

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.309 of 2013**

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Dhaneshwari Devi W/O Shankar Dayal Singh And D/O Late Sheo Nandan Singh Resident Of Village Dulhinganj, P.S. Jagdishpur, District Bhojpur at present resident of village-Dilian, P.S.-Udvanthnagar, District-Bhojpur.

.... .... Appellant/s

Versus

1. Manju Devi W/O Achhay Kumar Singh and D/O Late Sheo Nandan Singh Resident of Village Partappur, P.S. Sandesh, District Bhojpur. At Present Resident of Village Dilion, P.S. Udvanthnagar, District Bhojpur.
2. Krishna Sah son of late Kriti Sah R/o-village +P.O.-Korwan P.S. Arra Mufassil, District-Bhojpur.
3. Sripati Ram S/O Suraj Singh Resident of Village + Post Karwan, P.S. Ara Muffasil, District Bhojpur.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Aditya Narayan Singh-1  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**  
**ORAL ORDER**

4      07-01-2016

Heard the learned counsel for the appellant.

The plaintiff is the appellant in this appeal against the judgment and decree of affirmance.

The suit was filed by the plaintiff for partition of the suit property as mentioned in schedule-I of the plaint. The contesting defendants, by filing written statement, denied the status of the plaintiff as one of the daughters of late Sheo Nandan Singh and came out with the case that the property belonged to one Sheo Nandan Singh and he died leaving behind one daughter Manju Devi (defendant no. 1) and widow Sona Kuer defendant no.

2 (since deceased ). The crucial issue in the suit therefore was the status of the plaintiff Dhaneshwari Devi as one of the daughters of late Sheo Nandan Singh as claimed by her.

Both the parties led oral and documentary evidence on the said issue. The trial court, after scrutiny of the evidence of the parties, returned the findings that the plaintiff Dhaneshwari Devi was not the daughter of late Sheo Nandan Sing as claimed by her. Consequently, the suit was dismissed. In appeal by the plaintiff, the appellate court below, on reappraisal of evidence, has affirmed the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr. Singh, the learned counsel for the appellant while assailing the impugned judgment and decree has submitted that both the courts below have wrongly discarded the deposition of P.Ws. who are the nephews of late Sheo Nandan Singh and have stated in their deposition that the plaintiff Dhaneshwari Devi is one of the daughters of late Sheo Nandan Singh. It has also been canvassed that the voter list of the concerned village has been produced in evidence which shows that the plaintiff Dhaneshwari Devi is residing in the same house along with the descendants of late Sheo Nandan Singh. The learned counsel for the appellant has further argued that the learned court below has wrongly decided

the crucial issue by placing the burden of proof on the plaintiff whereas it was for the defendant to establish the fact as pleaded by them that the plaintiff was not the daughter of late Sheo Nandan Singh. The learned counsel has placed his reliance upon the decision in the case of **Hameed vs. Kanhaiya, A.I.R. 2004 Allahabad. 405.**

After considering the submissions and perusal of the impugned judgments of both the courts below, it is manifest that the seminal issue between the parties in the suit was the status of the plaintiff Dhaneshwari Devi as daughter of late Sheo Nandan Singh in view of the specific denial in that regard by the contesting defendants. The courts below have recorded their finding on the basis of appreciation of oral and documentary evidence led by the parties and have come to the conclusion that the plaintiff has failed to establish her parentage as claimed by her by leading cogent evidence. The courts below have also taken into consideration the provision of Section 50 of the Indian Evidence Act and have come to the conclusion that the deposition of the witnesses on behalf of the plaintiff including the two nephews of late Sheo Nandan Singh do not qualify the requirement of the said provision. The learned counsel for the appellant, in this regard, has submitted that the provisions of Section 50 and 60 of the Evidence



Act could not be applicable in the facts of the case but the said proposition is not acceptable in view of the decision of the Apex Court in the case of **Dolgobinda Paricha Vs. Nimai Charan Misra, A.I.R. 1959 S.C. 914** and also the decision of this Court in the case of **Smt. Fulkalia Vs. Nathu Ram, A.I.R. 1960 Pat. 480** where the principle has been clearly laid down that in a case where the court has come to a form an opinion with regard to the relationship between the two persons, the evidence must be in consonance with the requirement of Section 50 and 60 of the Evidence Act.

The submission on behalf of the appellants that the burden of proof has wrongly been placed upon the plaintiff whereas it should have been upon the defendants to establish the fact that the plaintiff was not the daughter of late Sheo Nandan Singh is also misconceived in view of the basics of law of evidence that no one can be asked to prove the negative. Further the decision in Hameed (supra) will also not inure to the benefit of the appellant in view of the law as laid down by the Apex Court in the case of **Arumugham Vs. Sundarambal, (1999) 4 SCC 350** that the issue of burden of proof becomes immaterial when both parties lead evidence and in such a case it is only the appreciation of evidence which becomes material. It has been further held that the question

of burden of proof becomes relevant only if a party on whom the burden of proof lies fails to adduce any evidence altogether. In the present case, both the parties have led evidence on the issues and the courts below have scrutinized the oral and documentary evidence of the parties before reaching to the conclusion on the crucial issue against the plaintiff. No unreasonableness or perversity in the findings could be shown or established during the course of submission on behalf of the appellant. In fact, the submissions made on behalf of the appellant have in substance centered around re-appreciation of evidence which cannot be done at the second appellate stage unless the concurrent finding recorded by the courts below are shown to be perverse in any manner.

In view of the aforesaid reasons and discussions, this Court finds no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

**(V. Nath, J)**

Devendra/-

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