

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.323 of 2013

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1. Akhtar Alam S/O Ali Asgar R/O Village Mehrauna, P.S. Lar, District Deoriya (U.P.).
 2. Asfak Akhtar S/O Akhtar Alam R/O Village Mehrauna, P.S. Lar, District Deoriya (U.P.).
 3. Akhlakh Ahmad @ Faujdar S/O Akhtar Alam R/O Village Mehrauna, P.S. Lar, District Deoriya (U.P.).
 4. Nashim Jaha @ Devi D/O Akhtar Alam R/O Village Mehrauna, P.S. Lar, District Deoriya (U.P.).
 5. Washim Jaha @ Gudiya D/O Akhtar Alam R/O Village Mehrauna, P.S. Lar, District Deoriya (U.P.).

..... Plaintiffs Respondents

.... Appellants

Versus

1. Bibi Sakira W/O Sk. Safik Matvafa R/O Village Khor, P.O. Kewatsiya, P.S. Darauli, District Siwan.
2. Sk. Ishar S/O Late Sumsul Haque R/O Village Khor, P.O. Kewatsiya, P.S. Darauli, District Siwan.
3. Sk. Samsul Haque S/O Md. Yashin R/O Village Khor, P.O. Kewatsiya, P.S. Darauli, District Siwan. Defendants Appellants
4. Bibi Najban Nisha @ Najbun Nisha W/O Maneer Ahmad R/O Village And P.O. Mehrauna, P.S. Lar, District Deoriya (U.P.). At Present R/O Nonekhor, P.S. Darauli, District Siwan.
5. Md. Mustafa S/O Akhtar Alam R/O Village And P.O. Mehrauna, P.S. Lar, District Deoriya (U.P.). At Present R/O Nonekhor, P.S. Darauli, District Siwan.
6. Alamgir @ Bablu S/O Akhtar Alam R/O Village And P.O. Mehrauna, P.S. Lar, District Deoriya (U.P.). At Present R/O Nonekhor, P.S. Darauli, District Siwan. Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

5 30-01-2016 Heard Mr. Yogendra Prasad Sinha, learned Counsel for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal. The facts are not in dispute that Md. Rasool had two wives. From the first wife Bibi Ropna, he had three daughters, who are defendants in the suit and from the second wife



he had two daughters who are plaintiffs in the suit. The suit has been filed for partition of their share in the suit property. The facts are also not in dispute that the suit property originally was acquired by the first wife Bibi Ropna of Md. Rasool by registered gift deed dated 12.4.1929 from her great grand father. Later on, Md. Rasool had got a sale deed on 22.1.1957 executed from Bibi Ropna with regard to her gifted property. Bibi Ropna subsequently filed T.S. No. 192 of 1959 for setting aside the said sale deed and in that suit the plaintiffs were also impleaded as party defendants. The said suit was disposed of in terms of compromise dated 16.11.1960 (Ext-'F'). The plaintiffs have filed the suit for partition of the entire gifted property of Bibi Ropna on the premises that after the sale deed the entire property belonged to their father Md. Rasool and after the death of Md. Rasool the plaintiffs have also acquired share in the said property by inheritance.

3. The trial court returned the finding in favour of the plaintiffs including the finding that at the time of disposal of T.S. No. 192 of 1959 the plaintiffs were minors and their interest was not represented and, therefore, the compromise could not be binding upon them. The suit was, accordingly, decreed.

4. In appeal, the appellate court below on reappraisal of evidence has come to the finding that the plaintiffs have failed to adduce cogent evidence to establish that they were minors at the time when T.S. No. 192 of 1959 was disposed of in terms of the compromise. It has also been held that the plaintiffs have not prayed any relief against the said compromise decree either in the present



suit or in T.S. No. 192 of 1959 after attaining majority. It has also been found on appreciation of evidence by the appellate court below that the sale deed executed by Bibi Ropna in favour of her husband Md. Rasool contained only 3 Bigha and odd land and not the entire gifted land of Bibi Ropna measuring about 7 Bigha and odd and on that basis also the appellate court has come to the conclusion that the plaintiffs' suit for partition of their share in the entire gifted property was not maintainable. The appeal has been therefore allowed, the finding by the trial court was reversed and the plaintiffs' suit for partition has been dismissed by the impugned judgment and decree.

5. Mr. Sinha, learned Counsel appearing for the plaintiff – appellants has submitted that the appellate court has not properly appreciated the material evidence on behalf of the plaintiffs before reversing the finding of the trial court. It has also been submitted that the plaintiffs had adduced the Parawarik Pustika (Ext. 3) in support of their contention that they were minors at the time of earlier T.S. No. 192 of 1959. The learned Counsel has also submitted that the trial court has recorded correct findings of fact and the same should not have been interfered. No other submission on behalf of the appellants has been made.

6. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the appellate court below on the basis of evidence on record has come to the finding that the plaintiffs have failed to adduce cogent evidence to substantiate their case that they were minors at the time of disposal

of the earlier T.S. No. 192 of 1959 by way of compromise and has rightly discarded the Pariwarik Pustika (Ext. 3) to be a document of legal evidence for establishing the date of birth. It has also been found by the appellate court below that the plaintiffs have failed to seek relief against the compromise decree in T.S. No. 192 of 1959 even after attaining majority, within the prescribed period of limitation and no such relief has been prayed in the present suit. The fact has also been taken into notice that the alleged sale deed in favour of Md. Rasool contained only 3 Bigha and odd, whereas the suit has been filed with regard to 7 Bigha and odd which was admittedly gifted property of Bibi Ropna, the mother of the respondents. This Court has not been persuaded to find any perversity or unreasonableness in any manner in the findings recorded by the appellate court below reversing the findings of the trial court.

7. Ex consequenti, there is no substantial question of law arising for consideration in this appeal which is, accordingly, dismissed.

(V. Nath, J.)

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