

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.317 of 2014

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Ram Krishna Vishwakarma Son of Late Ram Prasad Mistry Resident of Village -
Makhdumpur, Saraiya, P.S. - Makhdumpur, Distt. - Jehanabad.

..... Plaintiff Appellant

.... Appellant

Versus

1. Uma Shankar Prasad Vishwakarma Son of Late Ram Prasad Mistry Resident of Village - Makhdumpur, Saraiya, P.S. - Makhdumpur, Distt. - Jehanabad (Plaintiff In Counter Claim in The Learned Trial Court And Respondent In the Appellate Court Below)
2. Radhey Prasad Vishwakarma Son of Late Ram Prasad Mistry Resident of Village - Makhdumpur, Saraiya, P.S. - Makhdumpur, Distt. - Jehanabad.
3. Kedar Prasad Son of Late Ram Prasad Mistry, Resident Of Village - Makhdumpur, Saraiya, P.S. - Makhdumpur, Distt. - Jehanabad.
4. Sabita Devi W/o - Shiv Gobind Mistry Resident of Village - Narayanpur, P.S. - Kako, Distt. - Jehanabad.

..... Defendant Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Santosh Kumar Sinha – 2, Advocate
Mr. Arvind Prasad Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-04-2017

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the judgment and decree of affirmance granting decree to defendant No. 2 as claimed in the counter claim filed by him.

3. The matrix of facts discloses that the plaintiff filed a suit for partition of the suit property claiming 6/25th share in the property on the basis of assertion of unity of title and jointness of possession between the parties. It was the case of the plaintiff that though there was a separation between the parties but there was no partition by metes and bounds. The defendant No. 2 while supporting the case of partition of the



plaintiff filed a counter claim wherein he claimed for partition of the properties described in the counter claim. The parties filed their respective written statement against the counter claim filed by defendant No. 2 contesting the relief as prayed therein. It was the case of the defendants who contested the counter claim that the property in the counter claim was not the joint family property but the self acquisition of the persons who are none else than the plaintiff as well as the wives of defendant Nos. 1 and 3.

4. The trial court decreed the counter claim after coming to the conclusion that the suit property, subject matter of the counter claim, was acquired out of the income of the father of the parties. The suit for partition was decreed granting the relief for partition as prayed by the plaintiff and the relief as prayed by defendant No. 2 in the counter claim was also allowed granting the shares to the parties therein. The plaintiff alone filed the appeal against the decree granted to the defendant No. 2 in the property subject matter of the counter claim. The appellate court below on reappraisal of evidence has concurred with the findings of the trial court holding that the property, subject matter of counter claim, was joint family property acquired by father of the parties i.e. plaintiff and defendants of the suit. Accordingly the appeal against the decree in the counter claim has been dismissed by the impugned judgment and decree.

5. Learned Counsel for the plaintiff- appellant has submitted that the property, subject matter of the counter claim, has been acquired in the name of three persons i.e. the plaintiff and the respective wives of defendant Nos. 1 and 3 and therefore the wives of defendant Nos. 1 and



3 were necessary parties to the suit for the purpose of adjudication of the suit which could not have been decreed in their absence. The learned Counsel has canvassed that the courts below have not considered the said aspect and therefore the decree passed by the learned courts below in the counter claim is vulnerable. Elaborating his submission, the learned Counsel has pointed out that there is no dispute about the fact that the wives of defendant Nos. 1 and 3 who are co-purchasers with the plaintiff have not been made party and therefore the relief granted to defendant No. 2 for the property, the subject matter of the counter claim, could not have been granted. During the course of submission, the learned Counsel for the appellant has failed to point out any part of the pleading or evidence on behalf of the plaintiff-appellant to show that any case was made out by the plaintiff- appellant regarding the self acquisition of the property, subject matter of the counter claim, in his name as well. Further no part of the evidence on behalf of the plaintiff-appellant has been pointed out by the learned Counsel even during the course of submission to show that the plaintiff-appellant has explained the circumstances in which his name has also been included as purchaser of the property by sale deed which is subject matter of the counter claim. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below it is manifest that the appeal in the appellate court below was filed by the plaintiff-appellant against the decree for partition as prayed by defendant No. 2 in his counter claim for the property, subject matter of the said counter claim. The name of the



plaintiff is admittedly shown in the sale deed by which the property, subject matter of the counter claim, has been purchased. On behalf of the plaintiff- appellant there is no pleading or evidence aliunde explaining the presence of his name as one of the purchasers along with the wives of defendant Nos. 1 and 3 in the said sale deed. To the contrary the evidence of the scribe as well as the vendor of the said sale deed have been noticed by both the courts below wherein the scribe and the vendor both have stated that the consideration money for the purpose of the property, subject matter of the counter claim, was paid by father of the plaintiff and the defendants. In absence of any pleading or evidence on behalf of the plaintiff to show that the property, subject matter of the counter claim, was acquired out of his own income or out of the *Stridhan* of the wives of defendant Nos. 1 and 3 this Court does not find that the finding by both the courts below in this regard that the said property was joint family acquisition is perverse or unreasonable in any manner. Even otherwise also both the courts below have recorded the findings on the basis of evidence which were acceptable and could have been relied upon. The attempt by the plaintiff to avoid the decree for partition as granted by both the courts below only on the ground that the two other purchasers, who are none else than the wives of defendant Nos. 1 and 3, have not been made party cannot be legally sustained in absence of any case of the plaintiff explaining the presence of his name in the sale deed along with wives of defendant Nos. 1 and 3. Whole argument on behalf of the appellant has centered around reappraisal of evidence which cannot be done in the second appellate jurisdiction unless the concurrent findings of fact are shown to be not based on cogent evidence of the



parties or being dehors settled principle of law.

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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