

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.818 of 1979

Against the judgment and decree dated 03.09.1979 passed by
Subordinate Judge, Gopalganj in Title Suit No.95 of 1976.

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1. Bibi Chand Tara, daughter of Sheikh Jabir, deceased, wife of Tasadduk Hussain, resident of Village Pipra, P.O. Garhmanjha, police Station Manjhagarh, District-Gopalganj. (defendant no. 9) (Appellant no.1 died and the following heirs are substituted).
 - 1.(a) Noorul Basar, son
 - 1(b) Khairul Basar, son
 - 1(c) Asgari Khatoon, daughter , wife of Isumuddin, resident of Village-Pathra, P.s. Manjhagarh, District-Gopalganj.
 - 1(d) Akhtari Khatoon, daughter, wife of Kayamuddin, resident of village-Mirallipur, P.s. Gopalganj, District-Gopalganj.
 - 1(e) Sarwari Khatoon, daughter, wife of Sohrab Ali, resident of village-Barauli, P.s. Barauli, District-Gopalganj.
 2. Mostt. Hasiban, widow of late Sk. Jabir, resident of Semra, Post Office Thabe, Police Station and District-Gopalganj (defendant no.8).

.... Appellant/s

Versus

1. Sk. Mobarak son of late Sk. Bakshi, resident of village-Pipra, P.O.-Garhmanjha, Police Station Manjhagarh, District-Gopalganj. (Plaintiff)
(respondent no.1 is dead and following legal heirs have been substituted vide order dated 3.9.2014)
 - 1(i) Kamrujjaman
 - 1(ii) Shamshejjaman
 - 1(iii) Kamre AzamAll sons of late Sk. Mobarak Hussain
 - 1(iv) Noor Tana (daughter), wife of Shanwas Hussain
 - 1(v) Noor Afza (daughter) wife of Ghaisuddin
- Both residents of village-Parsa, P.O. –Bagheji (Barauli) P.S. Barauli, District-Gopalganj.
- 1(vi) Aaffrina (daughter), wife of Mehdi Hussain, resident of village-Rampur, P.S./ P.O. Jamo- District-Siwan.
2. Sk. Taiyab
 3. Sk. Jahir
- Sons of late Sk. Liyakat
4. Jan Bibi, (since deceased) daughter of late Raj Mohammad. Following heirs have been substituted vide order dated 7.3.1990.
 - 4(i) Subuk Tara wife of Abdul Bari
 - 4(ii) Kubib Tara, wife of Safiur Rehman
 5. Bibi Khairunissa, wife of late Sk. Tajammul
 6. Ali Raza, son of late Sk. Tajammul
 7. Khodaiya daughter of late Sk. Tajammul
 8. Jobaida, daughter of late Sk. Tajammul
 9. Bibi Sakina, wife of late Hafiz Yasin
 10. Bibi Maimuna, daughter of late Hafiz Yasin
- All residents of village Pipra, P.O. Garhmanjha, P.S. Manjhagarh, District Gopalganj.

11. Sk. Samtullah, son of Sk. Kudrat, resident of village Banki Khal, P.S. Mirganj, District-Gopalganj.
12. Rojid Dhobi, son of Gulab Hussain
13. Mohammad Hussain, son of Abdul Gaffar
14. Sk. Sahab Hussain (since deceased) son of Sk. Ummat. Following heirs have been substituted vide order dated 13.1.1983.
- 14(i) widow of Sk. Sahab Hussain
- 14(ii) Anwarul Haque, son of Sk. Sahab Huassain
- 14(iii) Sarful Haque, son of Sk. Sahab Huassain
- 14(iv) Amirul Haque, son of Sk. Sahab Huassain
15. Sk. Akbar Hussain (since deceased) son of Sk. Ummat. Following heirs have been substituted vide order dated 13.1.1983
- 15(i) Kamrun Nissa, widow of the deceased
- 15(ii) Waris Hassan, son of Sk. Akbar Hussain
- 15(iii) Imam Hassan, son of Sk. Akbar Hussain
- 15(iv) Saida Khatoon, daughter of Sk. Akbar Hussain, wife of Haider Ali, Resident of village Chaap, P.O. Chaap, P.S. Siwan, District-Siwan.
16. Sk. Mohaimad Yakub son of Sk. Ummat
17. Manjur Ahmad, son of Mohammad
18. Mohammad Manjur, son of Yasin
19. Bibi Noor Jannat, wife of Noor Hasan
- All residents of Village Pipra, P.O. Garhmanjha, P.S. Manjhagarh, District-Gopalganj.

.... Defendants- Respondents.

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Appearance :

For the Appellant/s : None

For the Respondent No.1 : Mr. Raghbir Ahsan, Senior Advocate
Md. Sufiyan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

44 20-02-2015

This appeal is preferred against a preliminary decree dated 03.09.1979 passed by the Court of Subordinate Judge, Gopalganj in Title Suit No.95 of 1976.

Defendant Nos.8 and 9 in the suit are the appellants. The 1st respondent herein filed the suit for partition and claimed 1/9th share in the suit property. After serious contest by the parties, the trial Court passed the preliminary decree and

directed that a Survey Knowing Pleader Commissioner be appointed to submit a report for preparation of final decree.

Since the appeal was pending for a long time, it was listed for hearing duly circulating the advance list. However, there is no representation for the appellants.

Sri Raghieb Ahsan, learned senior counsel appeared for respondent nos.1(i) to (v).

A perusal of the record, discloses that 4th respondent, i.e. defendant no.3 in the suit died and her legal representatives were brought on record. On 12.03.1991, this Court directed notice to the substituted legal heirs. It was also directed that in case, the appellants fail to take steps in that behalf, the appeal against the substituted heirs shall stand dismissed. The said order operated and the appeal stood dismissed against the legal heirs of deceased respondent no.4.

Since the subject matter of appeal is a preliminary decree, the appeal does not survive against the other respondents also. The decree is inseparable and once it becomes final against one of the co-sharers, the same holds good as against other sharers. Therefore, the appeal is dismissed.

It is brought to the notice of the Court that the final decree has not been drawn up on the ground that the appeal is

pending. Since the appeal is dismissed, the trial Court shall forthwith take steps for drawing up the final decree.

There shall be no order as to costs.

All the I.A.s in the appeal shall also stand disposed

of.

(L. Narasimha Reddy, CJ)

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