

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.164 of 2024

Hari Charan Mistri, Male, aged about 91 years, son of Late Baliram Mistri @ Vikan Mistsri, resident of village- Prasadi English, Police Station- Arwal, District- Arwal.

... .. Appellant/s

Versus

1. Ram Govind Mistri, son of Late Ram Lakhan Mistri,
2. Chand Govind Mistri, son of Late Ram Lakhan Mistri,
3. Suraj Mukhi Devi, daughter of Late Ram Lakhan Mistri,
4. Baliram Mistri @ Doman Mistri, son of late Sohrai Mistry,
5. Most. Tetari Devi, wife of Late Sohrai Mistri,
All resident of Village- Prasadi English, Police Station- Arwal, District- Arwal.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dhanendra Chaubey, Advocate Mr. Kamlesh Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Surendra Kishore Thakur, Advocate Ms. Priyam Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

3 12-02-2026 Heard learned counsel for the appellant and learned counsel for the respondents.

2. This second appeal has been filed against the judgment and decree dated 16.04.2024 passed by the Additional District Judge-III, Jehanabad, in Title Appeal No.14 of 2018 whereby judgment and decree dated 21.08.2008 passed in the Partition Suit No.51 of 2005 by the Sub-Judge, 1st, Jehanabad, has been upheld.

3. This second appeal has been filed by the defendant-appellant. The original plaintiff filed Partition Suit No.51 of



2005 for 1/3rd share in the schedule property. The defendant no.1 appeared and filed his written statement while the defendant no.2, though appeared but did not file any written statement. The learned trial Court after considering the pleading of the parties framed issues and proceeded for trial. The learned trial Court upon hearing the parties and considering the materials available on record, decreed the suit and allowed 1/3rd share to the original plaintiff.

4. Being aggrieved by the judgment of the trial Court, the defendant-appellant filed Title Appeal, which too, was dismissed having considered the submissions of the parties, materials on record as well as judgment of the learned trial Court.

5. From the judgment of the first appellate Court, it is clear that the appellate Court, which is the final Court of facts, after considering the evidence adduced by the parties and the materials on record held that the plaintiff-respondent has proved his case on the basis of sale deed dated 22.02.1961 (Ext.1) purchased jointly by the original plaintiff and the defendant nos. 1 and 2 in which all the vendees have equal shares. The defendant no.1 in his written statement has specifically pleaded that the property was already partitioned



between the parties and the defendant no.2 was allotted a separate property in lieu of the share in Ext.1. Defendant No. 1 neither produced any documentary evidence nor adduced oral testimony to substantiate his plea that a prior partition by metes and bounds had taken place among the parties. In the absence of any cogent evidence in support of such a plea, the allegation of previous partition between the three purchasers, namely, plaintiff No. 1 and defendant Nos. 1 and 2 has not been proved. Consequently, the present suit has been instituted merely for the purpose of claiming partition of 2 kathas of land appertaining to Khata No. 66, which was admittedly purchased in the joint names of plaintiff No. 1 and defendant Nos. 1 and 2. Defendant no.2 appeared but did not file any written statement. There is no document to prove that the joint property was earlier partitioned by metes and bounds.

6. On the contrary, the plaintiff has successfully established that the property in dispute was acquired by way of a sale deed executed in the joint names of the parties and that no partition by metes and bounds has ever taken place between them. The mere fact that the co-sharers have been maintaining separate mess or are in separate possession of portions of the property does not amount to a legal partition or severance of



status in respect of the joint property held by the plaintiff and defendant nos. 1 and 2.

7. For the reasons aforesaid, I find no merit in the instant Second Appeal. Concurrent findings recorded by the Courts below in favour of plaintiff are fully justified by the evidence on record. Concurrent findings recorded by the Courts below are not based on misreading or misappreciation of evidence nor it is shown to be illegal or perverse in any manner so as to call for interference in Second Appeal. No question of law, much less substantial question of law arises for adjudication in the instant Second Appeal.

8. Accordingly, the appeal is dismissed at the stage of admission under Order XLI, Rule 11 of the Code of Civil Procedure.

9. Pending interlocutory applications, if any, shall also disposed of.

(Khatim Reza, J)

J. Alam/-
Shyambihari

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