

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.288 of 2014

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1. Sharda Devi Wife of Late Prem Nath Sah
 2. Girish Kumar @ Giresh Kumar
 3. Ranjan Kumar Both 2 and 3 are Sons of Late Prem Kumar Sah
 4. Lal Babu Sah Son of Late Indradeo Sah
 5. Chhavila Sah Son of Late Indradeo Sah
 6. Oshihar Sah Son of Late Indradeo Sah All are resident of Village-Khanpur, P.S.-Barharia, District-Siwan.
 7. Kalawati Devi Wife of Hira Sah, Daughter of Late Indradeo Sah Resident of Village-Dumara, P.S.-Gautam Budh Nagar, District-Siwan.
 8. Uma Devi Wife of Rama Nand Sah, daughter of Late Indradeo Sah Resident of Village-Khalishpur, P.S.-Siwan Muffasil, District-Siwan.
 9. Jhalai Devi Wife of Birendra Sah, daughter of Late Indradeo Sah Resident of Village-Salempur, P.S.-Sidhwalia, District-Gopalganj.
 10. Sughanti Devi Wife of Suraj Sah Resident of Village-Sundari, P.S.-Barharia, District-Siwan.
- Appellant/s

Versus

1. Shankar Sah
2. Sri Bhagwan Sah
3. Kisha Sah
4. Kanhaiya Sah All from 1 to 4 are Son of Late Durga Sah
5. Srimati Lal Kuer Wife of Late Durga Sah
6. Sharda Devi Wife of Ram Sajor Sah, Daughter of Durga Sah Resident of Village-Inarwa, P.S.-Gopalganj, District-Gopalganj.
7. Radha Devi Wife of Jagdish Sah, Daughter of Durga Sah Resident of Village-Chhaku Tola, P.S.-Barharia, District-Siwan.
8. Rajanti Devi Wife of Hawaldar Sah, Daughter of late Durga Sah.... Resident of Village- Khanpur, P.S.- Barharia District- Siwan.
9. Parwati Devi Wife of Timal Sah Resident of Village-Kaua Hatta, P.S.- Barharia, District-Siwan.
10. Bipin Sah Son of Late Prem Nath Sah
11. Mintu Sah Son of Late Prem Nath Sah
12. Rajendra Sah Son of Late Indradeo Sah
13. Yogendra Sah alias Yogendra Singh Son of Late Indradeo Sah All from 10 to 13 are resident of Village-Khanpur, P.S.-Barharia, District-Siwan.



.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Udit Narayan Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-02-2017

Heard Mr. Udit Narayan Singh, learned counsel appearing on behalf of the appellants.

The present appeal has been filed by the plaintiffs against the judgment and decree of affirmance dismissing the suit.

The plaintiffs filed the suit only for declaration that the plaintiffs alone were entitled to the property left by Most. Ramrati Devi and the defendants had got no concern with the same. It appears from the judgments of both the courts below that there was no consequential relief prayed by the plaintiffs with regard to the possession.

Mr. Singh, learned counsel for the appellants has emphasized that the courts below have not properly considered the evidence led on behalf of the plaintiffs and therefore the judgments of both the courts below are vulnerable. It has been canvassed that the plaintiffs are the real owners of the property as they came in possession over the same on the basis of surrender by Most. Ramrati Devi of her title and possession in favour of the plaintiffs and since thereafter they have been coming in possession. It has been further also argued that the defendants started claiming their entitlement to



the suit property which led to a proceeding under Section 144 Cr.P.C. and has compelled the plaintiffs to file the present suit. The main submission on behalf of the appellants has however pertained to non-consideration of the evidence by the courts below.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that both the courts below have come to the concurrent finding of fact that Most. Ramrati Devi was the widow of one of the brothers namely Makhan Teli who had two more brothers namely Somari Teli and Shivdhar Teli. It is also not in dispute that Makhan Teli died issueless but left behind Most. Ramrati Devi as his widow. The plaintiffs are the descendants of Shivdhar Teli and defendants are the descendants of Somari Teli. The plaintiffs claimed their entitlement to the property left behind by Most. Ramrati Devi on the basis of the surrender in their favour of her title and thereafter coming in adverse possession over the same. In view of the findings by both the courts below on the basis of scrutiny of evidence that the defendants are also co-sharers of the plaintiffs, the issue of adverse possession does not legally arise between the parties in absence of plea of ouster. As such, both the courts below have come to the correct conclusion that the plaintiffs cannot acquire title over the property of Ramrati Devi on the basis of adverse possession. The plaintiffs thereafter have claimed the title over the property of Ramrati Devi on the basis of surrender by her. In view of the



provision of Article 197 of the Mulla's Hindu law, the surrender by a widow can be made of whole of her estate in favour of the entire body of reversioners. This principle is based upon the theory that the surrender of her interest by a widow amounts to her effacement from the property. The courts below have rightly come to the conclusion that the plea of surrender and acquisition of title on that basis as raised by the plaintiffs cannot be legally sustainable. So far as the submission of non-consideration of evidence by the appellate court below is concerned, it is well settled by a three judge Bench of the Apex Court in the case of **Santosh Hazari Vs. Purushottam Tiwari, A.I.R. 2001 SC 965** that in case of judgment of affirmance the duty of the appellate court is lighter. It however also does not appear to this Court that the appellate court was not alive to the material facts as well as issues arising between the parties. This Court has not been persuaded to find any perversity or unreasonableness in the judgments of both the courts below.

In the ultimate eventuate, it is held that there is no substantial question of law arising for consideration in this appeal which is, accordingly, dismissed

Devendra/-

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(V. Nath, J)

