

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.220 of 2013

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Chankaliya Devi D/O - Hira Nand Sharma, W/O Shiv Bachan Sharma Resident Of
Village - Sheopur, P.S. - Jagdishpur, District - Bhojpur, At Present Village + P.O. -
Barahi, P.S. - Jagdishpur, District - Bhojpur

..... Defendant Respondent

.... Appellants

Versus

1. Brij Nandan Sharma Son Of Sri Suchit Sharma Resident Of Village + P.O. -
Barahi, P.S. - Jagdishpur, District - Bhojpur
2. Ram Sagar Mistri Son Of Late Kailash Mistri Resident Of Village + P.O. -
Barahi, P.S. - Jagdishpur, District - Bhojpur
3. Lala Devi The Correct Name Is Lallita Devi Resident Of Village + P.O. -
Barahi, P.S. - Jagdishpur, District - Bhojpur
4. Janki Devi D/O - Ram Sagar Mishtri Resident Of Village + P.O. - Barahi, P.S. -
Jagdishpur, District - Bhojpur

.....Plaintiffs.....Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. RAJESH KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-07-2015

Heard Mr. Rajesh Kumar, learned Counsel for the appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of reversal granting the decree of partition to the
plaintiffs, as prayed.

3. From perusal of the impugned judgment and after
considering the submission on behalf of the appellant it is manifest that
the centrirorial issue between the parties was the status of the plaintiff
no. 2 Tetri Devi as daughter of Moti Chand and the status of Moti Chand
as son of Rajdeo Sharma as the defendant-appellant has come out with
a case that Rajdeo Sharma had only one son Heera Chand and the
defendant was the daughter of Heera Chand, who had executed a gift

deed in her favour with regard to the entire family property of Rajdeo Sharma.

4. The trial court returned the finding on the issue against the plaintiffs holding that Moti Chand was not the son of Rajdeo Sharma. The appellate court, in appeal by the plaintiff, on reappraisal of the pleadings and evidence, has overturned the said finding and came to the conclusion that Rajdeo Sharma had two sons Moti Chand and Heera Chand. Further it was also held that plaintiff no. 2 Tetri Devi is the daughter of Moti Chand and was entitled to share in the family property of Rajdeo Sharma.

5. Learned Counsel for the appellants has submitted that both the courts below have not considered the fact that the suit was not maintainable in view of the bar created under Section 4(b) of the Bihar Consolidation of Holdings (Prevention of Fragmentation) Act, 1956 (hereinafter referred to as 'the Consolidation Act'). It has been urged that cogent evidence has been brought on record to show that the consolidation proceeding was going on when the suit was filed. It has been further submitted that both the courts below have not correctly appreciated evidence led on behalf of the parties and therefore the impugned judgment and decree is not sustainable. No other submission has been made on behalf of the appellant.

6. The appellate court in its judgment has taken into notice the submission made on behalf of the defendant-appellant in her deposition in para 21 wherein she has stated that Rajdeo Sharma had two sons Moti Chand and Heera Chand. The appellate court below has further also taken into notice the certificate granted by the Mukhiya of

the village and the deposition by the said Mukhiya who was examined as a witness. The finding by the trial court that Rajdeo Sharma had two sons Moti Chand and Heera Chand and plaintiff no. 2 Tetri Devi was the daughter of Moti Chand has been recorded after elaborate scrutiny of oral and documentary evidence on behalf of the parties. No perversity or unreasonableness in the finding by the appellate court below could be established during the course of submission on behalf of the appellant.

7. So far as the submission regarding bar of the suit under Section 4(b) of the Consolidation Act is concerned, it appears to be misconceived as the consolidation authorities under the scheme of the Consolidation Act would not have the jurisdiction to decide the status of Moti Chand Sharma as son of Rajdeo Sharma and plaintiff no. 2 as daughter of Moti Chand Sharma which was the crucial issue in the suit. This position of law has been well settled by the judgment of the Apex Court in the case of **Ram Sakal Singh Vs. Most. Munako Devi (dead) & ors. 1997 (2) PLJR (SC) 63** and a decision by this Court in the case of **Raj Kumar Choubey & anr. Vs. Dulhin Janki Devi & ors. 2009(3) PLJR 475.**

8. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this Second Appeal, which is accordingly dismissed.

(V. Nath, J.)

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