

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.129 of 2014

- =====
1. Sudama Devi wife of Late Ganesh Mahton
 2. Rajesh Mahton
 3. Harishankar Mahton
 4. Ramashankar Mahton
 5. Bam Shankar Mahton All sons of late Ganesh Mahton
 6. Indu Devi
 7. Renu Devi
 8. Mamta Devi
 9. Gangotri Kumar All Daughter of Late Ganesh Mahton All resident of Chhoti Paharhi, P.S. Alamganj, Distt. - Patna

..... Defendants Respondents

.... Appellants

Versus

1. Mahendra Mahton
2. Surendra Mahton
3. Jitendra Mahton
4. Dhannu Mahton All sons of late Kishori Mahton All resident of Chhoti Paharhi, P.S. Alamganj, Distt. - Patna
5. Binay Sah son of Jai Kishun Sah resident of Chhoti Paharhi, (Jakariyapur), P.S. Alamganj, Distt. - Patna

..... Plaintiffs Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Gauri Shankar Prasad

For the Respondent/s : Mr. Ashok Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-03-2017

Heard learned Counsel for the appellants. Learned Counsel for the respondents is also present.

2. After considering the submissions on behalf of the parties this Court holds that this appeal is misconceived in the facts and circumstances.

3. The plaintiffs filed the suit for declaration that the defendant 1st set could not have transferred the suit property alone without addition of the plaintiffs as co-vendors, to the defendant 2nd set on the premise that the suit property was joint family property of the plaintiffs and defendant 1st set in which both had got half share each.



4. The defendants contested the prayer of the plaintiffs. The trial court dismissed the suit. However, the appellate court below on reappraisal of evidence granted the decree to the plaintiffs declaring the plaintiffs' entitlement for half share in the suit property.

5. There was admittedly no counter claim made by the defendant 1st set or declaration of their own half share in the suit property. During course of submission Mr. Gauri Shanker Prasad, learned Counsel for the appellants, has submitted that the appellate court below has committed error in granting the decree to the plaintiffs to the extent of half share in the suit property. However, the learned Counsel for the appellants has also accepted that the plaintiffs are entitled to half share in the suit property but has further submitted that the appellate court below should have also declared the entitlement of the defendant 1st set to another part. This submission is clearly misconceived inasmuch as there was no counter claim by the defendant 1st set in the suit nor such a prayer was ever made before the appellate court below by the defendant 1st set. Moreover, when the defendant 1st set themselves are accepting half share of the plaintiffs in the suit property, which has only been declared by the impugned judgment and decree by the appellate court below, this Court does not find that any substantial question of law is arising for consideration in this appeal.

6. This appeal is dismissed.

Snkumar/-

(V. Nath, J.)

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