

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.4 of 2015

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1. Dhramnath Ray
2. Shambhu Rai, both sons of Late Ramayan Ray
3. Most. Jileba Devi, wife of Late Lootawan Choudhary
All resident of Village Nanda Tola, P.O. Kundipur, P.S. Daraunda, District Siwan
..... Defendants Respondents

.... Appellants

Versus

1. Jaglal Chaudhary
2. Nandlal Choudhary, both sons of Late Ramanand Chaudhary
Both resident of Village Nanda Tola, P.O. Kundipur, P.S. Daraunda, District Siwan
..... Plaintiffs Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-03-2017

Heard Mr. Yogendra Prasad Sinha, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal. The suit was filed by the plaintiffs for partition of their half share in the suit property.

3. The matrix of facts discloses that one Ishwar Raut had three sons namely Sobha, Sobaran and Sukai. The plaintiffs are descendents of Sukhai, whereas the defendants are descendents of Sobha. The plaintiffs pleaded jointness with regard to the suit property and claimed half share in the same on the basis of assertion that Sobharan died issueless and his branch became extinguished. The defendants contested the case of the plaintiffs on the base that there had been partition between the three brothers prior to the recent survey operation in which Sobha, Sobharan and Sukai got 1/3rd share each. It was further



case of the defendants that latter on there was reunion between Sobha and Sobharan and after reunion Sobharan died leaving behind his brother Sobha as his only heir and legal representative. In this manner the defendants claimed $2/3^{\text{rd}}$ share in the property and accepted the plaintiffs to have $1/3^{\text{rd}}$ share.

4. The trial court returned the findings on the issues against the plaintiffs and dismissed the suit. The appellate court below, however, on reappraisal of evidence has reversed the findings of fact as recorded by the trial court, allowed the appeal and set aside the judgment and decree of the trial court granting the decree to the plaintiffs as prayed.

5. Mr. Sinha, learned Counsel appearing for the appellants has submitted that the learned appellate court below has not properly considered the entry in the survey khatian, the mortgage deeds executed by Sobha's branch and the payment of compensation by the Land Acquisition Department to the branch of Sobha alone. It has been emphasised that the plaintiffs at no point of time raised any objection to the entries in the recent survey khatian, transfers by mortgage by Sobha's branch as well as the payment of compensation to Sobha's branch exclusively and all these facts indicated that there had been previous partition in the suit property. The learned Counsel for the appellants has extensively placed the portions of the impugned judgment in order to bolster his submission that the findings as recorded by the appellate court below have not been recorded on the basis of correct appreciation of evidence on record.

6. After considering the submissions and perusal of the judgments of both the courts below it is manifest that the parties to the



suit belong to a Hindu family. There is presumption of unity of title and possession amongst the members of such family. As the plaintiffs have filed the suit for partition asserting jointness, the burden of proof was clearly upon the defendants who have come out with the case of previous partition between the parties by metes and bounds. The appellate court below has elaborately considered the recent survey entry before coming to the conclusion that the said survey entry does not support the case of the defendants regarding complete partition of the family properties between the parties. The appellate court below has also taken into note that a large chunk of plot measuring nearly 18 Katha besides the basgit land have been recorded in the joint names of the three brothers. During the course of submission no explanation could be shown to have been furnished regarding the aforesaid joint entry for the part of the family property. The appellate court below has taken into notice the oral evidence as well as other documentary evidence including the five mortgage deeds and thereafter has come to the conclusion that the defendants have failed to bring on record cogent and convincing evidence to establish the case of previous partition. It is not the submission on behalf of the appellants that the findings of facts have stemmed out of non-consideration of evidence or are dehors the settled principles of law. Reappreciation of evidence in order to interdict the findings of fact recorded on the basis of evidence is clearly not within the domain of second appellate jurisdiction. As the findings of fact have been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon, this Court, therefore, does not find any perversity or unreasonableness in the same.



7. In the ultimate eventualate, 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	
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