

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.292 of 2014

- =====
1. Sanjay Kumar @ Sanjay Kumar Verma Son of Late Krishna Kumar Prasad Resident of Mohalla - Madhuri Chowk, Railway Quarter No. 361/A, P.S.+Distt. - Samastipur. Defendant 1st party Respondent 1st party
 2. Rama Shankar Thakur Son of Late Ram Lagan Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 3. Most. Laxmi Thakur, Wife of Late Uday Shankar Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 4. Mukund Kumar @ Mukund Kumar Thakur Son of Late Uday Shankar Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 5. Archana Kumari D/o Late Uday Shankar Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 6. Kajal Kumari D/o Late Uday Shankar Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 7. Chandan Kumari D/o - Late Uday Shankar Thakur Resident of Mohalla - Bahadurpur, Ward No. 23, P.O. + P.S. + Distt. - Samastipur
 8. Vibha Kumari @ Vibha Devi W/o - Sri Arun Kumar Singh Resident of Village - Pataliya, P.S. - Bibhutipur, Distt. - Samastipur. Defendant 2nd party Respondent 2nd party
 9. Meena Prasad W/o - Late Vishnu Kumar Prasad Resident of Mohalla - Bahadurpur, Ward No. 4 4 (Old), P.S. + Distt. - Samastipur
 10. Suman Kumar Prasad Son Late Vishnu Kumar Prasad Resident of Mohalla - Bahadurpur, Ward No. 4 4 (Old), P.S. + Distt. - Samastipur
 11. Sanjeev Kumar Sinha Son of Late Vishnu Kumar Prasad Resident of Mohalla - Bahadurpur, Ward No. 4 4 (Old), P.S. + Distt. - Samastipur Defendant 3rd party Respondent 3rd party
 12. Pradeep Paswan Son of Late Ram Chandra Paswan Resident of Mohalla - Bahadurpur, Ward No. 2 (Old), 20 (New), P.O. + P.S. + Distt. - Samastipur. Defendant 4th party Respondent 4th party

.... Appellants

Versus

1. Dr. Kumari Manju Wife of Sri Swami Nandan Prasad Verma & D/o - Late Krishna Kumar Prasad Resident of Bahadurpur, Ward No. 4 (Old) 18 (New), P.S. + Town + Distt. - Samastipur Plaintiff Appellant
2. Smt. Anju Devi W/o Sri Ram Pramod Prasad Srivastava Resident of Mohalla - MIG - 7, RIt Colony, Shirmour Chouraha, Rews 486001 (M.P.), Presently Residing At Mohalla - Bahadurpur, Wad No. 4 (Old), 18 (New), P.O. + P.S. + Distt. - Samastipur.
3. Archana Devi Wife of Late Arun Kumar Srivastava Resident of Mohalla - Magardahi Chowk, Ward No. 8 (Old), P.S. + Distt. - Samastipur.
4. Smt. Sumitra Prasad W/o - Late Krishna Kumar Prasad Resident of Mohalla - Madhukaran, P.O. + Distt. - Ranchi
5. Smt. Aradhna D/o - Late Krishna Kumar Prasad Resident of Mohalla - Madhukaran, P.O. + Distt. - Ranchi.



6. Smt. Vandana W/o - Sri Dharmendra Srivastava Resident of Mohalla - Urhut, P.O. + Distt. - Rewa (M.P.) Defendant 1st party Respondent 2nd set
7. Kaushalya Devi W/o - Late Ram Chandra Prasad @ Ram Sundar Prasad & D/o - Late Jaimangal Prasad Resident of Village - Sanhauli, P.S. + Distt. - Khagaria.
8. Smt. Shiv Kumari W/o - Sri Jamuna Prasad Verma And D/o - Late Jaimangal Prasad Resident of Gugadra Bazar, P.S. - Bettiah, Distt. - West Champaran. Defendant 3rd party Respondent 3rd party

.... Respondents

Appearance :

For the Appellant/s : Mr. Pushkar Narain Shahi, Sr. Advocate
Mr. Patanjali Rishi & Mr. Sanjeet Kumar Singh

For the Respondent/s : Mr. Kundan Bahadur Singh
Mr. Akhileshwar Kumar Shrivastava

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-01-2017

Heard Mr. P.N.Shahi, learned Senior Counsel appearing on behalf of the appellants.

2. The defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance granting decree of partition to the plaintiff as prayed.

3. The matrix of fact discloses that the suit property originally belonged to Indrani Kuer, who died leaving behind two sons and three daughters. The plaintiff's case is that the three daughters of Indrani Kuer relinquished their share in favour of their two brothers who partitioned the property of Indrani Kuer inherited by them in the half share each. The plaintiff is one of the descendents of one son namely Krishna Kumar Prasad of said Indrani Kuer and has claimed 4/7th share in the suit property stating that Krishna Kumar Prasad died leaving one son, five daughters and a widow. The facts and the manner in which the plaintiff



acquired 4/7th share by transfer of their share by other co-owners has been explained in the plaint. The plaintiff has also stated that defendant No. 1 Sanjay Kumar Verma has wrongly transferred part of the suit property in excess of his share to other defendants. The case of the contesting defendants, however, is that the plaintiff was not entitled to the relief and share as claimed in the suit property.

4. The trial court after considering the evidence and perusal of the documents came to the finding that the plaintiff was entitled to 4/7th share in the suit property. However, the suit was decreed with regard to portion of the suit property which stood after exclusion of the property transferred to the defendant No. 14. The plaintiff filed the appeal against the judgment and decree of the trial court. No appeal or cross appeal was filed by the contesting defendants against the findings recorded by the trial court including the finding that the plaintiff was entitled to 4/7th share in the suit property. The appellate court below after reappraisal of the evidence has set aside the conclusion of the trial court by which the property owned by the contesting defendants was excluded from partition and by allowing the appeal has granted the decree to the plaintiff in the suit property as prayed.

5. Mr. Shahi, learned Senior Counsel for the appellant has submitted that the appellate court below has not correctly appreciated the facts and circumstances of the case as well as the material evidence on record. It has been submitted that the appellate court below has also not considered the provisions of Section 6 of the Hindu Succession Act, according to which the plaintiff could not have the quantum of share as claimed by him. It has been further contended that defendant No. 11 died



during pendency of the appeal, but no substitution was made. While placing the judgments of the trial court as well as the appellate court below the learned Senior Counsel has endeavoured to substantiate the submissions as above made. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that the plaintiff filed the suit for partition claiming 4/7th share in the suit property. The trial court came to the finding that the plaintiff was entitled to 4/7th share in the suit property. The said finding has attained finality between the parties as no appeal or cross objection was filed by the contesting defendants in that regard. The plaintiff, however, filed appeal praying for reversal of the finding of the trial court restricting the relief for partition as prayed by the plaintiff only with regard to the suit property which has been left after transfer by the contesting defendants. The appellate court below after considering the evidence has come to the conclusion that the transfer made by defendant No. 1-appellant No. 1 and the subsequent transfers thereafter were in excess of the share of defendant No. 1- appellant No. 1 and accordingly the appellate court below reversed the finding of the trial court. The findings by the appellate court below have been recorded on the basis of scrutiny of evidence which were acceptable and could have been relied upon. This Court is not persuaded to find perversity or unreasonableness in the findings by the appellate court below. It has also been noticed that defendant No. 1 did not contest the suit and had even supported the case of the plaintiff in the written statement.



7. In view of the aforesaid facts and circumstances this Court comes to the conclusion that there is no 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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