

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.7 of 2011

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1. Baldeo Choudhary, son of Late Harkhu Choudhary
 2. Suresh Choudhary, son of Anandi Choudhary
 3. Ritlal Choudhary, son of Late Bhubneshwar Choudhary, All are resident of Village Garbhudih Tola Nilkothi, P.S. Chandan, District Banka (Bhagalpur)
 4. Bachani Devi, wife of Karu Manjhi, d/o Late Bhuneshwar Choudhary, resident of Village Maihantario, P.O. Mohanpur, P.S. Simultala, District Jamui
 5. Bhagni @ Bhagni Devi, wife of Suresh Manjhi, d/o Late Bhuneshwar Choudhary, resident of Village Ramaldih, P.O. Koridih, P.S. Jasidih, District Deoghar
- Plaintiffs Appellants

.... Appellants

Versus

1. Menakshi Devi, d/o Late Paghu Choudhary, w/o Jaddu Manjhi, resident of Village Bhelgamro, P.O. Banka, Via Chandan, P.S. Chandan, District Banka (Bhagalpur)
2. Rikhwa Devi, d/o Late Paghu Choudhary, w/o Bari Manjhi, resident of Village Maihantari, P.O. Mohanpur, P.S. Simultalla, District Jamui
3. Kuwa Devi, d/o Late Paghu Choudhary, w/o Gaya Manjhi, resident of Village Jamuwa, P.O. Kokwara, P.S. and District Banka (Bhagalpur)
4. Gopal Choudhary
5. Nuneshwar Choudhary, both sons of Late Paghu Choudhary, resident of Village Garbhudih Tola, Nilkothi, P.S. Chgandan, District Banka (Bhagalpur)
6. Chandan Choudhary, minor son of Gopal Choudhary, under the guardianship of his father Gopal Choudhary, resident of Village Garbhudihn, Tola Nilkothi, P.S. Chandan, District Banka (Bhagalpur) Defendants Respondents Respondent 1st set
7. Anandi Choudhary, son of Late Harkhu Choudhary
8. Dihdayal Choudhary
9. Naresh Choudhary, both sons of Baldeo Choudhary, all residents of Village Garbhudih Tola Nilkothi, P.S. Chandan, Districxt Banka (Bhagalpur) Plaintiffs Appellants Respondent 2nd set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh
For the Respondent/s : Mr. T.N.Maitin, Sr. Advocate
Mr. Rajeev Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Heard Mr. Jitendra Prasad Singh, learned Counsel appearing

for the appellants. Mr. T.N.Maitin, learned Senior Counsel, is present on behalf of respondent Nos. 1, 2 and 4 to 6.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit.

3. The plaintiffs filed the suit for declaration of their title over the suit property and further for declaration that the proceeding of Jamabandi creation before the Circle Officer was without jurisdiction, null and void. The plaintiffs and the defendants are admittedly descendents of Mithu Choudhary, who had two sons namely Mani Choudhary and Kesho Choudhary. The plaintiffs represent the branch of Mani Choudhary and the defendants represent the branch of Kesho Choudhary. The plaintiffs had claimed that the suit property was acquired by the two sons of Mani Choudhary namely Harkhu Choudhary and Bhubneshwar Choudhary by settlement from the ex-landlord and on this basis they claimed their exclusive title over the same and denied the share of the defendants in the suit property. The defendants, on the other hand, resisted the claim of the plaintiffs asserting that the suit property was not the exclusive property of the plaintiffs, and the defendants had half share in the same.

4. The trial court returned the finding on the crucial issue relating to the exclusive title of the plaintiff over the suit property against the plaintiffs and dismissed the suit. In appeal, the appellate court below on reappraisal of evidence has affirmed the finding of the trial court and dismissed the appeal by the impugned judgment and decree.

5. Mr. Singh, learned Counsel for the appellants, has

submitted that the appellate court below has not considered the oral evidence adduced on behalf of the plaintiffs and, therefore, the impugned judgment 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 plaintiffs and the defendants are descendants of Mani Choudhary and Kesho Choudhary respectively who were full brothers. The claim of exclusive title over the suit land of the plaintiffs is based upon the **Hukumnama** through which the settlement of the suit land has been made. This **Hukumnama** has been brought on record on behalf of the plaintiffs as Ext. 2. Both the courts below have found that this **Hukumnama** is in torn condition and the entries therein with regard to the date or description of the land are not visible. The plaintiffs have tried to corroborate the case of settlement of the land by **Hukumnama** (Ext. 2) in the name of two predecessors of the plaintiffs by filing the certified copy of Register II, but the same also has been found by the courts below to be only in the name of Harkhu Choudhary and the name of other settlee Bhubneshwar Choudhary was not there. On behalf of the defendants, however, a number of documentary evidence has been adduced to show that there has been earlier partition of the suit land, wherein the defendants have been allotted half share in the same. The memorandum of partition (Ext. A), the **Ekrarnama** (Ext. D) and the **Panch Faisla** (Ext. E) are some of the documents which demonstrate that there has been partition of the suit land in between the plaintiffs and the defendants.

It has been accepted on behalf of the appellants that there has been no explanation of these documents but it appears clearly from the memorandum of partition (Ext. A) that it carries the LTI and signature of the plaintiffs. It has further also been accepted that in the oral evidence also on behalf of the plaintiffs there is no denial or challenge to the validity of the aforementioned documentary evidence. On behalf of the defendants the certified copy of Register II (Ext. M) for the suit land has also been filed which is in the name of predecessor of the plaintiffs and defendants and again admittedly there is no explanation to this.

7. In this backdrop, consideration of oral evidence becomes an empty formality and the appellate court below has not committed any illegality in not considering the oral evidence on behalf of the plaintiffs which admittedly does not carry any explanation with regard to the documentary evidence. Even otherwise also, the findings recorded by both the courts below are on the basis of scrutiny of evidence and this Court has not been persuaded to find unreasonableness or perversity in any manner in the same.

8. 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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