

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.280 of 2010

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1. Chandra Narain Mandal S/O Harikant Mandal Resident Of Village- Chhatauni Tola, Dhobiahi, P.O- Hathauri, P.S- Baheri, District- Samastipur.
 2. Ram Sharan Mandal S/O Jugat Mandal Resident Of Village- Chhatauni Tola, Dhobiahi, P.O- Hathauri, P.S- Baheri, District- Samastipur.
- Plaintiffs Respondent 1st Set

.... Appellants

Versus

1. Lakhan Pandit S/O Late Rameshwar Pandit Resident Of Village- Chhatauni Tola, Dhobiahi, P.S- Baheri, P.O- Hathauri, District- Samastipur.
 2. Makhan Pandit S/O Late Rameshwar Pandit Resident Of Village- Chhatauni Tola, Dhobiahi, P.S- Baheri, P.O- Hathauri, District- Samastipur.
.....Intervener Opposite parties ...Appellants ...Respondent 1st set
 3. Kamalesh Jha S/O Kapileshwar Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 4. Ram Kishore Jha @ Manghu Jha S/O Late Tripit Narain Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 5. Laxman Jha S/O Late Chandradeo Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 6. Bhulan Jha S/O Late Chandradeo Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 7. Trilok Narain Jha S/O Late Shiv Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 8. Ram Udgar Jha S/O Late Shiv Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 9. Purendra Jha S/O Rudra Kant Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 10. Maheshwar Jha S/O Fauzar Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
 11. Sanjay Jha S/O Tripit Narain Jha Resident Of Village- Chhatauni, P.S- Baheri, District- Samastipur.
- Opposite parties Respondent 2nd Set Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. HARISHANKAR RAY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-10-2015

Heard Mr. Hari Shankar Ray, learned Counsel for the appellants.

2. The plaintiffs in the suit under Section 106 of the B.T.Act are

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

3. The impugned judgment and decree in this appeal, as it appears from the aggrieved portion of the memo of appeal, has been passed in Survey Appeal No. 14 of 1996 which was filed against the judgment and decree dated 9.5.1996 passed in Title Suit No. 79 of 1989, which was a suit filed under Section 106 of the B.T.Act. It is apparent from the impugned judgment and decree that two appeals have been heard together and disposed of by a common judgment and decree. Those two appeals are Survey Appeal No. 14 of 1996 and Survey Appeal No. 39 of 1998. It is also apparent from the impugned decree that those two appeals were filed against the judgment and decree passed in the Title Suit No. 79 of 1989 which was filed by the present appellants and the Title Suit No. 123 of 1995 which was filed by respondent 1st set. Both the appeals, i.e. Survey Appeal No. 14 of 1996 and Survey Appeal No. 39 of 1998 were filed by respondent 1st set Lakhan Pandit and others against the present appellants.

4. Admittedly, no appeal has been filed by the appellants against the decree passed in Survey Appeal No. 39 of 1998 and the same has attained finality. As the impugned judgment has proceeded on common ground, the findings recorded therein, which has attained finality, will operate as res judicata in the present appeal. The learned Counsel for the appellants has not disputed this position in law but at this juncture, learned Counsel for the appellants has made the prayer for adjourning this appeal in order to enable the appellants to file appeal against the decree passed in Survey Appeal No. 39 of 1998.

5. This appeal has been filed in the year 2010 and now at the

stage of its hearing under Order 41 Rule 11 CPC today, this Court is not inclined to grant adjournment as this appeal had earlier been dismissed for default for non-prosecution and has been listed after restoration.

6. In the facts and circumstances as abovementioned, this Court finds no substantial question of law arising for consideration in this appeal which is accordingly dismissed.

(V. Nath, J.)

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