

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.367 of 2013

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1. Bibi Kulsum W/O Late Allauddin D/O Bibi Fatma Resident Of Village Barbighi Bari Ballia, Police Station Balia, District Begusarai.
 2. Surendra Mahton S/O Juleshwar Mahto Resident Of Village Barbighi Bari Ballia, Police Station Balia, District Begusarai.

..... Defendants Appellants

.... Appellants

Versus

1. Amrit Mahton S/O Late Lal Bihari Mahton Resident Of Village Barbighi Bari Ballia, Police Station Balia, District Begusarai.
2. Saryug Devi W/O Amrit Mahton Resident Of Village Barbighi Bari Ballia, Police Station Balia, District Begusarai. Plaintiffs Respondents
3. Hameedan Khatoon W/O Lte Nawabuddin Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
4. Sahabuddin W/O Jamila Khatoon Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
5. Anarul Hque S/O Shabuddin Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
6. Bibi Ruhi Khatoon Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
7. Bibi Subuhi Khatoon D/O Sahabuddin Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
8. Anjum Khatoon D/O Sahabuddin Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
9. Sanjeeda Khatoon W/O Jahid Hussain Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
10. Masooma Khatoon D/O Md. Sharif Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
11. Nyeema Khatoon D/O Md. Sharif Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
12. Md. Asgar Alam S/O Md. Sharif Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
13. Sarfaraj Alam S/O Md. Sharif Resident Of Mungeri Ganj, Pargana Balia, P.S. And District Begusarai.
14. Md. Isteyak Alam S/O Late Md. Asfaque Resident Of Mehboob Khan Tola Behind Bus Stand Of Purnia, P.S. K. Hat, P.O. And District Purnea.
15. Md. Parwez Alam S/O Late Md. Asfaque Resident Of Mehboob Khan Tola Behind Bus Stand Of Purnia, P.S. K. Hat, P.O. And District Purnea.
16. Md. Zawed Alam S/O Late Md. Asfaque Resident Of Mehboob Khan Tola Behind Bus Stand Of Purnia, P.S. K. Hat, P.O. And District Purnea.
17. Md. Safique Alam S/O Late Md. Asfaque Resident Of Mehboob Khan Tola Behind Bus Stand Of Purnia, P.S. K. Hat, P.O. And District Purnea.
18. Md. Irshad Alam S/O Late Md. Asfaque Resident Of Mehboob Khan Tola Behind Bus Stand Of Purnia, P.S. K. Hat, P.O. And District Purnea. Defendants Respondents

19. Bibi Nayeema Khatoon W/O Late Md. Asfaque S/O Late Md. Asfaque

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raghiv Ahsan
Mr. Sanjay Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 08-03-2016

Heard Mr. Raghib Ahsan, learned Senior Counsel appearing for the appellants.

2. The defendants are the appellants in this Second Appeal against the judgment and decree of affirmance. The suit has been filed by the plaintiff for declaration of title and recovery of possession and also for recovery of arrears of rent. The further relief has also been prayed to declare the gift deed dated 31.3.1994 standing in the name of the defendants as void and inoperative.

3. The plaintiffs' case was that the suit property measuring 2 Katha 10 dhurs originally belonged to Daimunnissa, who sold 1 Katha to one Sarju Singh. It is the further case of the plaintiffs that Daimunnissa died and at the time of her death only her two daughters namely Bibi Imaman and Bibi Fatima were alive and succeeded to the property left by her. The plaintiffs are purchasers of 15 dhurs of land from the sons and daughters of Bibi Imaman, except one daughter Bibi Nayeema who according to the plaintiffs could not join the sale deed as she was handicapped. The defendants, on the other hand, have come out with a case that Bibi Imaman died during the life of her mother Daimunnissa and therefore the sons and daughters of Bibi Imaman did not inherit any share in the property left behind by

Daimunnissa and the same was inherited exclusively by her surviving daughter Bibi Fatima. The defendants are claiming on the basis of gift deed and sale deeds from the descendents of Bibi Fatima.

4. The trial court and the appellate court below have concurrently returned the finding of fact that Bibi Maman died after the death of Daimunnissa. Both the courts below thereafter have proceeded to decide other issues also in favour of the plaintiffs and granted the decree, as prayed.

5. Mr. Raghieb Ahsan, learned Senior Counsel appearing for the appellants, has raised solitary point that both the courts below wrongly held that Bibi Imaman died after the death of Daimunnissa and, as such, she also inherited the estate of Daimunnissa along with her sister Bibi Fatima. It has been posited by the learned Senior Counsel that the appellate court below has not at all considered any oral evidence led on behalf of the defendants and, therefore, the findings with regard to the date of death of Bibi Imaman is vulnerable. No other submission has been made on behalf of the appellants.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the issue of death of Bibi Imaman prior to the death of her mother Daimunnissa has been considered by both the courts below and both the courts below have recorded the fact that Bibi Imaman had died after the death of Daimunnissa. From perusal of the judgment of the appellate court below it transpires that in para 10 the court has taken into notice the averments made by the defendants in their additional written statement filed in the year 2001, wherein in para 5 it has been stated

that Bibi Daimunnissa died and then Bibi Imaman died. The appellate court has further taken into notice the statement made in para 23 of the written statement filed on 18.9.2006, where statement has been made that Daimunnissa died in the year 1955 and Imaman died on 5.9.1976. Besides the aforesaid submission, the courts below have also taken into notice the material evidence adduced in this regard by the parties and has come to the finding that Bibi Imaman died after the death of Daimunnissa. This Court, therefore, does not find that the findings by both the courts below in this regard are unreasonable or perverse in any manner. It is also apparent that the finding by the courts below have been recorded after scrutiny of evidence of the parties including the statements made by defendant No. 2 as D.W. 6 in her deposition. It is not the case of the appellants that the findings have been recorded without evidence or are based on surmises and conjectures.

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

(V. Nath, J)

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