

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.285 of 2014

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1. Navalal Thakur Son of Sonelal Thakur (Now deceased)
 2. Sanjha Devi Wife of Nevalal Thjakur Both Resident of Vilage-Sauriya Bujurg.
Pargana 63, P.S.-Nanpur, District-Sitamarhi.

.... Appellant/s

Versus

1. Rampari Devi Wife of Khobhari Mahto
2. Khobhari Mahto Son of Late Gena Mahto
3. Ram Sakal Mahto
4. Shambhu Mahto
5. Sanjeet Mahto All sons of Khobhari Mahto Residents of Village-Sauriya
Bujurg, P.O. Radhi P.S.-Nanpur, District-Sitamarhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-01-2017

Heard Mr. Yogendra Prasad, learned counsel for the appellants.

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 and recovery of possession over the suit land.

The matrix of facts discloses that the suit land admittedly belongs to three brothers. There are two plots i.e. plot nos. 3461 and 3462 having two decimal each and the western part of the plot no.



3461. is the suit land. The fact is not in dispute that there has been no partition by metes and bounds between the three brothers. Out of the three brothers, two brothers namely Anup Das and Parikshan Das sold the two decimal of plot no. 3461 to the defendants by executing a registered sale deed in March 1983. The plaintiffs, however, purchased the three dhurs of plot no. 3461 subsequently in March 1983 by one brother Achay Das. It is the case of the plaintiffs that the defendants subsequently dispossessed the plaintiffs from their purchased land (suit land). The defendants denied the assertion of the plaintiffs and contested the relief.

Both the courts below have come to the concurrent finding of fact that the plaintiffs have not been able to establish their case for grant of the relief as claimed. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

Learned counsel for the appellants has submitted that the plaintiffs are admittedly the purchasers from one co-sharer namely Achay Das who by registered sale deed executed the sale deed in August, 1983 sold the suit land having area of 3 dhurs (west) of plot no. 3461. It has been canvassed that as the right, title and interest of the plaintiffs' vendor are admitted and therefore both the courts below have committed illegality in non-suiting the plaintiffs by not



granting the relief for declaration of title and recovery of possession.

The fact has however been not denied during the course of submission that there was no relief sought by the plaintiffs in the suit against the prior sale deed of the entire two decimal of plot no. 3461 which included the suit land standing in favour of the defendants. Both the courts below have concurrently taken into notice the fact that till the sale deed in favour of the defendants was not cancelled no relief for declaration of title as prayed can be granted in favour of the plaintiffs. The findings of fact by both the courts below have been recorded on the basis of scrutiny of evidence which were acceptable and could have been relied upon. During the course of submission, this Court has not been persuaded to find perversity or unreasonableness in the findings by both the courts below.

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)

Devendra/-

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CAV DATE	
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