

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.175 of 2013

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Surendra Kumar Mahto, Son of Sri Shivjee Mahto @ Shiva Mahto,
Resident of Mauza-Karimabad @ Magardahi, Mohalla-Kashipur, Ward
No.14, under town Samastipur, P.S. & District-Samastipur.... **Appellant.**

Versus

1. Smt. Chandra Prabha Devi, Wife of Sri Ram Pukar Choudhary,
Resident of Village- Ramnagar, Narghoghi, P.S.-Sarairanjan, P.S.-
Narghoghi, District-Samastipur.

-Defendant 1st party-Respondent 1st party.

2. Sri Shivjee Mahto @ Shiva Mahto.

3. Sri Ram Pukar Mahto.

Both Sons of Late Bankey Mahto.

4. Vijay Kumar Mahto, Son of Sri Shivjeet Mahto @ Shiva Mahto.

5. Bhola Kumar Mahto, Son of Ram Pukar Mahto.

6. Ashwini Kumar Mahto.

7. Basant Kumar Mahto.

Minor sons of Ram Pukar Mahto, minors under guardianship of the
natural guardian & mother Jagtaran Devi.

Respondent Nos. 2 to 7 are resident of Mauza- Karimabad @
Magardahi, Mohalla-Kashipur, Ward No.14, P.S., P.O. and District-
Samastipur. ---**Defendant 2nd party-Respondent 2nd party.**

8. Bihar Hindu Dharmik Niyas Parishad (Religious Trust) Bihar, Patna.

9. Mahanth Sri Bajrang Das Chela Late Mahanth Sri Narain Das resident
of Anchal Ramnagar Narghoghi, P.S.-Sarairanjan, District-Samastipur.

-Defendants 3rd party –Respondents 3rd party.

.... Respondents.

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGEMENT

9 20-03-2015

Heard Mr J.K.Verma, the learned counsel

appearing for the appellant.

The plaintiff is the appellant in this appeal against the judgment and decree of affirmance.

The suit has been filed by the plaintiff for declaration of title and possession with declaration that the decree passed in Title (Eviction) Suit No.28/1984 is not legally binding upon the plaintiff and for permanent injunction.

The plaintiff has admitted the fact that the suit property was the self-acquired property of his grandfather. The fact has also been admitted by the plaintiff that earlier the Title (Eviction) Suit No.28/1984 was filed by the defendant no.1 against the father and uncle of the plaintiff (defendant 2nd set in the present suit) which was later on converted into title suit after the amendment of the plaint claiming the relief for declaration of title also for the suit property. It is also admitted fact that in the said Title (Eviction) Suit No.28/1984 the issue of title was decided against the father and uncle of the plaintiff, while granting the decree to the plaintiff of that suit. The plaintiff's father and uncle unsuccessfully preferred appeal up to the apex court. The plaintiff has filed the present suit with assertion that there was partition in the year 1982 whereby the suit property was allotted to the plaintiff in his share. It is further case of the

plaintiff that in the Title (Eviction) Suit No.28/1984 he was not made a party knowingly and the decree was obtained in the suit by the defendant no.1 in collusion with the father and uncle of the plaintiff.

The defendant 1st set filed his written statement contesting the assertions made by the plaintiff, inter alia, stating that after losing their contest up to the apex court, the father and uncle of the plaintiff has set up the plaintiff to claim the suit property. It has been specifically pleaded by the defendant no.1 that the suit property was his purchased property and the father and uncle of the plaintiff alongwith their family were his tenant in the suit premises. It has also been averred that the Title (Eviction) Suit No.28/1984 was keenly contested, and thereafter, the declaration of title of the defendant no.1 over the suit land has been granted alongwith the decree for recovery of possession of the suit premises.

During the pendency of the suit, the defendant 1st set filed a petition stating that the suit was barred by res judicata and praying for the determination of the issue of res judicata as preliminary issue. The trial court allowed the prayer of defendant 1st set and heard the parties on the preliminary issue of bar of res judicata. After hearing the parties the trial court came to the

conclusion that the suit was barred by res judicata, and accordingly, dismissed the same. In appeal by the plaintiff, the appellate court after hearing the parties has affirmed the finding of the trial court and dismissed the appeal by the impugned judgment and decree.

