

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1347 of 1998

Arising out of

First Appeal No. 87 of 1980

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1. (i) Domini Devi, widow of Late Sir Ballabh Yadav.
(ii) Pappu Yadav, Son of Late Sir Ballabh Yadav.
(iii) Karu Yadav, Son of Late Sir Ballabh Yadav.
(iv) Mithlesh Yadav Son of Late Sir Ballabh Yadav.
(v) Akhilesh Yadav, Son of Late Sir Ballabh Yadav.
All (i) to (v) resident of Village- Sabnahuadih, P.O. & P.S. Harnaut, District- Nalanda.
 2. Chattu Gope
 3. Umesh Gope
 4. Sibap Gope
 5. Ram Dev Gope
 6. Jawahar Gope
 7. Shiv Balak Gope
- 2 to 3 are sons of Lala Gope. 4 to 7 are sons of late Prabhu Gope, All residents of Village- Sabnahuadih,
Post- Harnaut, District- Nalanda.

----- Defendants Ist Party / Appellants
Versus

1. (i) Kaushaliya Devi widow of Late Bindeshwar Mahto.
(ii) Arun Yadav Son of Late Bindeshwar Mahto.
(iii) Tarun Yadav Son of Late Bindeshwar Mahto.
(iv) Karun Yadav Son of Late Bindeshwar Mahto.
(v) Barun Yadav Son of Late Bindeshwar Mahto.
(vi) Bharti Devi daughter of Late Bindeshwar Mahto.
All (i) to (vi) are residents of village- Balwaper, P.S. Harnaut, District- Nalanda.
 2. (i) Munni Devi Widow of Late Ambika Mahto.
(ii) Choutu Kumar Son of Late Ambika Mahto.
(iii) Dharmendra Kumar Son of Late Ambika Mahto.
(iv) Sujit Kumari daughter of Late Ambika Mahto.
(v) Sangita Kumari daughter of Late Ambika Mahto.
(vi) Usha Kumari daughter of Late Ambika Mahto.
All (i) to (v) resident of village- Balwaper, P.S. Harnaut, District- Nalanda.
 3. Basdeo Prasad Singh, Son of Dhanraj Mahto.
 4. Prem Kumar Pardesi @ Samunder Gope, Son of Dhanraj Mahto.
 5. Mano Devi, W/O Not Known.
All residents of village- Mohmudpur Balwa, P.S. Harnaut, District- Nalanda
- Plaintiffs / Respondents / Respondents Ist Party
6. (i) Prayag Yadav Son of Late Babulal Yadav
(ii) Ram Rajya Yadav Son of Late Babulal Yadav
(iii) Mithu Yadav Son of Late Babulal Yadav.
All (i) to (iii) resident of village- Alipur, P.S. Harnaut, District- Nalanda.
 7. Prayag Mahto Son of Babulal Gope.
 8. Ram Rag Mahto Son of Babulal Gope.
 9. Mithhu Mahto Son of Babulal Gope.
 10. Sona Devi daughter of Babu Lal Gope.
All resident of Village- Alipur, P.S. Harnaut, P.O. Powari, District- Nalanda.
 11. Badani Devi, D/o Late Sampat Mahto, Resident of Village- Sabnahuadih, P.S. Harnaut, District- Patna.

-----Defendant IInd Party/ Respondents

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Appearance :

For the Appellant/s : Mr. Kamala Prasad Roy &
Mr. Anil Chandra, Advocates.
For the Respondent/s : Mr. Pramod Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 23-02-2015

Defendant-first party of Title Suit No.

213/7/1973/1977 has preferred this Letters Patent Appeal against the judgment of the learned Single Judge of this Court passed in First Appeal No. 87 of 1980 whereunder learned Single Judge has dismissed the said appeal holding that the judgment and decree passed in the aforesaid title suit granting 8 ana share in Schedule II and III property to the plaintiff/respondent first party does not call for any interference. Plaintiff/Respondent/First Party claim themselves to be the maternal grandsons of Bhimlal Mahto who died on 10.08.1964. Prior to his death Bhimlal Mahto has executed a registered Will (Exhibit-4) bequeathing his property in favour of his daughter Dhano Devi as also to heirs of the other daughter Kalo Devi who predeceased Bhimlal Mahto the plaintiff/respondent/respondent first party herein. The trial Court allowed the prayer made in the suit with reference to the genealogy as indicated in the registered Will as to that extent the properties were bequeathed thereunder.

2. Learned counsel for the appellant assailed the impugned judgment on the ground that the contents of registered

Will ought not to have been admitted in evidence as perusal of (Exhibit- 4) does not indicate that the contents thereof were read over to the executant by the Registrar. Aforesaid submission has been noted for being rejected as the contents of the Will is not to be read over by the Registrar before registering the same, to the testator. The testator/executant is only to admit the execution of the document before the registrar. The contents of the document is to be read over to the executant by the scribe of the document. There is nothing on record to suggest that document Exhibit-4 was not read over to Bhimlal Mahto by its scribe.

3. In this connection learned counsel has also relied on the evidence of D.W. 16 who deposed in Court that Bhimlal Mahto was married to Sakali Devi and he is the brother of Sakali Devi and that Bhimlal Mahto had no daughter. The oral evidence of D.W. 16 that Bhimlal Mahto has no daughter is fit to be rejected in view of the contents of registered Will (Exhibit- 4) executed by Bhimlal Mahto.

4. We see no infirmity in the impugned judgment passed by the learned Single Judge. The appeal is, accordingly, dismissed.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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