

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.313 of 2013

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1. Mobarak Hussain S/O Late Abdul Ghani Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

2. Abdul Hassan S/O Mobarak Hussain Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

3. Amanat Hussain S/O Late Abdul Ghani Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

4. Ashraf Ali S/O Salamat Hussain Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

5. Ali Imam S/O Late Jan Mohammed Mian Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

6. Taiyab Hussain S/O Late Jan Mohammed Mian Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

7. Bibi Samsu Nisha D/O Late Jan Mohammed Mian Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

8. Syed Ali son of late Pan Mohammed Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. Majharul Haque Nagar (M.H. Nagar), District Siwan.

....Plaintiffs-Appellants-Appellant/s

Versus

1. Shamsheer Ahmad

2. Sabeer Ahmad

Both sons of late Islam Mian.

3. Expunged .

3(A). Bibi Aisha W/O Late Islam Mian Resident Of Village Harpalpur, Pergana Ander, P.O. Nadiaon, P.S. M.H. Nagar, District Siwan.

Respondents 1st Set

4. Israr Ali.

5. Monir Ali.

6. Bibi Nasima.

7. Bibi Zarina Khatoon all sons and daughter of Late Azimullah.

8(A). Bibi Ajibun Nisha.

8(B) Bibi Shamrun Nisha.

8(C). Manzoora Begum.

8(D). Shamima Begum all D/O Late Tabarak Hussain.

9. Bibi Saida Khatoon W/O Late Azimullah Resident Of Village Harpalpur,
Pergana Ander, P.S. M.H. Nagar, District Siwan.

Respondents 2nd Set.

10. Bibi Aitun Nisha W/O Late Sagir Ahmad.

10(A). Hasnain Ahmad.

10(B). Shohana Khatoon.

10(C). Shahnaz Khatoon.

10(D). Afsana Khatoon.

10(E). Mehnaj Khatoon all sons and D/O Late Sagir Ahmad.

11. Tauqir Ahmad S/O Late Sagir Ahmad Resident Of Village Harpalpur
Pergana Ander, P.O. Nadiaon, P.S. M.H. Nagar, District Siwan.

Respondents 3rd Set

12. Salamat Hussain S/O Late Abdul Gani.

13. Bibi Safrun Nisha.

14. Bibi Hassibon Nisha both D/O Late Jan Mohammad Mian.

15. Sahed Ali S/O Late Pan Mohammad

16. Bibi Gulsan W/O Late Pan Mohammad S.No. 12 to 16 are Resident Of
Village Harpalpur, Pargana Ander, P.O. Nadiaon, P.S. Majharul Haque
Nagar (M.H. Nagar), District Siwan.

Plaintiff....Appellants.... Respondents 4th Set.

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Appearance :

For the Appellant/s : Mr. Md. Aslam Ansari, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

5 13-01-2016

Heard learned counsel for the appellants.

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

suit in part.

3. The plaintiffs filed the suit for partition of their shares with regard to the suit property as mentioned in the plaint. The suit properties were described in Schedule 1 and 2 of the plaint. The plaintiffs claimed 13/30 shares in Schedule-1 property and 5/6 share in Schedule-2 property. The defendant no. 10 contested the relief claimed by the plaintiffs.

4. The trial court granted the part decree of partition to the extent of 2/5 shares to the plaintiffs and 2/5 shares to the heirs of Abdul Hakeem and 1/5 share to Defendant No. 10 Sagir Ahmad in the property of Kariman Mian as described in Schedule-1 and Schedule-2. The appellate court below, on reappraisal of the evidence, has affirmed finding of the trial court, and dismissed the appeal by the impugned judgment and decree.

5. Learned counsel for the appellant has reiterated the submissions made on behalf of the plaintiffs in the court below and has further also submitted that the finding with regard to the validity of the gift deed by Bibi Sobratan in favour of the respondent no. 10, cannot be sustained in view of the materials on record which show that Bibi Sobratan did not acquire the title over Schedule-1 property on the basis of oral gift from her

mother. No other submission has been made on behalf of the appellants.

6. After perusal of the judgment of both the courts below and considering the submissions, it is manifest that the parties have admitted that fact that the suit property described in Schedule-1 and Schedule-2 of the plaint originally belonged to the common ancestor Kariman Mian. It is also not disputed that Kariman Mian died leaving behind two sons, Abdul Ghani and Abdul Hakeem and one daughter Bibi Dipa.

7. Learned counsel for the appellants has fairly submitted that after the death of Kariman Mian, his two sons Abdul Ghani and Abdul Hakim would inherit $\frac{2}{5}$ share each and his daughter Bibi Dipa would inherit $\frac{1}{5}$ share in his property. It has also been accepted on behalf of the appellants that no relief in the suit with regard to the registered gift deed executed by Bibi Sobratan in favour of the defendant no. 10 has been prayed by the plaintiffs. Both the courts below, after considering the evidence and the principles of law, have come to the finding that the defendant no. 10 would be entitled to $\frac{1}{5}$ share in the suit property, which has been transferred to him by way of gift by Bibi Sobratan. The findings by both the Courts below have been recorded after scrutiny of the evidence and during the course of

submission, no unreasonableness or perversity in any manner has been established.

8. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly, dismissed.

(V. Nath, J)

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