

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.103 of 2014

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Mustari Begum Wife of Tipu Sultan Resident of Village and P.O. Gundi, P.S. -
Krishnagarh, District - Bhojpur, Ara.

.... Appellant

Versus

1. Wahid Mian
2. Zahid Mian
3. Izharul Haque (name expunged) All sons of Late Abbas Mian Resident of Village and P.O. Gundi, P.S. - Krishnagarh, District - Bhojpur.
4. Akbar Ali Son of Idrish Mian (name expunged)
5. Anwar Ali Son of Idrish Mian
6. Samsad Ali Son of Idrish Ali
7. Ashraf Ali Son of Akbar Ali
8. Md. Firoj Son of Akbar Ali
9. Sharwar Ali Son of Akbar Ali
10. Kausar Ali Son of Akbar Ali
11. Arshad Ali @ Asvshd Ali, Son of Akbar Ali
12. Afsana Parveen Daughter of Akbar Ali
13. Rukhsana Parveen Daughter of Akbar Ali
14. Rehana Parveen Daughter of Akbar Ali
15. Asgari Begun, wife of Safiuddin, resident of Village Anaith, P.S. Nawada Arra, District Bhojpur
16. Enamuddin Son of Late Nizamuddin Resident of Village - Chakia, P.S. - Ara Mufasil, District - Bhojpur.
17. Shakila Bano Wife of Jamaluddin Resident of Village - Gola Mohalla, P.S. - Ara Town, District - Bhojpur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Md.Imteyaz Ahmad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-04-2017

Heard learned Counsel for the appellant.

2. One of the plaintiffs is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit for partition.

3. The plaintiffs filed the suit for partition of 9 Ana share out of 16 Annas share in the property mentioned in Schedule I of the plaint and also for recovery of possession and mesne profit from defendant No. 7.



4. During pendency of the suit the defendant No. 6 was transposed as plaintiff in the suit. It is not in dispute that defendant No. 6 was the full sister of the original plaintiff. The suit was contested only by defendant No. 7(a) on the basis of purchase by registered sale deed from the plaintiffs.

5. Both the courts below have returned the findings on the issue against the plaintiff and dismissed the suit.

6. Learned Counsel for the appellant has submitted that both the courts below have not properly considered the evidence on record and have wrongly recorded the findings against the plaintiff. After giving the genealogy of the family of the plaintiff and the defendant Nos. 1 to 6 in detail and mentioning other facts it has been contended that the plaintiffs were entitled to reliefs as claimed in the suit. During the course of submission, however, it has not been denied that no relief has been claimed in the suit by the plaintiff against the sale deeds executed by them in favour of contesting defendant No. 7 and 7(a). No other submission has been made on behalf of the appellants.

7. After considering the submission and perusal of the judgments of both the courts below it is pellucid that the plaintiff's suit was originally for partition of 9 Anna share in the suit and recovery of possession against defendant No. 7. The suit was contested only by defendant No. 7, who died during pendency of the suit and was substituted by defendant No. 7(a), on the basis of their purchase of the share of the two plaintiffs by registered sale deeds dated 19.9.1991 and 2.5.1981. The courts below after appreciating the evidence on record have come to the conclusion that there has been partition between the



two brothers namely Abbas Mian and Himayat Mian who were predecessors of the plaintiffs and defendant Nos. 1 to 5. The courts below after taking notice of Exts. ‘B’ and ‘B/1’ have further come to the finding that both daughters of Himayat Mian (original plaintiff and the transposed plaintiff in the suit) have sold their lands to defendant Nos. 7 and 7(a) for valid consideration and put the purchasers in possession. It has also been concluded by both the courts below that those two sale deeds are valid and legal documents. On this basis the courts below have come to the findings that the plaintiffs are not entitled to get any share in the land in question as on the date of filing of the suit no title and possession of the plaintiffs in the suit land were subsisting.

8. The findings of fact have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon. During the course of submission this Court has not been persuaded to come to the conclusion that those findings are perverse or unreasonable in any manner.

9. In the ultimate eventuate, it is held that there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

Snkumar/-

(V. Nath, J.)

AFR/NAFR	
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