

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.214 of 2013

1. Naresh Mistry Son Of Late Rameshwar Mistri Resident Of Village - Mahawar,
P.S. - Daudnagar, District - Aurangabad

.... Appellant/s

Versus

1. Kamla Devi W/O Rambilash Mistry Resident Of Village - And P.O. Rampur,
Chai, P.S. - Karpi, District - Arwal
2. Shanti Devi W/O Siyaram Mistry R/O Village - Narsan, P.O. - Itwa, P.S. -
Hapura, District - Aurangabad
3. Chandeshwari Devi W/O Ishrar Dayal Mistry R/O Village + P.O. - Rampur Chai,
P.S. - Karpi, District - Arwal
4. Bijendra Sharma S/O Sri Mistri R/O Village - Haibaspur, P.O. - Dhamani P.S. -
Haspura, District - Aurangabad
5. Sri Mistri Husband Of Late Channa Devi, S/O Late Rupchand Mistri R/O Village
- Haibaspur, P.O. - Dhamani P.S. - Haspura, District - Aurangabad
6. Jugesh Sharma Son Of Sri Mistri R/O Village - Haibaspur, P.O. - Dhamani P.S. -
Haspura, District - Aurangabad
7. Harendra Sharma Son Of Sri Mistri R/O Village - Haibaspur, P.O. - Dhamani
P.S. - Haspura, District - Aurangabad
8. Surendra Mistri S/O Ram Pravesh Mistry R/O Village - Birai, P.O. - Arain, P.S. -
Daudnagar, District - Aurangabad
9. Gopal Mistry S/O Late Rameshwar Mistry R/O Village - Mahawar, P.S. -
Daudnagar, District - Aurangabad

.... Respondent/s

Appearance :

For the Appellant/s : Mr. BACHAN JEE OJHA

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-07-2015

Heard learned Counsel for the appellant.

2. The defendant no. 1 in the suit is the appellant in this appeal against the judgment and decree of reversal granting the decree for partition as prayed by the plaintiffs.

3. In order to appreciate the contention raised on behalf of the appellant it would be fruitful to take into notice the undisputed facts of the case, according to which one Pragash Mistry had two sons; Yugeshwar



Mistry and Rameshwar Mistry. Yugeshwar Mistry died leaving behind his widow Rajmatiya Kuer and five daughters. Rameshwar Mistry had one son, Naresh Mistry, who has been impleaded as defendant no. 1 in the suit. The defendant no. 2 Gopal Mistry, according to the case of defendant no. 1 (appellant herein), was the illegitimate son of Rajmatiya Kuer born out of a relationship with Rameshwar Mistry. The defendant no. 2, however, has supported the case of the plaintiffs with further assertion that he was born out of the wedlock of Rameshwar Mistry with Rajmatiya Kuer, who remarried after the death of Yugeshwar Mistry. The five daughters of Yugeshwar Mistry are the plaintiffs in the suit claiming partition of the half share in the entire family property of Pragash Mahto. Rajmatiya Kuer, widow of Yugeshwar Mistry admittedly died in the year 1993.

4. The defendant no. 1 contested the claim of the plaintiffs on the ground that Yugeshwar Mistry died in the year 1955 and therefore his daughters could not be entitled to succeed his interest in the joint family property as his heirs. It had also been the case of defendant no. 1 that after the death of Rameshwar Mistry he entered into a partition with defendant no. 2 Gopal Mistry to the extent of half share. It has also been his case that some of the suit properties belonged to his wife and some other property have been sold out and the purchasers are in possession.

5. The trial court after scrutiny of pleadings and evidence returned the finding that Yugeshwar Mistry died in the year 1955 and therefore the daughters would not be entitled to succeed his interest as his heirs. The suit was therefore dismissed. In appeal, the appellate court on reappraisal of evidence has recorded the finding that Yugeshwar

Mistry died in the year 1957 and accordingly granted half share to the plaintiffs in the entire family property as claimed.

6. Learned Counsel for the appellant has submitted that the plaintiffs are not entitled to half share in the suit property as the defendant no. 2 Gopal Mistry will also be entitled to a share therein. It has also been submitted that Rajmatiya Kuer, widow of Yugeshwar Mahto was also entitled to share in the property after the death of Yugeshwar Mistry and as she had remarried with Rameshwar Mistry, her interest in the suit property would devolve upon her heirs. It has also been submitted that the appellate court below has not given any finding with regard to the right, title and interest of the wife of defendant no. 1 and has also not considered the interest of the purchasers. No other submission has been made on behalf of the appellant.

7. After perusing the impugned judgment and considering the submissions, it is pellucid that the plaintiffs are admittedly daughters of Yugeshwar Mistry. The crucial issue of fact regarding the year of death of Yugeshwar Mistry has been decided by the appellate court below holding that Yugeshwar Mistry died in the year 1957 i.e. after passing of the Hindu Succession Act, 1956. Accordingly the appellate court below has granted the decree of partition of half share to the plaintiffs, as prayed.

8. This appeal has been filed by defendant no. 1 alone. Defendant No. 2 Gopal Mistry has not chosen to challenge the judgment and decree and has not joined the defendant No. 1 in this appeal. The defendant No. 1 has not accepted the remarriage of Rajmatiya Kuer (widow of Late Yugeshwar Mistry) with Rameshwar Mistry after the death of her husband and his only plea is that she had illicit relationship

with Rameshwar Mistry. The defendant No. 2 in his written statement as well as deposition has admitted the claim of the plaintiffs to have half share in the suit property. In this view of the matter, the defendant No. 1 cannot be allowed to seek reversal of the impugned judgment and decree on the basis of the case and cause of the defendant No. 2 or for any other person. The appellate court below after elaborate scrutiny of the pleadings and evidence has recorded the finding that Yugeshwar Mistry died in the year 1957 and the plaintiffs as his daughters are entitled to the decree for partition as prayed. No unreasonableness or perversity in any manner could be established in the findings during the course of submission on behalf of the appellant.

9. In the result, this Court does not find any substantial question of law involved in this appeal, which is accordingly dismissed.

(V. Nath, J.)

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