

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.353 of 2013

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1. Anil Kumar Gupta.
 2. Sujit Kumar Gupta.
 3. Mantu Kumar Gupta 1 to 3 Sons of Late Shioshankar Sah.
 4. Rani Kumari Devi @ Rani Kumari D/O- Late Shioshankar Sah.
 5. Kamla Devi W/O- Late Shioshankar Sah all R/O- Village- Bishunpur
P.S. – Jalalpur, Distt- Chhapra- (Saran).

.... Defendants- Respondents.... Appellants

Versus

1. Smt. Usha Sharma W/O- Bangali Singh.
2. Smt. Manju Ojha W/O- Naraini.
3. Smt. Asha Devi W/O- Barjeshwar Rai all R/O- Village- Dumarhar, P.S-
Darauli Distt- Siwan

.....Plaintiffs-Appellants-Respondents

4. Dhanuk Dhari Prasad Singh Son Of Raj Nandan Prasad Singh R/O-
Village - Rampur, P.S- Bhagwanpur, Distt- Siwan.
5. Ramashankar Pandey.
6. Uma Shankar Pandey.
7. Ravi Shankar Pandey, 5 to 7 are sons of late Ram Prit Pandey, Resident
of village-Bank at P.S. Bhagwanpur, District-Siwan.

.....Plaintiffs-Appellants-Respondents.

8. Rinku Kumari, Daughter of Late Shio Shankar Sah, Resident of village-
Bishunpur, P.S. Jalalpur, District-Chhapra (Saran).

....Defendant-Respondent-Respondent.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

28 08-12-2015

Heard Mr. Yogendra Pd. Sinha, the learned counsel
appearing on behalf of the appellants.

The defendants are the appellants in this appeal against the judgment and decree of reversal.

The suit has been filed by the plaintiffs for declaration of their title and recovery of possession over the suit land and also for grant of permanent injunction restraining the defendant 1st set from making or demolishing any structure over the suit property.

The case of the plaintiffs, in short, is that the suit property belonged to two brothers namely Jibodhan Prasad Singh and Mangal Prasad Singh in whose names the recent survey khatian was also prepared. Jibodhan Prasad Singh had a son Raj Nandan Singh and the son of Raj Nandan Singh namely Dhanushdhari Singh was the defendant no. 4 in the suit. The another brother Mangal Prasad Singh had five daughters out of whom one daughter namely Ramdulari Kuer was the defendant no. 3. The plaintiffs claimed their title over the suit land on the basis of their purchase from defendant no. 4 Dhanushdhari Singh asserting that Mangal Prasad Singh died in the year 1936 in jointness with Jibodhan Prasad Singh and the widow of Mangal Prasad Singh also died in the year 1952. It has been pleaded that in this background the widow and daughters of Mangal Prasad Singh did not acquire any interest in the joint family property which

devolved exclusively upon Jibodhan Prasad Singh by rule of survivorship. On the other hand, the contesting defendants have claimed their title over the suit property on the basis of their purchase from the defendant no. 3 Ramdulari Kuer and asserted that Mangal Prasad Singh died after the year 1936 in separation from his brother and after his death his estate was inherited by his five daughters. It was further case of the defendants that there had been partition between the five daughters of Mangal Prasad Singh and the suit property was allotted in the share of the defendant no. 3 Ramdulari Kuer.

The trial court returned the findings against the plaintiffs and dismissed the suit. In appeal by the plaintiffs, the appellate court below on reappraisal of evidence of the parties has reversed the findings of the trial court and granted the decree to the plaintiffs, as prayed.

