

Sagir Ahmad, Son of Late Shekh Manouwar, Resident of Village-Bhuidharwa Tola Chandarpur Malahi, P.O.-Bhuidharwa, P.S.-Thakaraha, District-West Champaran.

-Defendants 1st party-respondents 1st party- Appellant.

Versus

1. Baqrai Sah , Son of Late Mangal Sah.
2. Smt Kalawati Devi, Wife of Birjhan Sah, Daughter of Late Mangal Sah.
Both Resident of Village-Bhuidharwa Tola Chandarpur Malahi, P.O.-
Bhuidharwa, P.S.-Thakaraha, District-West Champaran .

--Plaintiffs-Appellants-Respondents.

3. Ram Briksha Sah, Son of Late Mangal Sah.
 4. Laxmi Sah, Son of Late Mangal Sah.
 5. Smt.Fulkali Devi, Wife of Indrasan Sah. Daughter of Late Mangal Sah.
- All 3 to 5 residents of Village-Mangalpur, P.O.-Narenapur, P.S.-Bagaha, District-West Champaran.

-Defendants 2nd party-Respondents 2nd party- Respondents.

Appearance :

For the Appellant/s : Mr. Javed Aslam, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

13 19-01-2015

Heard the learned counsel appearing on behalf of

The defendant 1st party in the suit is appellant in this appeal against the judgment and decree of reversal.

The factual score need not be exposted in detail. Suffice it to state that the centrirorial issue between the parties pertains to the right in the property of Mangal Sah, acquired by the

son and daughter (defendant 2nd set) of Mangal Sah from Sukhali Devi whose status as legally wedded wife of Mangal Sah has been disputed. Admittedly Mangal Sah had married with Dukhani Devi and the plaintiffs have been born out the said wedlock. According to the plaintiffs Mangal Sah brought Sukhali Devi as his wife in the lifetime of his 1st wife. It is the case of the plaintiffs that Sukhali Devi was a widow with a daughter from her previous husband and two more sons were born to Mangal Sah from her. It is, however, the case of the plaintiffs that Sukhali Devi never acquired the status of the legally wedded wife of Mangal Sah, and therefore, the defendant 2nd set did not acquire the legal right to succeed to the estate of Mangal Sah after his death in the year 1975. The plaintiffs have claimed themselves to be the exclusive heirs and successors of Mangal Sah and on that basis their exclusive right, title and possession over the suit property. The plaintiffs have questioned the alienation by sale made by the defendant 2nd set in favour of the defendant 1st set as illegal and void and prayed for a declaration that the sale deeds dated 15.10.1992 and 19.11.1992 are null and void and not binding on the plaintiffs with further relief for a decree of permanent injunction restraining the defendants from giving any kind of threat in respect of the suit land described in schedule of the plaint.

The defendant 2nd set have resisted the claim of exclusive title and possession of the plaintiffs over the suit land asserting that Sukhali Devi was legally married wife of Mangal Sah who solemnized the marriage with her after the death of his wife Dukhani Devi. The defendants have claimed that after the death of Mangal Sah, the plaintiffs and the defendant 2nd set jointly inherited the estate of Mangal Sah and the defendant 2nd set have validly sold the suit land to the defendant 1st set by executing the sale deeds for valid consideration and also delivered possession to the defendant 1st set.

The defendant 1st set in his written statement has come out with the same facts as asserted by the defendant 2nd set.

The trial court returned the finding that Sukhali Devi was the legally married second wife of Mangal Sah and was not his concubine. In sequel, it was further held that the children (defendant 2nd set) born out from his second wife Sukhali Devi would be entitled to their shares in the property of Mangal Sah as his heirs after his death. Upholding the legal validity of the sale deeds in question, the suit was dismissed.

In appeal by the plaintiffs, however, the appellate court on reappraisal of pleadings and evidence has overturned the findings of the trial court and granted the decree as prayed for by

the plaintiffs.