Assailing the impugned judgment and decree, Mr Verma, the learned counsel for the appellant, has firstly submitted that both the courts below have erred in law in dismissing the suit as barred by res judicata without appreciating the fact that the plaintiff has assailed the decree passed in the previous suit as collusive and not binding on the plaintiff who was not a party to that suit. It has been propounded that the courts below have ignored the fact that the plaintiff has independent title over the suit property and have wrongly held that the plaintiff has claimed to have derived his title through his father. Elaborating his submissions, Mr Verma, has further argued that in view of the provisions of Hindu Succession Act also the plaintiff cannot be denied his interest in the property acquired by his grandfather. It has been next argued that the courts below have ignored the provisions of Order 14 Rule 1 and 2 C.P.C. and the suit has been wrongly dismissed as barred by res judicata.



After perusing the judgments of both the courts below and considering the submissions, it is pellucid that the suit property is admittedly the self-acquired property of the grandfather of the plaintiff. It is also not in dispute that earlier the defendant-respondent 1st set had filed Title (Eviction) Suit No.28/1984 against the father and uncle of the plaintiff-appellant. By amendment in the said eviction suit, the relief for declaration of title was also made. After contest, the said Title (Eviction) Suit No.28/1984 was decreed holding that the father and uncle of the plaintiff had no title over the suit property. The said decree has remained affirmed up to the apex court. There is also no dispute that the suit property in the present suit was also subject matter of the previous Title (Eviction) Suit No.28/1984. It is the case of the plaintiff that there has been partition in the year 1982 with his father and uncle whereby the suit property has been allotted in his share and on this basis the plaintiff has claimed his independent right, title and interest over the suit property and has claimed the relief that the decree passed in Title (Eviction) Suit No.28/1984 is not binding on him.

Both the courts below have returned the finding that the decree passed in the earlier Title (Eviction) Suit No.28/1984 against the father and uncle of the plaintiff over the



suit property would operate as res judicata and would bind the plaintiff as he has claimed to have derived his title and possession over the same through his father and uncle in partition. The assertion of independent right, title and interest over the suit properties by the plaintiff, which has been strongly put-forward by the learned counsel for the plaintiff-appellant before this Court, however, does not appear to have substance in the facts and circumstances of the case. Admittedly, the suit property was the self-acquired property of the grandfather of the plaintiff and he died leaving behind the plaintiff's father and uncle who are still alive and have been impleaded as defendants in the present suit also. In view of the provision of Sections 8 and 9 of the Hindu Succession Act, 1956, the plaintiff would be excluded from inheritance of the self-acquired property of his grandfather who admittedly died leaving behind his two sons (father and uncle of the plaintiff) who are his heirs mentioned in Class I in the Schedule of the said Act. The law in this regard has been categorically laid down by the apex court in the case of **Commissioner of Wealth Tax Vs Chander Sen, AIR 1986 SC 1753** and in the case of **Yudhishter Vs Ashok Kumar, AIR 1987 SC 558**. The same view has been followed and reiterated in the later decision also in the case of **Bhanwar Singh Vs Puran ,**



AIR 2008 SC 1490. As such it is not far to seek that the plaintiffs could not have legally inherited the suit property after the demise of his grandfather and in sequel his claim of independent right, title and interest after partition with his father and uncle has also no leg to stand. Both the courts below, therefore, have rightly come to the conclusion that the plaintiff cannot claim that the decree passed in Title (Eviction) Suit No.28/1984 against his father and uncle would not be binding on him, and the present suit therefore would be barred by res judicata.

It has been next submitted that the courts below should not have tried the issue of res judicata as preliminary issue in view of the provisions of Order 14 Rule 1 and 2. However, this submission is also devoid of merit. In view of the provision of Rule 2 of Order 14, the courts below were well within their jurisdiction to postpone the settlement of other issues and take up the issue of res judicata as preliminary issue as this issue related to the jurisdiction of the court. Even otherwise also in view of the presence of admitted facts there was no impediment in taking up the issue of res judicata as preliminary issue as laid down by the apex court in the case of **Abdul Rahman Vs. Prasony Bai, AIR 2003 SC 718.**

Ex consequenti, 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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