Mr. Sinha, the learned counsel for the appellants has contended that the crucial issue between the parties in the suit regarding the year of death of Mangal Prasad Singh has been wrongly decided by the appellate court below holding that Mangal Prasad Singh died in the year 1936. It has been argued that the burden of proof to establish the fact that Mangal Prasad Singh died in the year 1936 in jointness with his brother was squarely upon



the plaintiffs but no documentary evidence has been led by the plaintiffs to establish the said fact. It has been further canvassed that the finding by the appellate court below was not based upon the cogent evidence and, therefore, is vulnerable. It has also been argued that the suit was barred by limitation as the sale deed of the defendant has been executed on 03.10.1985 but the suit has been filed on 29.09.1989. The learned counsel has relied upon the decision of the Apex Court in the case of **U.P. State Electricity Board Vs. Aziz Ahmad 2009 (2) P.L.J.R. page 131(S.C.)** in support of the submission that the burden of proof to establish that Mangal Pd. Singh died in the year 1936 was on the plaintiffs by adducing documentary evidence. No other submission has been made on behalf of the appellants.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the crucial issue in the suit was the year of the death of Mangal Prasad Singh which according to the plaintiffs occurred in the year 1936 whereas the contesting defendants asserted that Mangal Prasad Singh died after 1956. Neither the plaintiffs nor the contesting defendants adduced documentary evidence in support of their rival case regarding the year of the death of Mangal Prasad Singh. Both the parties, however, led oral evidence to establish the said fact.



From the impugned judgment of the appellate court below it is apparent that the material oral evidence led by the parties on the issue of the year of the death of Mangal Prasad Singh have been scrutinized and the court has preferred to rely upon the evidence led on behalf of the plaintiffs for reaching to the conclusion that Mangal Prasad Singh died in the year 1936. It is, thus, clear that the finding recorded by the appellate court below regarding the year of the death of Mangal Prasad Singh was based upon appreciation of oral evidence of the parties and the submission, therefore, on behalf of the appellants that the said finding has been reached without any evidence has got no force. The further submission on behalf of the appellants that for proving the year of death of Mangal Prasad Singh, the plaintiffs was required to lead documentary evidence as the same could not be proved by oral evidence. However, in view of Section 59 of the Evidence Act, this Court does not find substance in this submission. In U.P. State Electricity Board (supra) which has been relied upon on behalf of the appellants in support of this submission also no such principle has been laid down that the fact relating to the year of death of the person must be proved by documentary evidence.

It has also been submitted on behalf of the appellants that the appellate court below has decided the crucial issue of the

year of death of Mangal Prasad Singh by relying upon the deposition of only P.W.-2. This Court is not persuaded to hold the finding by the appellate court to be vulnerable for the said reason.

In the case of **Laxmibai Vs. Bhagwantbuva 2013 (4) SCC 97** their lordships have ruled as follows:-

“39.....In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality or witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act.....”

Moreover, from the analysis of the oral evidence by the appellate court it does not appear that the finding recorded by it on that basis is unreasonable or improbable. During the course of submission on behalf of the appellants also it could not be shown that the finding recorded by the appellate court below on the basis of appreciation of oral evidence is perverse in any manner.

This Court also does not find substance in the submission on behalf of the appellants that the suit was barred by limitation. The suit has been filed for declaration of title and recovery of possession and such suits are governed by Article 65 of the Limitation Act which prescribes a period of 12 years for filing the suit and the starting point is when the possession of the defendants become adverse. In view of the pleadings of the plaintiffs and the nature of the relief claimed in the suit, the provision of Article 59 or the residuary Article 58 has clearly no application and more so when no relief has been sought against the sale deed of the defendants.

The appellate court below has also recorded the finding on the basis of scanning of the evidence that Mangal Prasad Singh died in jointness with his brother Jibodhan Prasad Singh. The sale deeds (Ext. 1 series) executed by the defendant no.

4 Dhanushdhari Singh in favour of other persons have been taken into notice by the appellate court below with further fact that the defendant no. 3 or for that matter her sister (daughters of Mangal Prasad Singh) did not choose to challenge those transfer even though more than half share had been alienated. It has also been taken into notice by the appellate court below that the vendor of the contesting defendants did not appear in the suit nor was examined in the suit in support of the case of the contesting defendants. No perversity or unreasonableness in this finding also could be established on behalf of the appellants during the course of submission.

In view of the aforesaid reasons and discussions, this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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