

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.322 of 2005

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1.Ram Nath Bind s/o Ram Sagar Bind.
2.Ram Sagar Bind s/o late Sheo nandan Bind(Insane through Ram Nath Bind)
3.Most Keshri w/o Late Ram Bhajan Bind.
4.Sushila Kumari (Minor) daughter of Late Ram Bhajan Bind.
(Through Mostt. Keshari Mother and natural guardian)
All residence of village Nalaw, P.S. Sasaram, District Rohtas.
Plaintiff-Respondent Appellants. Ist Set

5. Gangia Devi w/o Suraj Bind, Resident of village Sikandarpur, P.S.
Sheosagar, District Rohtas.
Respondent(Proforma)

Versus

Deo Nath Bind s/o Late Kashwar Bind, resident Village Malaw, P.S.
Sasaram, District Rohtas.

Plaintiff-Defendant.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamlakant Pandey
Mr. Sheela Pandey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 09-02-2016 Heard Mr. Sunil Kumar Verma, learned counsel for
the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal. The plaintiffs filed the suit for setting aside the sale deed executed by defendant no. 3, Gangia Devi in favour of defendant no. 2 with further prayer of partition. The basis of the case of the plaintiffs in the suit was that the said sale deed has been executed by the defendant no. 3 Gangia Devi who had no concern with the family of the plaintiffs and therefore, she had no title or possession over the



land which is the subject matter of the said sale deed. The defendants appeared and contested the claim of the plaintiffs by asserting that Gangia Devi was daughter of Ramanand Bind who was a co-sharer of 1/2 share in the family property with the predecessor Sheo Nandan Bind of the plaintiff. The core issue between the parties therefore was the status of the defendant no. 3 Gangia Devi as daughter of Ramanand Bind.

3. The trial court returned the findings on the issue in favour of the plaintiffs and decreed the suit by holding that defendant no. 3 Gangia Devi had no concern with the family of the plaintiff. The appellate court, however, on reappraisal of evidence, overturned the said finding, allowed the appeal and set aside the judgment and decree of the trial court.

4. Mr. Verma, learned senior counsel appearing on behalf of the appellants, while criticizing the impugned judgment has submitted that the appellate court below has failed to consider the important piece of evidence which is the deposition of Gangia Devi, wherein, she had failed to disclose the relevant facts by which her relationship with the family of the plaintiff could have been established. It has been canvassed that the trial court has elaborately considered the deposition of the defendant no. 3 Gangia Devi and thereafter has come to the



conclusion that she had no relationship with the family of the plaintiffs as she had even failed to identify or disclose the relevant facts and information about the family members of the plaintiff. It has therefore, been contended that the appellate court below ought not to have reversed the finding of the trial court. No other submission has been made on behalf of the appellants.

5. After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the seminal issue between the parties regarding the status of defendant no. 3 Gangia Devi as daughter of Ramanand Bind has been decided by the appellate court below on consideration of evidence on record and in accordance with the settled principles in law. During the course of submission learned senior counsel for the appellants has accepted that in the plaint, plaintiffs have not mentioned the parentage of Gangia Devi. It is transparent from the judgment of the appellate court below that it has considered the oral and documentary evidence adduced by the parties before coming to the conclusion that the plaintiffs has failed to establish the case that Gangia Devi was stranger to the family of the plaintiff. The effort to take advantage of the weakness of the case of the defendants will not ennure to the benefit of the plaintiffs as it is the plaintiff who has to succeed

on his own legs. The appellate court below appears to have correctly approached the matter and its conclusions are based upon analysis of evidence. This court has not been persuaded to find perversity in any manner in the findings recorded by the appellate court below.

6. 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)

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