

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.37 of 2011

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Satyadeo Mahto, s/o Late Harif Mahto, R/v Piprahiya, P.O. Ishuapur, Distt. Saran

.... Appellant/s

Versus

1. Shyama Nand Mahto , S/o Raj Karan Mahto
2. Vishwanath Mahto, s/o Shyamanand Mahto, both resident of village Bahrauli, P.S. Mashrakh, Distt. Saran.
3. Dhaneshwar Mahto, S/o Late Harif mahto, R/v Piprahiya, P.o. Ishuapur, Distt. Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10 03-11-2015

Heard learned counsel for the appellant and learned counsel for the Respondents.

The defendant is the sole appellant in this case against the judgment and decree of affirmance by the appellate court decreeing the suit for partition filed by the plaintiff-respondents.

The plaintiff-respondents filed the suit for partition of the suit land on the premises that after the death of Sriphal Mahto, his two sons, namely, Harif Mahto and Sanehi Mahto inherited the suit land by survivorship. The plaintiff No. 1 Bhagiya Devi, claimed herself to be the widow of Sanehi Mahto and had stated that he died in the year 1958, leaving behind the plaintiff no. 1 (his widow) and plaintiff no. 2 Shanti Devi, who was his

daughter. The plaintiffs' further case was also that in the year 1990, the plaintiff no. 1 Bhagiya Devi had executed a deed of gift of the suit property in favour of plaintiff no. 2, Shanti Devi.

The defendant-appellant Harif Mahto contested the suit firstly on the ground that Sanehi Mahto died in the year 1936 after the death of his father Sripal Mahto and thereafter his widow Bhagiya Devi married with Jhagaru Mahto, and Shanti Devi was the daughter of Jhagru Mahto through Bhagiya Devi after their marriage. The defendants' further case was that Sripal Mahto had left behind his two daughters, namely, Kaushalya Devi and Fulesari Devi (sisters of Harif Mahto and Sanehi Mahto) who had alienated their shares in the property of Sripal Mahto by gift in favour of their brother Harif Mahto.

It would be pertinent to mention here that the plaintiffs in their plaint disclosed the year of death of Sripal Mahto to be 1925 but no such specific year of death of Sripal Mahto has been given by the contesting defendant. In his deposition as D.W. 5, Haarif Mahto did not mention the year of death of Sripal Mahto but has come out with the version that Sripal Mahto was alive at the time of the death of his son Sanehi Mahto.

The trial court held that the plaintiffs were entitled to



the share in the part of the suit property and accordingly decreed the suit in part directing the residential house to be allotted to the share of the contesting defendant. In appeal by the defendant, the appellate court, on reappraisal of evidence, affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Learned counsel for the appellant has submitted that the courts below did not consider the evidence led on behalf of the parties in correct perspective and have also ignored the fact that though in the plaint the year of death of Sanehi Mahto has been stated to be 1958 but in the gift deed (Exhibit-2) executed by Bhagiya Devi in favour of Shanti Devi, the year of death of Sanehi Mahto has been mentioned as 1950. It has also been submitted by the learned counsel that though the defendant did not disclose the year of death of Sanehi Mahto but still the courts below wrongly held that Sripal Mahto died in the year 1925 after ignoring the further statement by the defendant that Sri Phal Mahto died after the death of Sanehi Mahto. It has also been submitted by the learned counsel that the courts below have wrongly recorded the finding that the Bhagiya Devi did not marry with Jhagaru Mahto, and Shanti Devi is not the daughter of Jhagaru Mahto, and have ignored the material evidence produced on behalf of the defendant

appellant in this regard.

After perusal of the judgments of both the courts below and consideration of the submissions, it is manifest that the seminal issue in the suit was the year of death of Sanehi Mahto and Sriphal Mahto. Both the courts below have taken into notice the statement made by the contesting defendant Harif Mahto in his deposition (Exhibit-5) in a criminal case wherein, he has stated that Bhagiya Devi, the widow of his brother, was living in the house alongwith his family members and Shanti Devi was the daughter of his brother. The trial court has taken in notice the said statement by the contesting defendant Harif Mahto and after juxtaposing the same with the age stated by Shanti Devi during the course of her deposition as well as the age assessed by the court, the court below has come to the finding that Shanti Devi was born in the year 1949 and disbelieved the case of the defendant that Sanehi Mahto died in the year 1936.

The learned counsel for the appellant has made the submission that the defendant-appellant in his deposition has denied to have made such a statement but in absence of cogent explanation/reasons in support of the denial of the said statement made by the contesting defendant in his deposition, the same has rightly been taken by both the courts below as his admission.

After coming to the finding with regard to the year of death of Sripal Mahto in the year 1925, the further fact has also been found on the basis of appreciation of evidence that after the death of Sanehi mahto, Bhagiya Devi has inherited the half share in the suit property. The case of the contesting defendant that the two daughters of Sripal Mahto had alienated/transferred their share in the property of Sripal Mahto in favour of contesting defendant has rightly been disbelieved by the courts below in view of conclusion that Sripal Mahto died in the year 1925 and his daughters, therefore were not entitled to share in his property after his demise.

The findings have been recorded by both the courts below after appreciation of the pleadings and evidence of the parties and no perversity or un-reasonableness in any manner could be established on behalf of the appellant in the same. The issues arising between the parties are now concluded by the concurrent findings of fact.

In view of the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

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(V. Nath, J)