

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.362 of 2013

Rameshwar Prasad S/O Baban Prasad Resident Of Mohalla Chatradhari Bazar,  
Pragana Majhi, P.O. And P.S. Bhagwan Bazar, District Saran.

..... Defendant ..... Appellant

.... .... Appellant

Versus

1. Uma Kant Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
2. Ramjee Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
3. Mohan Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
4. Birendra Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
5. Krishna Devi W/O Late Shankar Prasad D/O Late Raghunath Prasad Resident  
Of Village West Semar, P.O. And P.S. Ravelganj, District Saran. .... Plaintiffs  
..... Respondents
6. Meera Devi W/O Tuntun Prasad Resident Of Village West Semar, P.O. And  
P.S. Ravelganj, District Saran.

..... Defendant No. 2 ..... Respondent

.... .... Respondents

with

Second Appeal No. 363 of 2013

Rameshwar Prasad S/O Baban Prasad Resident Of Mohalla Chatradhari Bazar,  
Pragana Majhi, P.O. And P.S. Bhagwan Bazar, District Saran.

..... Plaintiff ..... Respondent

.... .... Appellant

Versus

1. Uma Kant Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
2. Ramjee Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
3. Mohan Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
4. Birendra Prasad S/O Late Raghunath Prasad Resident Of Village West Semar,  
P.O. And P.S. Ravelganj, District Saran.
5. Most. Krishna Devi W/O Late Shankar Prasad D/O Late Raghunath Prasad  
Resident Of Village West Semar, P.O. And P.S. Ravelganj, District Saran.

..... Defendants ..... Appellants

.... Respondents

**Appearance :**

(In SA No.362 of 2013)

For the Appellant/s : Mr. MD. WALIUR RAHMAN

For the Respondent/s : Mr. Gyan Prakash

(In SA No.363 of 2013)

For the Appellant/s : Mr. MD. WALIUR RAHMAN

For the Respondent/s : Mr. Gyan Prakash

**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

**Date: 30-06-2016**

Heard Mr. W.Rahman, learned Counsel appearing in both the appeals on behalf of the appellant.

2. Second Appeal No. 362 of 2003 and Second Appeal No. 363 of 2013 have been directed to be heard together on the prayer made on behalf of the appellant. Accordingly, both the appeal have been heard together and are being disposed of by this common judgment.

3. The genealogy as propounded by the appellant Rameshwar Prasad is relevant to be taken into notice according to which Sita Ram had a son Babban, and Rameshwar Prasad is son of Babban. The suit premises admittedly belonged to Sita Ram. According to the plaintiff-appellant Rameshwar Prasad, Sita Ram died leaving behind his widow Rukminia Devi and a son Babban. The plaintiff has claimed himself to be successor of the property of Sita Ram. However, the defendant Murti Devi filed T.S. No. 209 of 1987 claiming herself to be daughter of Sita Ram and on that basis staked her entitlement to share in the property left behind by Sita Ram. During pendency of T.S. No. 209 of 1987, the plaintiff Rameshwar Prasad filed T.S. No. 45 of 1988 against the defendant Murti Devi seeking her eviction on the ground mentioned in Section 11 of the Bihar Building (Lease, Rent and Eviction) Control Act.



In this suit, the plaintiff asserted that the defendant Murti Devi was his tenant for the suit premises and as she defaulted in payment of rent, she was liable to be evicted from the suit premises on the ground of default. It is pertinent to mention here that in that suit the plaintiff also alternatively prayed for grant of decree on the basis of title. After contest, T.S No. 45 of 1988 was decreed by the judgment and decree dated 10.9.1991. The trial court in the said judgment returned the finding that there was relationship of landlord and tenant in between the plaintiff Rameshwar Prasad and the defendant Murti Devi and the plaintiff was held to be entitled to a decree of eviction on the ground of default in payment of rent. However, the trial court in para 29 of the judgment has also recorded that though the finding on title over the suit premises was in favour of plaintiff, but the plaintiff was not entitled to a decree on that basis. Title Appeal No. 96 of 1991 was preferred by the defendant Murti Devi against the said judgment and decree in the eviction suit. No cross objection, however, was preferred by the plaintiff Rameshwar Prasad in this appeal.

