

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.55 of 2011

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1. Ram Nath Yadav
2. Ram Badan Yadav, sons of Late Sarju Yadav
3. Janaki Kuer, wife of Late Budhan Yadav
4. Amar Chand Yadav
5. Narad Yadav, sons of Late Budhan Yadav
6. Aditya Narayan Yadav
7. Bhagirathi Yadav, sos of Late Budhan Yadav
8. Raj Muna Devi, wife of Late Devahe Yadav
9. Ramdhani Yadav
10. Jitan Yadav, sons of Devaha Yadav, all residents of Village Karari, P.S. Arrah Muffassil, District Bhojpur Plaintiffs Appellants

Versus

1. Gopal Yadav
2. Suraj Nath Yadav, sons of Late Chulahan Yadav
3. Eatawaria, D/o Late Chulhan Yadav
4. Ram Dayal Yadav
5. Ram Babu Yadav
6. Ranglal Yadav
7. Jay Dayal Yadav
8. Hardayal Yadav
9. Shyajee Yadav, all residents of Village Suhiya, P.S. Sahpur, District Bhojpur
10. Gangajali
11. Darapani, D/o Late Chulahi Yadav, resident of Village Manpur, P.S. Arrah, Muffasil, District Bhojpur Defendant 1st set ... appellate 1st set.
12. Sunil Keshri
13. Pradip Keshri
14. Raj Kumar Keshri
15. Rajesh Kumar Keshri, all sons of Late Khobhari Sah
16. Rama Kuer, w/o Late Khobhari Sah
17. Ramawati Kuer, w/o Late Dasarath Sah, resident of Village karari, P.S. Arrah Muffasil, District Arrah at present resident of Mohalla Terimohala, P.S. Arrah Town, District Bhojpur Defendant 1st Set Appellant 2nd set
18. Basropan Sah, son of Mahendra Sah
19. Bhalu Sah, son of Late Suraj Sah
20. Most. Sarshwati Kuer, w/o :Late Jhalu Sah
21. Santosh Sah, son of Late Jhalu sah
22. Shewjee Sah
23. Ramjee Sah, both sons of Jhalu Sah, under guardianship of their mother Sarasawati Kuer
24. Nanahak Sah, son of Late Isher Deyal Sah, resident of Village karari, P.S. Arrah Muffasil, District Bhojpur Defendant 3rd set Appellant 2nd set

... Respondents

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Appearance :

For the Appellant/s : Mr. Awadh Bihari Ojha, Sr. Advocate

Mr. Bharat Bhushan & Nitesh Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

9 09-02-2016

Heard Mr. A. B. Ojha, learned Senior Counsel appearing on behalf of the appellants.

2. This second appeal has been filed against the judgment and decree of affirmance of the final decree. After the preliminary decree in a suit for partition, which was not challenged by the parties, the plaintiffs filed the petition for preparation of the final decree. The trial court appointed a Pleader Commissioner under Order 26 Rule 14 CPC for carving out the shares of the parties in accordance with the preliminary decree. After submission of the report, the objections were filed by the plaintiffs and the defendants. The trial court after considering the objections confirmed the report and directed for preparation of the final decree accordingly. The plaintiffs filed appeal, but the appellate court below on appraisal of materials on record has dismissed the appeal by the impugned judgment and decree.

3. Mr. Ojha, learned Senior Counsel for the appellants, has strenuously submitted that once after the appellate court has taken into notice the discrepancy in the order passed by the trial court in the matter of objection by the plaintiffs to the report of the Pleader Commissioner, the matter ought to have been remanded to the trial court for fresh consideration. It has been pointed out that the trial court has wrongly recorded in the order sheet that the objection filed by the plaintiffs was not pressed although the order sheet itself shows that the learned Counsel for the parties were heard on the report and

thereafter the order has been passed. Learned Senior Counsel has pointed out that specific objections were raised by the plaintiffs to the report of the Pleader Commissioner. No other submission has been made on behalf of the appellants.

4. After perusal of the judgments of both the courts below and considering the submissions it is manifest that this second appeal has arisen out of a final decree. It is well settled by now that the first appeal against the final decree is in the nature of a second appeal and the interference can be made only when some questions of principle in allotment arise. The reference in this regard may be made to the bench decision of this Court in the case of **Jugeshwar Singh & anr. Vs. Rijhan Singh & ors. AIR 1938 Patna 104** and in the case of **Sm. Ambika Bhawani Devi vs. Sm. Gouri Kumari Devi AIR 1947 Patna 271**.

5. However, from perusal of the judgments of the appellate court below it appears that the appellate court below has taken into notice the objections filed by the parties to the report of the Pleader Commissioner and has also noticed that the primary objection of the parties to the report of the Pleader Commissioner related to the claim of the three parties i.e. the plaintiffs, defendant 1st set and the defendant second set for allotment of their share in the western side of the plot. The appellate court below has further also noticed that the Pleader Commissioner in view of the claims of the parties had visited the spot and had also recorded in the order sheet that the other parties i.e. the plaintiffs and the defendant 2nd set had admitted the possession of the defendant 1st set in the western side of the plot.

The appellate court below has given elaborate consideration to all the facts and circumstances of the case as well as the report of the Pleader Commissioner and thereafter has reached to the findings. The findings of fact have been recorded by the appellate court below on the basis of materials on record and this Court does not find any unreasonableness or perversity in the same.

6. 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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