

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.176 of 2014

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Lukhara Yadav son of Late Badri Yadav (Gope) resident of village and P.O.- Begumsarai, Pergana- Akbarpur Rani, P.S. and Anchal- Bachhwara, Sub Registry and Sub-Division- Teghra, District- Begusarai

... .. Appellant/s

Versus

1. Maha Kumari Devi wife of Late Surendra Kumar Yadav, resident of village and P.O.- Begumsarai, Pergana- Akbarpur Rani, P.S. and Anchal- Bachhwara, Sub Registry and Sub-Division- Teghra, District- Begusarai
2. Shambhu Yadav son of Late Kalpu Yadav
- 2a. Sunita Devi,
- 2b. Usha Devi, both daughters of Kalpu Yadav
All residents of village and P.O.- Begumsarai, Pergana- Akbarpur Rani, Sub-Division- Teghra, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Amresh Kr. Verma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 01-08-2019

The sole appellant filed this Second Appeal against the judgment and decree dated 05.04.2014 passed by learned Additional District Judge II, Begusarai in Title Appeal No.27 of 2010 by which the judgment and decree dated 02.07.2010 passed by learned Munsif II, Begusarai in Title Suit No.45 of 2005 has been affirmed and the appeal has been dismissed.

2. The appellant is the defendant. The plaintiff-



respondent filed the suit on the premises that the suit land described in Schedule A of the plaint originally belonged to Borhan Gope and Lakhan Gope. On partition, 1 katha 18 dhurs land fell in the share of Borhan Gope from southern side and Lakhan Gope got half from the northern side. Lakhan Gope died leaving behind two sons namely, Baun Gope and Ashesar Gope and Borhan Gope died leaving behind one son, Badri Gope. Badri Gope died leaving behind three sons namely, Bindeshwari Gope, Lukhara Gope and Kalpu Gope who were defendants. Ashesar Gope sold his half share measuring 19 dhurs in the suit land through registered sale deed dated 16.10.1974 to the plaintiff after receiving consideration from the north of the aforesaid khesra. The plaintiff came in possession. Baun Gope also sold his 19 dhurs share to the plaintiff through registered sale deed date 26.11.1974 and thus, plaintiff came in possession of 1 katha 18 dhurs of Survey Plot No.2894 from north. The defendants who are the co-sharers raised unnecessary disputes with regard to allotment of share which necessitated filing the suit.

3. The defendants contested the suit that there was no partition between Borhan Gope and Lakhan Gope. Khatiyani of Khesra No.2894 was standing in the name of Lacchu Gope and



after death of Lacchu Gope, his two sons, namely, Borhan Gope and Lakhan Gope jointly inherited the entire homestead land. After death of Borhan Gope, his younger brother, Lakhan Gope became karta of the joint family and after death of Lakhan Gope, Badri Gope became head of the joint family. There was a village road running east to west situated in the northern boundary of the suit land bearing Khesra No.2894. Father of the defendants constructed dalan on western half portion of Khesra No.2894 and defendants are in possession of half portion from the east fell in the share of Lakhan Gope. The land was amicably partitioned between two branches. Western block came into possession of the father of the defendants and the eastern block fell in the share of vendors of the plaintiff.

4. Learned Munsif held that Lukhara Yadav(the appellant) himself admitted in his cross-examination that there was amicable partition of the suit land and appellant got share from south and the vendors of the plaintiff got share from the north and on the basis of such admission and appreciation of other evidence on record, learned Munsif held that vendor of the plaintiff got half share of Plot No.2894 from north and came in possession and the plaintiff purchased the land from north, accordingly, decreed the suit. On appeal, preferred by the



appellant, the appellate court also returned with the same findings that the appellant himself admitted about the partition of the property and his share from the southern side of Plot No.2894.

5. Learned counsel for the appellant submits that both the courts have erred in holding that there was partition between the vendors of plaintiff and the appellant. The finding is against the recital of the sale deeds, Ext. 1 and 1/A and the suit should have been dismissed due to non-joinder of parties as the vendors of the plaintiff-respondent were not party but I find on perusal of the judgments of learned court below that on the basis of the admission of the appellant that his branch got half share of Plot No.2894 from southern side and Lakhan Gope, the father of the vendor of the plaintiff-respondent got half share from the northern side. The plaintiff-respondent purchased the entire half portion from the northern side from the two sons, namely, Ashesar Gope and Baun Gope. Even the recitals of the sale deeds show that the plaintiff-respondent purchased the lands from the northern portion of the suit land which fell in the share of her vendors.

6. Having considered the facts aforesaid, I do not find any reason to interfere into the concurrent findings of both



the courts arrived at on evidence and admission of the defendant. Accordingly, I do not find any substantial question of law arises for consideration in this Second Appeal. Consequently, this Second Appeal is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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