prasad

For the Respondent/s : Mr. Surendra Kishore Thakur, Adv.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 15-02-2017**

Heard Mrs. Rekha Prasad, the learned counsel appearing for the appellants. Mr.Surendra Kishore Thakur, advocate, has appeared on behalf of some of the respondents.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit. The plaintiffs filed the suit for declaration of title over the suit land and further for declaration that the sale deed dated 24.05.2001 executed by the defendant 1<sup>st</sup> set was illegal and invalid and without consideration and not binding on the plaintiffs.

The matrix of facts discloses that the plaintiff filed



the suit asserting their exclusive title over the suit property on the basis of partition through the award in the year 1996. The contesting defendants, on the other hand, claimed that the suit property was not joint family property but was the self acquired property of the defendant no.5 who transferred it by sale deed in favour of defendant no.4 from whom the defendant 1<sup>st</sup> set purchased the suit property by registered sale deed dated 24.05.2001.

Both the courts below have come to the concurrent finding of fact that the suit property is the self-acquired property of the defendant no. 5 and the claim of the title by the plaintiffs who are his sons over the said property is not tenable as the plaintiffs have failed to prove the acquisition of the suit property through joint family funds. Returning the findings on the material issues against the plaintiffs, the suit was dismissed and thereafter in appeal, 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.

Mrs. Prasad, learned counsel appearing for the appellants has submitted that both the courts below have not properly considered the evidence adduced on behalf of the parties and therefore the findings are perverse. It has been argued that even if the award through which the partition had been claimed was not legally admissible for want of registration, the learned courts below ought to have taken into notice the aspect that at least the partition was affected through that document



(award). However, the learned counsel for the appellants could not place before the court any principle or precedent in support of the said submission. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the findings on the materials issues of fact have been recorded by both the courts below on the basis of scrutiny of evidence. The possibility of another view on the same set of evidence cannot be a substantial question of law in a second appeal. This Court has not been persuaded to hold that the findings of facts as recorded by both the courts below are perverse or unreasonable in any manner. This Court also finds that the findings have been recorded by the courts below on the basis of evidence which were acceptable and could have been relied upon. The issues of facts arising between the parties now stand concluded by concurrent findings of facts.

This Court thus comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Nitesh/-

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