Calling in question the legal acceptability of the judgment and decree of the appellate court below, the learned counsel for the appellant has submitted that the appellate court below has failed to consider that the plaintiffs have omitted to seek the relief for declaration of their title over the suit property, and therefore, were precluded from getting the reliefs as prayed by them in the suit. It has been argued that the plaintiffs in the plaint have accepted Sukhali Devi as wife of Mangal Sah, and as such, they cannot be allowed to resile from the said admission. It has also been canvassed that the brother of Mangal Sah has accepted the partition, and therefore, the appellate court below has wrongly come to the conclusion that there was no case of partition of the suit land between the plaintiff and defendant 2nd set in the pleadings and evidence of the defendants. The learned counsel has also propounded that there was sufficient evidence led by the defendants to establish the marriage of Mangal Sah with Sukhali Devi but the learned appellate court below has wrongly discarded the oral evidence adduced on behalf of the defendants and has preferred to rely upon the oral evidence adduced on behalf of the plaintiff. It has, thus, been submitted that the substantial questions of law arise for consideration in this appeal.

After perusing the judgments of both the courts below and careful consideration of the submissions made on behalf of the appellant, it is pellucid that the status of the plaintiff as legal heirs of Mangal Sah has not been disputed. The gravamen of the controversy as is demonstrable from the facts pertains to the status of Sukhali Devi as legally married wife of Mangal Sah. Both sides have led oral and documentary evidence in this regard in support of their rival case.

After scanning the oral evidence of the parties, the appellate court has come to the conclusion, after taking into notice the provision of Section 50 of the Evidence Act that the witnesses examined on behalf of the plaintiffs are the near and distant relatives of Mangal Sah and as such they are more reliable. It has been found that all these witnesses are Mamera, Fufera brothers, nephew, Bhanja and own brother of Mangal Sah and they have given direct evidence of the conduct and the circumstances when Mangal Sah brought Sukhali Devi in his house as his concubine and sons were born to her through him. After examining the facts and other evidence on record the appellate court has further found that the copy of family register (Ext.C) produced on behalf of the defendants is not a genuine document. The findings by the appellate court below are clearly on



the basis of appraisal of evidence and no perversity in any manner could be established on behalf of the appellant during the course of submission except emphasizing that in view of the judgment of the trial court, the evidence on record are required to be reappraised to test the correctness of the findings of the appellate court below. It is well settled that the appellate court below is the final court of fact and its findings can be interfered in second appellate jurisdiction only when the same are shown or established to be perverse in any manner. Simply because another view on the same set of evidence may be a possibility, the conclusion by the courts below cannot be interdicted.

From the judgment of the appellate court below it further transpires that it has assessed the rights of the defendant 2nd set in the property of Mangal Sah even as his illegitimate offsprings. It has been found that the suit property was admittedly the coparcenary property of Mangal Sah with his son (plaintiff no.1) and therefore the defendant 2nd set even in view of Section 16(1) of Hindu Marriage Act cannot be entitled to a share in the coparcenary property as illegitimate son of Mangal Sah. This Court is again not persuaded to overturn the findings in this regard by the appellate court.

Further the learned counsel for the appellant has

failed to point out the specific pleading by the defendant regarding the partition of the property of Mangal Sah after his death in between the plaintiffs and the defendant 2nd set. The evidence of P.W.8 Bular Sah brother of Mangal Sah regarding partition in between Mangal Sah and his brothers cannot help the appellant in establishing further that, the share allotted to Mangal Sah in partition, which became coparcenary property between Mangal Sah and his sons after they were born, was further partitioned between his sons after his death. The appellate court below has found that there is no evidence either oral or documentary to support the case of partition between the plaintiff and the defendant 2nd set. It is also transparent from the pleadings of the parties that there is no denial of the title of the plaintiff in the suit property which admittedly originally belonged to Mangal Sah and in this view of the matter, the submission by the learned counsel for the appellant that the plaintiffs' suit must fail for want of relief for declaration of title, is totally misconceived simply because the said fact was never in issue between the parties. The plaintiffs have questioned the validity of the sale deeds as null and void on the ground that the defendant 2nd set had no title or interest to transfer the properties subject matter of the sale deeds. The relief of permanent injunction has also been prayed. In the backdrop of

these facts, the provisions of Section 34 of the Specific Relief Act are not at all attracted.

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

(V. Nath, J)

Nitesh/-

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