

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.249 of 2014

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1. Kamla Kuar W/o - Late Lal Babu Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Dist. - Bhojpur.
 2. Sanjay Kumar Gupta S/o - Late Lal Babu Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Dist. - Bhojpur.
 3. Deepak Kumar Gupta Son of Late Lal Babu Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Dist. - Bhojpur.
 4. Rajesh Kumar Son of Late Lal Babu Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Dist. - Bhojpur.
 5. Rupesh Kumar Son of Late Lal Babu Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Dist. - Bhojpur.

.... Appellants

Versus

1. Ved Prakash Son of Late Prayag Sah Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
2. Mithilesh Kumar @ Sanjay Kumar Son of Bed Prakash Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
3. Ramjee Son of Bed Prakash Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
4. Satya Prakash Son of Bed Prakash Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
5. Bikash Son of Bed Prakash Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
6. Phulwanti Devi Wife of Late Sheojee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
7. Anil Prasad Son of Late Sheojee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
8. Raj Kumar Son of Late Sheojee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
9. Rajendra Kumar Son of Late Sheojee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
10. Ashok Kumar Son of Late Sheojee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
11. Lalanjee Son of Late Beni Prasad Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
12. Kunti Kuar Wife of Late nandjee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
13. Baby Kumari D/o Late Nandjee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
14. Rajani Kumari D/o Late Nandjee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
15. Rabi Kumar Son of Late Nandjee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.
16. Ritesh Kumar Son of Late Nandjee Resident of Mohalla - Mahadeva Road, Babu Bazar, Ara, P.S. - Ara Town, Distt. - Bhojpur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha
Mr. Krishna Murari Rawt



For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-01-2017

Heard Mr. Anish Chandra Sinha, learned Counsel appearing for the appellants.

2. The plaintiffs filed the suit for declaration of title and confirmation of possession/recovery of possession over the suit property which was a wall described in detail in the schedule of the plaint. The defendants denied the assertion of the plaintiffs and restricted the reliefs claimed in the suit.

3. It would be material to mention here that there were two sets of plaintiffs being descendents of branch of Lal Babu and Beni Prasad. The set of the plaintiffs who were descendents of the branch of Lal Babu only have preferred this appeal. It is not in dispute between the parties that the plaintiffs and the defendants are descendents of the common ancestor. There was a partition in the family in which the suit wall has been claimed by the plaintiffs to have been allotted to them. In view of denial by the defendants regarding the claim of the plaintiffs, the trial court returned the findings on the issues on the ground that the defendants admitted the title of the plaintiffs over the suit wall and therefore by resorting to Section 58 of the Indian Evidence Act, the decree was granted to the plaintiffs as prayed.

4. The appellate court below on reappraisal of pleadings and evidence on behalf of the parties has reversed the findings of the trial court, set aside the judgment and decree and dismissed the suit by the impugned judgment and decree.

5. Mr. Sinha, learned Counsel for the appellants has



submitted that the appellate court below has not considered the oral evidence adduced on behalf of the plaintiffs and therefore the judgment is vitiated. It has been submitted by placing the findings of the trial court that the trial court has recorded the findings correctly on the basis of evidence on record. No other submission has been made on behalf of the appellants.

6. After considering the submission and perusal of the judgment of appellate court below, it is manifest that the appellate court below has come to the specific finding on examination of the pleadings of the parties that the defendants have denied the title of the plaintiffs of the branch of Lal Babu over the suit property by stating that Lal Babu was not allotted any share in Holding No. 921 which is the land in dispute where the suit wall is located. The appellate court on the basis of scrutiny of evidence has also come to the finding that the plaintiffs have failed to establish their exclusive title over the suit wall and accordingly the findings of the trial court have been reversed. From perusal of the judgment of the appellate court below it is apparent that the findings of fact have been recorded on the basis of evidence which were acceptable and could have been relied upon. It is not the case on behalf of the appellants that the findings have stemmed out of non consideration of evidence or are unreasonable in any manner. The submission regarding non consideration of the oral evidence adduced on behalf of the plaintiffs is also not substantiated from the impugned judgment, where the appellate court has pointedly made reference to the oral evidence on behalf of the plaintiffs including the deposition of PW 5 (one of the plaintiffs). This Court, therefore, has not been persuaded to find perversity or unreasonableness in the



findings by the appellate court below.

7. In the result, 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	
CAV DATE	N/A
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