

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.240 of 2013

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1. Manjar Khan Son of Late Safique Khan
 2. Auangjeb Khan Son of Late Shafique Khan
 3. Nizamuddin Khan Son of Late Safi Ahmad Khan
 4. Md Anwar Ali Son of Nizamuddin Khan
 5. Md Mojabali Ali @ Mojahid Son of Nizamuddin Khan
 6. Md Jahid Ali Son of Nizamuddin Khan
 7. Chandni Khatoon D/o Nizamuddin Khan All R/o Village-Duba Walia, P.O. - Mejhwal Mathia, P.S. Ram Nagar, District West Champaran (Bettiah)
 8. Meraj Khan Son of Late Bibi Shamsun Nesha AND Late Salim Khan
 9. Akbar Khan @ Akhbar Khan Son of Late Bibi Shamsun Nesha AND Late Salim Khan
 10. Farhad Khan Son of Late Bibi Shamsun Nesha AND Late Salim Khan
 11. Mumtaz Khan Son of Late Bibi Shamsun Nesha AND Late Salim Khan All R/o Village-Phulkaul, P.O. Mejhawj Mathia, P.S. Ram Nagar, District West Champaran
 12. Najma Khatoon D/o Late Bibi Shamsun Nesha AND Late Salim Khan AND Wife of Merot Khan R/o Village Mathia, P.S. Ram Nagar, District West Champaran (Bettiah)
 13. Chaman Tara Khatoon D/o Late Bibi Shamsun Nesha AND Late Salim Khan AND Wife of Tuna Khan R/o Village Dain Marwa, P.S. Ram Nagar, District West Champaran (Bettiah)
 14. Bibi Sitam Tare @ Sitamtara Khatoon D/o Late Sabir Khan, Wife of Nizamuddin Khan All R/o Village-Duba Walia, P.O. - Mejhwal Mathia, P.S. Ram Nagar, District West Champaran (Bettiah)

.... Appellant/s

Versus

1. Suresh Sah Son of Late Ranglal Sah
2. Sohan Sah Son of Late Ranglal Sah Both R/o Village Phulkaul, P.O. Majhawl Mathia, P.S. Ram nagar, District West Champaran (Bettiah)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dronacharya, Adv.

For the Respondent/s : Mr. Syed Arshad Alam, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

14 01-10-2015

Heard Mr. Dronacharya, the learned counsel

appearing on behalf of the appellants. Mr. Syed Arshad Alam,
the learned counsel for the plaintiff-respondents is present.

The defendants are the appellants in this appeal against the judgment and decree of reversal setting aside the dismissal of the suit and granting the decree to the plaintiffs as prayed.

The plaintiffs filed the suit for declaration of title and recovery of possession over the suit land described in detail in the schedule of the plaint. The plaintiffs have claimed their title over the suit land on the basis of inheritance stating that one Talind Kanu was their ancestor who died leaving behind a son Govind Kanu @ Shiv Govind Kanu. Gopal Kanu was the son of Sri Govind Kanu and he also died leaving behind two sons and one daughter. It is further case of the plaintiffs that one son and sole daughter of Gopal Kanu died and the entire property by survivorship devolved upon the remaining son Ranglal Kanu. The plaintiffs are the sons of Ranglal Kanu. The defendants, on the other hand, have contested the genealogy set up by the plaintiff with the assertion that Govind Kanu died issueless leaving behind his sister Suneshri Devi as his only heir. The defendants have purchased the suit property by registered sale deed in the year 1962 from Bishram Sah Son of Suneshri Devi. It is also case of the defendant Suneshri Devi

later on executed Izabnama (deed of acceptance) recognizing the sale in favour of the defendant as made by her son of Bishram Sah. It is further case of the defendants that other two brothers of Bishram Sah also executed similar Izabnama in favour of the defendants. The defendants have also come out with the story that Bishram Sah was adopted by Govind Kanu.

The trial court returned the finding against the plaintiffs and dismissed the suit. On appeal by the plaintiffs, the appellate court on reappraisal of the evidence has reversed the findings of the trial court and granted the decree to the plaintiffs as prayed. The appellate court has come to the finding that the defendants have failed to prove that Govind Kanu died issueless and have also failed to prove that Bishram Sah was adopted by Govind Kanu. The appellate court below has also declined to accept the case of the defendants of perfecting their title over the suit land on the basis of adverse possession.

Mr.Dronacharya, the learned counsel for the appellants has submitted that the appellate court below has not correctly appreciated the material evidence on behalf of the defendants and the findings therefore are vulnerable. It has been canvassed by the learned counsel that the appellate court below

has also failed to take into consideration reasonings assigned by the trial court in disbelieving the case of the plaintiff. It has been further submitted that the trial court has given the sound reasonings and appellate court ought to have accepted the same and dismissed the suit.

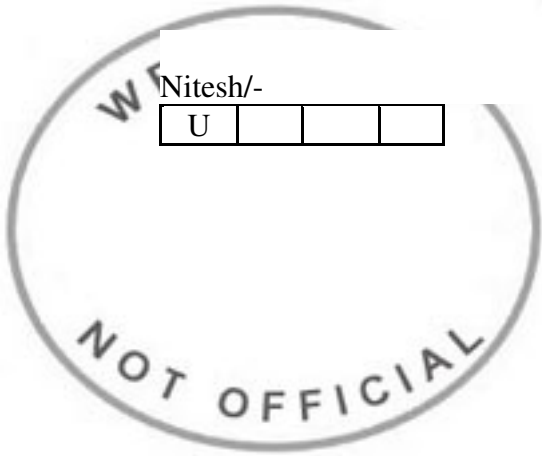
After perusal of the judgments of both the courts below and considering the submissions, it is evident that the plaintiff has claimed the suit property on the basis of inheritance being the descendants of Talind Kanu. The defendant's case is that Govind Kanu Son of Talind Kanu died issueless and was survived only by his sister Suneshri Devi who inherited the property left behind by Govind Kanu. The sale deed which is the basis of the title and claim of the defendants over the suit property has been admittedly executed by Bishram Sah who is said to be son of Suneshri Devi. It is not the case of the defendants that Suneshri Devi was dead at the time of the execution of the sale deed rather from the case of the defendant itself it is manifest that Suneshri Devi later on executed Izabnama (deed of acceptance) which shows that Suneshri Devi was alive when the sale deed was executed in favour of the defendant. The inevitable conclusion is that the vendor of the



defendant namely Bishram Sah was not the title holder over the property left behind by Govind Kanu, even after accepting the case of the defendants that Govind Kanu died issueless leaving his sister as heir. It is thus apparent that it would have been Suneshri Devi who was the title holder and could have transferred valid title to the defendants over the suit property. The matter however does not end here. The appellate court has further come to the finding that Govind Kanu did not die issueless rather he died leaving behind his son Gopal Kanu. This finding has been arrived on the appreciation of evidence and this Court does not find any unreasonableness or perversity in any manner in the same. The further case of the defendants regarding the adoption of Bishram Sah or adverse possession has also been disbelieved by the appellate court and this Court comes to the conclusion that the findings in this regard by the appellate court is also not vitiated in any manner. The appellate court has discarded the claim of adverse possession by the defendant by rightly juxtaposing the same with the case of the defendants of title.

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)