

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.67 of 2011

- =====
1. Ramakant Bhagat
 2. Dilip Kumar Bhagat, both sons of Late Mathura Prasad Bhagat, resident of Village Khajuria, P.S. Sanhaura, District Bhagalpur Defendant Nos. 5 & 6 Respondent Nos. 5 and 6

.... Appellants

Versus

- 1(i) Ashok Kumar Bhagat
- 1(ii) Kishore Kumar Bhagat
- 1(iii) Anup Kumar Bhagat, sons of Bhagwati Bhagat @ Bhagwat Pd. Bhagat
- 1(iv) Geeta Devi, daughter of Bhagwati Bhagat @ Bhagwat Pd. Bhagat, all resident of Village Khajuria, P.S. Sanhaura, District Bhagalpur ... Plaintiff Appellant
2. Shankar Bhagat, son of Late Mohan Lal Bhagat, resident of Village Hariyari, P.S. Poraiya, District Godda
3. Satyanarayan Bhagat, son of not known ... defendant Respondent
4. Ashok Kumar Bhagat
5. Guddu Bhagat
6. Sajan Bhagat, all sons of Late Satya Narayan Bhagat and successor of Late Manorma Devi, residents of Village and P.S. Panjawa, District Banka
7. Tuntun Devi, wife of Kuldeo Bhagat, residents of Village, P.O. and P.S. Panjawa, District Banka
8. Budhni Devi, wife of Hari Mohan Bhagat, resident of Village Chapari, P.O. & P.S. Dhoraiya, District Banka Defendants
9. Dwarika Pd. Bhagat
10. Rajendra Prasad Bhagat
11. Nirmal Kumar Bhagat, sons of Mathura Pd. Bhagat, residents of Village Khajuria, P.S. Sanhaura, District Bhagalpur
12. Sabita Devi, wife of Kapil Bhagat, resident of Village Panjwara, P.S. Panjwara, District Banka
13. Manti Devi, wife of Ramanand Bhagat, resident of Village Sabalpur, P.O. Sabalpur, P.S. Baunsi, District Banka Defendants Respondents
- 1.

.... Respondents

=====

Appearance :

For the Appellant/s	:	Mr. Kundan Bahadur Singh Mr. Amitabh Sohan Mr. Archit Rajpal
For the Respondents 9 - 11 :		Mr. Ganpati Trivedi, Sr. Advocate Mr. R.K. Sinha Mr. Manoj Kumar

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

21 06-04-2016 Heard Mr. Kundan Bahadur Singh, the learned Counsel appearing for the appellants. Mr. Ganpati Trivedi, learned Counsel for the respondents is present

2. Some of the defendants in the suit are the appellants in this appeal against the judgment and decree of reversal granting the decree as prayed.

3. The basic facts giving context to the questions arising in this appeal are not in dispute that the property, subject matter of the suit, was the self acquired property of one Mathura Prasad Bhagat. The plaintiffs and the defendants are the descendents of the said Mathura Prasad Bhagat. The suit property was admittedly acquired in the year 1943. As Mathura Prasad Bhagat was also a coparcener with regard to the joint family property there was a partition amongst the coparceners for the joint family property in the year 1947, wherein also Mathura Prasad Bhagat was allotted his share, but the suit property was not the subject matter of partition evidently because it was his self acquired property.

4. The suit was filed by the plaintiffs for partition of the suit property. After the dismissal of the suit, the appeal was filed and thereafter the matter reached to this Court in S.A. No. 22 of 2002, which was decided on 27.4.2009 remanding the matter back to the appellate court after recording some findings. One of the findings recorded in the said second appeal was that after the death of Mathura Prasad Bhagat, the succession to the suit property would be governed by Section 8 of the Hindu Succession Act, 1956 and the contention in this regard on behalf of the appellants that in view of the



provisions of Section 6 of the Hindu Succession Act the plaintiffs would be excluded from succession being already separate, was categorically negated. The appellate court below, on remand, has allowed the appeal and decreed the suit of the plaintiffs by the impugned judgment.

5. Mr. Singh, the learned Counsel appearing for the appellants, has submitted that the contesting defendants being the sons of the admitted owner Mathura Prasad Bhagat, born from his second marriage after the partition in 1947, would be exclusively entitled to the property allotted in the share of Mathura Prasad Bhagat in the partition as well as his self acquired property. The learned Counsel has placed reliance upon the commentary in this regard in Mulla's treatise on Hindu Law. It has, however, been accepted by the learned Counsel for the appellants that the findings recorded by this Court on this issue in S.A. No. 22 of 2002 has attained finality between the parties. A copy of the judgment of this Court in S.A. No. 22 of 2002 has been produced before this Court for perusal by the learned Counsel for the appellants as well as by Mr. Trivedi, the learned Senior Counsel appearing for the respondents.

6. After perusal of the judgments of both the courts below, consideration of the submissions on behalf of the parties and also after going through the judgment of this Court in S.A. No. 22 of 2002, it is manifest that the crucial issue arising in the suit between the parties regarding the exclusion of the plaintiffs from his share in the suit property has been finally settled by this Court and the impugned judgment of the appellate court below proceeds on the basis of said

finding of this Court. In this backdrop, this Court is not inclined to align with the submissions made on behalf of the appellants on the basis of passage in the Mulla’s treatise on Hindu Law. Even otherwise also, the said passage deals with the principle of inheritance on entirely different set of facts.

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

(V. Nath, J.)

Snkumar/-

U			
---	--	--	--