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Narayan Vs. Poonam Judgement Given By: Hon'ble Shri Justice Ravi Shankar Jha

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Court : Madhya Pradesh

Decided On : Jan-22-2014

Appellant : Narayan

Respondent : Poonam Judgement Given By: Hon'ble Shri Justice Ravi Shankar Jha

Advocate for Pet/Ap. : Shri. Sameer Seth

Judgement :

Second Appeal No.655/2013 (Narayan versus Poonam and otheRs.22.01.2014 Heard Shri Sameer Seth, learned counsel for the appellant on the question of admission.

This appeal has been filed by the appellant being aggrieved by judgment and decree dated 03.05.2013 passed in C.A.No.20A/2011 by Additional District Judge, Khandwa affirming and conforming the judgment and decree dated 07.04.2011 passed by the II Civil Judge, Class-II, Khandwa in C.S.No.15-A/10 whereby the suit for declaration, partition and possession filed by the appellant has been dismissed.

It is submitted by the learned counsel for the appellant that the suit was filed on the allegation that the plaintiff and the defendants belong to the same family and

therefore the property in question is a joint property in which the appellant has half share.

It is submitted that courts below have dismissed the suit filed by the appellant/ plaintiff by stating that the plaintiff was not the member of the joint family and he has failed to establish the same on the basis of oral and documentary evidence on record.

It is stated that the aforesaid finding recorded by the courts below is perveRs.as the courts below have failed to appreciate and take into consideration the documents Ex.

P/8 and P/9 which are the birth certificate of the appellant.

It is stated that on account of the aforesaid, the impugned judgment suffers from perversity giving rise to the substantial question of law for being adjudicated by this court.

Having heard the learned counsel for the appellant and having perused the impugned judgment, it is seen that in paragraphs 10 and 11 the trial court and in para 21 of the appellate court have considered both the aforesaid documents and have recorded a finding to the effect that Ex.

P/8 which is a birth certificate mentions the name of one Budhiya who was born to Sitaram and Ex.

P/9 which is school certificate mentions the name of Narayan but there is no document or evidence on record to indicate that Budhiya and Narayan are the same persons.

The aforesaid finding recorded by the courts below is based on proper appreciation of oral and documentary evidence available on record and does not suffer from any perversity.

No oral or documentary evidence is brought to the notice of this court by the counsel for the appellant to indicate that the finding recorded by the court below is contrary to the documents.

No substantial question of law arises for adjudication in the present appeal.

The appeal being meritless is accordingly dismissed.

(R.S.Jha) Judge msp

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