4. The earlier T.S. No. 209 of 1987 filed by Murti Devi for declaration of her title over the suit property eventually came to be decreed on 29.6.2001 holding that she was daughter of Sita Ram and entitled to have a share in the suit premises. It had also been held that her possession over the suit premises was not by way of tenant. The Title Appeal No. 62 of 2001 was filed by Rameshwar Prasad, who was defendant in that suit.

5. The Title Appeal No. 96 of 1991 which was filed by Murti Devi was allowed by the appellate court below by the judgment and



decree impugned in S.A. No. 363 of 2013, whereby the appellate court below reversed the finding of the trial court regarding the existence of the relationship between the plaintiff and the defendant and allowed the appeal. The Title Appeal No. 62 of 2001 has been dismissed by the appellate court below by the judgment and decree impugned in S.A. No. 362 of 2013, whereby the appellate court below has affirmed the finding of the trial court regarding the right, title and interest of the plaintiff Murti Devi of T.S. No. 209 of 1987 over the suit property. While setting aside the finding regarding partition between Murti Devi and Rameshwar Prasad, it has been further held that the plaintiff Murti Devi is in possession of the suit property as owner and not as tenant. In this backdrop both the appeals have been directed to be heard together and are being disposed of by this judgment.

6. It is manifest from the pleadings that the spinal issue between the parties is the status of Murti Devi as daughter of Sita Ram and thereby entitled to remain in possession over the suit premises as co-sharer.

7. Mr. Rahman, learned Counsel appearing for the appellant in both the appeals, has submitted that as T.S. No. 45 of 1988 came to be decided on 10.9.1991 much earlier to the judgment and decree passed in T.S. No. 209 of 1987, therefore, the finding with regard to the status of Murti Devi by the appellate court below is barred by res judicata. It has also been canvassed that the appellate court below was required to consider this aspect while considering the issues raised in T.S. No. 209 of 1987. It has further been contended that the appellate court below has passed the judgment ignoring the material evidence and relying on

extraneous documentary evidence which were never adduced in the suit. The learned Counsel has lastly submitted that there are thus substantial questions of law arising in these appeals and the same are required to be adjudicated.

8. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that the status of defendant Murti Devi (now deceased and through L.R.) has been considered by the courts below as a material issue between the parties in both cases. It is, however, also apparent from the judgment of the trial court in T.S. No. 45 of 1988 that the said suit was an eviction suit and has been decreed on the basis of finding of relationship of landlord and tenant between the plaintiff and the defendant. The trial court expressly negated the claim of the plaintiff for grant of decree on the basis of title. In the appeal (T.A. No. 96 of 1991), filed against the said judgment and decree, the appellate court below has reappraised the evidence on record and thereafter has come to the conclusion that the findings of the trial court are against the evidence and materials on record. Similarly, in T.A. No. 62 of 2001, the appellate court below has considered the submissions and evidence on record and has come to affirm the finding of the trial court with regard to the status of Murti Devi as daughter of Sita Ram and in possession of the suit property as a co-sharer. The submission on behalf of the appellant relating to bar of res judicata is clearly misconceived as admittedly the finding recorded in T.S. No. 45 of 1988 was not final and has been reversed in T.A. No. 96 of 1991 and in that view of the matter there was no scope for attracting the bar of res judicata. The other submission on behalf of the appellant regarding non-

consideration of material evidence and consideration of extraneous materials could not be substantiated in course of submission by the learned Counsel for the appellant.

9. This Court, therefore, comes to the conclusion that the findings recorded by the appellate court below in both the appeals are on the basis of scrutiny of evidence on record which are acceptable and could have been relied upon and it cannot be said that those conclusions could not have been arrived at on the basis of evidence as considered by the appellate court. This Court also does not find any perversity or unreasonableness in any other manner in the findings of the courts below in favour of the respondents.

10. Ex consequenti, this Court does not find any substantial question of law arising in both the appeals for consideration, which are, accordingly, dismissed.

**(V. Nath, J.)**

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