

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.218 of 2015
Arising out of
LPA 1263 of 2001

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Yogendra Sah, son of late Brij Lal Sah, Resident of village - Sursand, Police Station
- Sursand, District - Sitamarhi.

.... Petitioner/s

Versus

1. Radha Devi wife of Late Baijnath Prasad resident of Maruadih, Bahertawa Road, P.S. Marwadih, District - Varanasi (U.P.).
2. Laxmania Devi wife of late Ramji Prasad resident of village - Janakpur Dham, P.S. Janakpur, District Mohalri (Nepal) at present resident of village Diwari, P.S. Sursand, District - Sitamarhi.
3. Phuljhari Devi widow of late Brij Lal Sah
4. Parmeshwar Sah son of late Brij Lal Sah
5. Ram Narain Sah son of Parmeshwar Sah all are residents of village Sursand, P.S. Sursand, District Sitamarhi.
6. Shiv Shankar Prasad S/o Late Chandeshwar Prasad
7. Kaushalya Devi Widow of Late Sheo Shankar Prasad resident of village - Sursand, P.S. Sursand, District - Sitamarhi.
8. Shyama Devi w/o Sri Narendra Prasad resident of behind Central School, P.S. Samastipur Town, District - Samastipur.
9. Krishna Kumar W/o Sri Gopal Prasad residing at Mohalla - Tumaria Tola, P.S. Raxaul, District - Motihari.
10. Binita Devi W/o Sri Bishwanath Prasad residing at Mohalla - Kulamgaon, P.O. & P.S. - Raurkela, District - Sundergarh, Odisha.
11. Udai Chand Sah son of Yogendra Sah
Resident of village - Sursand, Police Station - Sursand, District - Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Advocate
Mr. Alok Kumar Jha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 09-02-2017

The present is a petition for review of the order passed
by a Division Bench of this Court on 27th April, 2015 whereby an
appeal filed by some of the defendants was accepted and the
judgment and decree passed in First Appeal No. 555 of 1975 and the



preliminary decree passed by the learned trial Court were set aside.

The petitioner seeks review of the order on two grounds. Firstly, that the father of the petitioner was purchaser of a land situated in village Debari in the year 1955 and, therefore, such land could not have been given to the plaintiffs in partition in the year 1951. Secondly, that the Division Bench has set aside the order passed by the learned Single Bench in the First Appeal on the ground that it violates the provisions of Order 41 Rule 31 of the Code of Civil Procedure but instead of remanding the case, dealt with the Letters Patent Appeal as the First Appeal. Since the First Appeal is a Court of finding of fact, but the Bench has not considered the oral and documentary evidence and given finding on each issue, therefore, the judgment passed by this Court suffers from patent illegality. Reliance is placed upon a Supreme Court judgment reported as Sawarni (Smt.)Vs. Inder Kaur (Smt.)& Ors., (1996) 6 SCC 223.

We have heard learned counsel for the petitioner and find no merit in the present review petition. Firstly, in the plaint there is no assertion that the land of the village Debari was purchased in the year 1955 as is sought to be argued before this Court. In the absence of specific pleading in respect of acquisition of land in a particular village in a particular manner, the argument that the father of the petitioner purchased the land in village Debari in the



year 1955 and thus there was no question of partition of such property to the petitioner, does not arise for consideration.

The appeal has been disposed of by a finding that the Defendant Nos. 1, 3 and 4 were enjoying their respective shares to the exclusion of others, therefore, there was no occasion or basis for affecting the partition once again, but at the same time, the plaintiffs have been given liberty to work out their remedies against the 1st defendant. Since there is no plea of purchase of land in village Debari in the year 1955, therefore, we find that such plea cannot be permitted to be raised at the stage of review.

In respect of the argument that the Letters Patent Bench which has accepted the appeal has to be treated as a Court of fact, is again not tenable. Though the Court has found that the judgment of the First Appellate Court is not proper in view of its being in contravention of the provisions of Order 41 Rule 31 of the Code of Civil Procedure, but still the findings recorded by the learned Single Bench has been taken into consideration and the findings are in respect of the error in the order passed by the learned Single Bench. Still further, when the High Court decides the First Appeal, even if it is treated that the High Court has decided Letters Patent Appeal as the First Appeal, the judgment of this Court cannot be disputed in review on the ground that evidence has not been discussed as is expected from the first Appellate Court presided over by the District



Judge or the Additional District Judge.

The findings recorded by the Division Bench of this Court cannot be permitted to be challenged on the ground that the sale of land purchased in the year 1955 has not been discussed as is expected of a Court of fact. The particular reference of non-consideration of the documentary evidence is the sale deed of the year 1955 which as mentioned above was not mentioned in the plaint itself.

We do not find any error in the order passed by the Division Bench of this Court apparent on record which warrants review of the order.

The review petition is, thus, dismissed.

(Hemant Gupta, ACJ.)

S.Pandey/-

(Sudhir Singh, J.)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2017
Transmission Date	

