

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.8 of 2019

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Sureshwari Prasad Singh, S/o Late Muneshwar Prasad Singh Vill.- Gundi,
P.s.- Barhara, Distt.- Bhojpur

... .. Appellant/s

Versus

1. Nareshwar Prasad Singh S/o Late Muneshwar Prasad Singh Vill.- Gundi,
P.s.- Barhara, Distt.- Bhojpur
2. Vijay Kumar Singh S/o Late Muneshwar Prasad Singh Vill.- Gundi, P.s.-
Barhara, Distt.- Bhojpur
3. Lakshuman Singh S/o Late Bindeshwar Prasad Singh Vill.- Dhaturi Tola,
P.s.- Bairiya, Distt.- Baliya (U.P.)
4. Vijay Kumar Singh S/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya,
Distt.- Baliya (U.P.)
5. Tinku Singh S/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya, Distt.-
Baliya (U.P.)
6. Uma Devi W/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya, Distt.-
Baliya (U.P.)
7. Pramila Devi D/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya, Distt.-
Baliya (U.P.)
8. Shashikala Devi D/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya,
Distt.- Baliya (U.P.)
9. Asha Devi D/o Lakshman Singh Vill.- Dhaturi Tola, P.s.- Bairiya, Distt.-
Baliya (U.P.)
10. Saraswati Devi W/o Vijay Pratap Singh Vill.- Beyasi, P.s.- Baliya, Distt.-
Baliya (U.P.)
11. Most. Prabhawati Devi W/o Late Birendra Pratap Singh Vill.- Viliyapur
Estate, P.s.- Madhuban, Distt.- Champaran
12. Pratima Devi W/o Ram Murti Singh Vill.- Narawara, P.s.- Shivahar, Distt.-
Shivahar (Bihar)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shiva Shankar Sharma, Advocate
For the Respondent/s	:	Mr. S. S. Dwivedi, Sr. Advocate
		Mr. Om Prakash Upadhyay, Advocate
		Mr. Abhay Kumar Pandey, Advocate
		Mr. Ashutosh Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

7 26-06-2023 Heard learned counsel for the appellant on the point



of admission.

02. Main point of contention of the learned counsel for the appellant is that the learned courts below have committed error in deciding the case when the Courts failed to take into consideration the fact that the property settled in favour of the minor sons by their father was not their separate property, and formed part of the joint property. The learned courts below failed to take into consideration that all the settlees were admittedly minors and had no independent source of income. So the properties entered into their names cannot be said to be their self acquired properties. Moreover, the land was settled by the father of the plaintiff and defendants in their favour at the time of abolition of *zamindari* only with a view to save the land from vesting in State Government. In this manner, the learned courts below failed to hold that entire suit land, as described in Schedule 1, 2 and 3 of the plaint was the joint family property, despite the fact of individual settlement made by the father of the parties and partition should have been ordered for the entire suit land.. However, learned counsel for the appellant admits that otherwise there is no defect in the order(s) since the claim of the appellant for partition was upheld and it was found to be 1/7th share of the property. Dispute is



only with regard to extent of the joint family property as some of the properties have been held to be separated from the joint family, which is challenged by the appellant.

03. I have considered the submission raised on behalf of appellant regarding the judgment passed by the learned trial court as well as the first appellate court. The issues being raised before this Court have already been considered by both the courts below and the claim of the appellant was rejected with reasoned consideration. At the stage of hearing on the point of admission under Section 100 of the Code of Civil Procedure Code regarding admission of suit, the provision of law is very clear that there could be no substantial questions of law against the concurrent findings of fact and the issues unless there is some perversity or conclusion arrived at by the courts below is without consideration of law or in complete disregard to evidence.

04. The Hon'ble Apex Court in Para-6 of the case of ***M. Nadar Kesavan Nadar Vs. Narayanan Nadar Kunjan Nadar***, reported in ***(2000) 10 SCC 244*** held as under:-

“6. It appears to us that in second appeal the High Court was in error in examining the evidence and then reversing the finding of the trial court in the lower appellate court by holding that the possession of the respondents satisfied the requirements of adverse possession. Both the trial



court and the lower appellate court had, in no uncertain terms, come to the conclusion that the respondents had failed to establish by positive evidence that their possession of the disputed property was hostile to the real owner and in denial of his title. Even if the finding of fact was wrong, in our opinion this finding of fact could not be disturbed specially when the High Court has not come to the conclusion that the same was not perverse nor was based on no evidence. The trial court as well as the lower appellate court have discussed the evidence on the record and then had come to the conclusion that the defence in Suit No. 645 of 1970, namely, the respondents herein, had failed in showing that they had perfected their title by adverse possession. It is to be noted that the issue in this regard placed the burden of proof on the respondents and as they had not led evidence to show that they had perfected that title, their plea had to fail.”

05. In the present case, I do not find any perversity or non-consideration of evidence in the judgments of the learned courts below.

06. In the aforesaid facts and circumstances, I am afraid no substantial questions of law arises for consideration by this Court to enable it to admit the present second appeal.

07. Accordingly, this appeal is dismissed at the stage of admission itself.

(Arun Kumar Jha, J)

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