

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.57 of 2013

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Phoolpati Devi D/O Late Ram Briksh Prasad R/O Village - Badka Teghra,
P.S. Maharajganj, P.O. Chotka Teghra, District - Siwan

.... **Appellant.**

Versus

1. Siyalal Prasad S/O Sheo Shankar Prasad R/O Village - Badka Teghra,
P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
2. Ganlal Prasad S/O Late Sheo Shankar Prasad R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
3. Lilawati Devi D/O Late Sheoshankar Prasad R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
4. Rampati Devi D/O Sheopujan Bhagat R/O Village - Badka Teghra, P.O.
Chotka Teghra, P.S. Maharajganj, District - Siwan
5. Dhanpati Devi D/O Late Sheopujan Bhagat R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
6. Madhusudan Bhagat S/O Late Sheopujan Bhagat R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
7. Ramashankar Bhagat S/O Late Sheopujan Bhagat R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
8. Kanhaiya Bhagat S/O Late Sheopujan Bhagat R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
9. Most. Ryapani W/O Indrashan Bhagat R/O Village - Badka Teghra,
P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan
10. Chamalia Devi W/O Late Indrashan Bhagat R/O Village - Badka
Teghra, P.O. Chotka Teghra, P.S. Maharajganj, District - Siwan

.... **Respondents.**

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Appearance :

For the Appellant/s : Mr. Md. Anisur Rahman, Adv.
Mr. Md.Rashid Alam, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

8 18-08-2015

Heard Mr. Anisur Rahman, the learned

counsel appearing on behalf of the appellant.

The defendant no.7 in the suit is the
appellant in this appeal against the judgment and decree of
affirmance.

The existence of four sons of Ram Kishun Mahto is not in dispute. Those four sons were Khublal Mahto, Sitaram Mahto, Shivdhari Mahto and Ramdhari Mahto. It is also not in dispute that Ramdhari Mahto was given in adoption and went out of the family. Out of three remaining brothers, according to the plaintiff Sitaram Mahto died in the year 1930 leaving behind his widow Kulwatia whereas according to the contesting defendant no.7, Sitaram Mahto, though died in the year 1930 but he left behind his son Nagina who became traceless in the year 1935 and in view of the civil death of Nagina his mother Kulwatia succeeded to the property of Nagina. It is further case of the defendant no.7 that Most. Kulwatia executed a deed of gift in favour of Ram Briksh Mahto (father of defendant no.7) in the year 1950 for the property of Sitaram Mahto and thereafter Ram Briksh Mahto has transferred the said property, which he received by gift from Kulwatia, in favour of defendant no.7 by executing the gift deed in the year 1975. In this manner the defendant no.7 has claimed her exclusive entitlement to the property of the share of Sitaram Mahto and by asserting partition among the three brothers, the defendant no.7 has also claimed her exclusive possession over the property acquired by her through the gift.



Both the courts below have come to the concurrent finding that Sitaram Mahto had no son and he died leaving behind Most. Kulwatia as his widow in the year 1930. It has been further found that there had been no partition between the three brothers namely Khublal, Shivdhari and Sitaram of their joint family property and there is unity of title and possession between the parties to the suit in the suit properties.

Mr. Rahman, the learned counsel for the appellant has strenuously submitted that the finding on the issue of existence of Nagina as the son of Sitaram Mahto is vitiated for non-consideration of the oral evidence adduced on behalf of the defendant no.7. It has been canvassed by the learned counsel that some of the witnesses of the defendants have stated about the existence of Nagina but the same has not been considered by both the courts below. It has also been further submitted that the judgment and decree of both the courts below are vitiated as there is no relief claimed by the plaintiff against the gift deed executed by Most. Kulwatia in favour of Ram Briksh Mahto and the subsequent gift deed executed by Ram Briksh Mahto in favour of the defendants. The learned counsel for the appellant has also argued that the trial court has recorded the finding that the branches of Khublal Mahto and Shivdhari Mahto would be

entitled to half share each in the property left by Sitaram Mahto but the appellate court has reversed this finding even when there was no cross objection. The learned counsel has also prayed for calling for the lower court records in order to appreciate his submissions.

After perusal of the judgments of both the courts below and considerations of the submissions, it is pellucid that the entitlement of the defendant no.7 to the property of Sitaram Mahto was solely based upon the existence of Nagina who was said to be son of Sitaram Mahto. It is not in dispute between the parties that Sitaram Mahto died in the year 1930 and his widow Kulwatia was then not entitled to inherit the property left by Sitaram Mahto but only entitled to maintenance. Both the courts below have come to the concurrent finding of fact that Nagina was not son of Sitaram Mahto who died issueless. The non-consideration of parts of deposition of some witnesses, as argued, would not vitiate the findings as both the courts below have considered the depositions of the material witnesses and thereafter have recorded the finding of facts. It is well settled that the civil litigations are decided on the principle of prepondence of probability. Moreover, there is also no specific mention in the

memo of appeal regarding the witnesses whose depositions have not been considered and as to the relevancy of those depositions. This Court therefore does not find any perversity or unreasonableness in the finding that Nagina was not the son of Sitaram Mahto.

So far as the submission with regard to absence of relief with regard to the gift deeds, it is not in dispute that the specific issue was framed in the suit with regard to the validity of the two gift deeds and the parties went to trial on the said issue, led their evidence, and thereafter the finding has been recorded. In such a circumstance, when the finding has been recorded against the defendant and the gift deed has been found to have been executed by a person having no title at all to the property, the submission relating to the absence of relief with regard to those gift deeds is more a submission in desperation than of substance. It has also been submitted that the appellate court below has reversed the finding of the trial court so far as the entitlement of the parties to half share each in the property of Sitaram Mahto is concerned. From paragraph-17 of the judgment of the appellate court below, it is manifest that the judgment of the trial court has been entirely affirmed and there is no order for modification in the same in any manner. Moreover, no such plea has been raised in the memo of this

appeal by the appellant who, herself filed the appeal in the appellate court below claiming her exclusive right to disputed property which has been turned down.

For the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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