

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.204 of 2013

1. Manoj Dubey S/O Late Ram Sagar Dubey, Formerly S/O Shyam Bahadur Dubey Resident Of Village- Bhalua, P.S- Manjhi, Prg. Bla, P.O- Bhalua, District- Saran At Present Resident Of Village- Jogia, P.O- Jogia, P.S- Rasoolpur, District- Saran.

.... Appellant/s

Versus

1. Radhika Devi W/O Late Ram Nagina Dubey Village- Paswanti, P.S- Maharajganj, P.O- Maharajganj, District- Siwan.
2. Dewanti Devi W/O Shivesh Chandra Ojha Village+ P.O And P.O- Rasoolpur, District- Saran.
3. Shyam Bahadur Dubey S/O Ram Swaroop Dubey Resident Of Village And P.O- Bhalua, P.S- Manjhi, District- Saran At Present Residing At Village And P.O- Jogia, P.S- Rasoolpur, District- Saran.
4. Kashinath Dubey S/O Sheo Lochan Dubey Resident Of Village And P.O- Jogia, P.S- Rasoolpur, District- Saran.
5. Angad Yadav S/O Nandlal Yadav Resident Of Village And P.O- Jogia, P.S- Rasoolpur, District- Saran.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Amaresh Kumar Sinha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-03-2015

Heard learned Counsel for the appellant.

2. The defendant in the suit is the appellant in this appeal against the judgment and decree of affirmance. The suit was filed by the plaintiff Parwati Devi for declaration of her title over the suit land.

3. It is not in dispute between the parties that the suit property originally belonged to Sitaram Pandey. The plaintiff Parwati Devi is the widow of Sitaram Pandey who died leaving behind three daughters, namely Radhika Devi, Dewanti Devi and Hemwanti Devi. Defendant Manoj Dubey claims himself to be the adopted son of Hemwanti Devi and her husband Ram Sagar Dubey. There is no dispute that Hemwanti Devi



died in the year 1980 and her husband Ram Sagar Dubey died in the year 1982. The defendant has contested the claim of the plaintiff on the ground that he is the adopted son of Hemwanti Devi and Ram Sagar Dubey and, therefore, after their death he has inherited the property left by them and acquired valid title and interest in the property in question. It is also the case of the defendant that there was earlier a Title Suit in the year 1951, filed by Hemwanti Devi, which ended in compromise in which the suit property was given to Hemwanti Devi.

4. The centrirorial issue between the parties to the suit was the status of the defendant as an adopted son of Hemwanti Devi and Ram Sagar Dubey. Both the courts below have scrutinized the pleadings and evidence of the parties and returned the finding that the defendant has failed to establish his status as adopted son of Hemwanti Devi and Ram Sagar Dubey. The suit was, therefore, decreed and the appeal thereafter by the defendant was dismissed.

5. Learned Counsel for the appellant has accepted that the issue of adoption is the crucial issue arising between the parties to the suit. It has been further submitted that both the courts below have wrongly determined the issue against the defendant-appellant ignoring the cogent evidence led in this regard. It has been canvassed that the witnesses examined on behalf of the plaintiff in their deposition have expressed ignorance of the genealogy or crucial details of the adoption and therefore their competency on the point of adoption is not established. It has been further argued that the School Leaving Certificate and other relevant documents have also been adduced in evidence by the defendant but they have been wrongly discarded by both

the courts below.

6. After perusing the judgments of both the courts below and considering the submission, it is manifest that the suit property originally belonged to Sitaram Pandey and the plaintiff Parwati Devi was his widow. The defendant Manoj Dubey has resisted the claim of the plaintiff over the suit land, asserting right of inheritance as adopted son of Hemwanti Devi (daughter of Parwati Devi) and her husband Ram Sagar Dubey with further stand that Sitaram Dubey gave 5 Bigha 3 Katha 14 dhur land to his daughter Hemwanti Devi as she was lame, for the purpose of her marriage. Both the courts below after considering the evidence of the parties have disbelieved the case of the defendant to be the adopted son of Hemwanti Devi and Ram Sagar Dubey. Even when some of the witnesses on behalf of the defendant have stated that a Godnama (adoption deed) was executed at the time of adoption of the defendant, the said document was not brought on record nor any explanation by the defendant has been furnished in that regard. The document relating to the school education, i.e. School Leaving Certificate or Admit Card, have also not been proved in accordance with law inasmuch as the original documents were not produced nor the competent person was examined to prove the said documents.

7. Learned Counsel for the appellant has submitted that the records of the court below be called for in order to appreciate the submission. This Court is not inclined to accept this submission as in the Second Appellate jurisdiction reappraisal of evidence cannot be done unless the findings by the courts below are shown to be perverse or unreasonable in any manner.

8. This Court has not been persuaded to find any illegality or perversity in the findings by both the courts below that defendant Manoj Dubey has failed to establish his status as adopted son of Hemwanti Devi.

9. Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

U			
---	--	--	--

Snkumar/- (NAFR)