

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.467 of 2011

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Manoj Kumar Sinha, son of Late Dharm Nath Prasad Singh, resident of Village Paino, P.S. Kopa, District Saran

..... Plaintiff Appellant
..... Appellant

Versus

Lal Babu rasad Singh, son of Late Nageshwar Bhagat, resident of Village Paino, P.S. Kopa District Saran

..... Defendant Respondent
..... Respondent

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Appearance :

For the Appellant/s : Mr. Nagendra Rai, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-05-2017

Heard Mr. Nagendra Rai, learned Counsel appearing for the appellant.

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

3. The plaintiff filed the suit for declaration of his title over the suit property on the basis of the fact that he is adopted son of Dharm Nath Prasad Singh. The defendants appeared and contested the claim of the plaintiff.

4. Both the courts below have come to the concurrent finding that the plaintiff has failed to establish, by cogent and convincing evidence, his claim that he is adopted son of Dharm Nath Prasad Singh.

5. Mr. Rai, learned Counsel appearing for the appellant, has fairly submitted that there are documentary evidence both in favour of the claim of the plaintiff as well as supporting the denial by the contesting defendants that the plaintiff is not the adopted son of Dharm Nath Prasad



Singh. It has, therefore, been contended that as both the courts below have recorded concurrent finding of fact on this issue that the plaintiff is not adopted son of Dharm Nath Prasad Singh, the same is not being assailed in the present appeal on behalf of the appellant. However, it has been further submitted that other issues were also arising in the suit and in view of the provisions of Order 14 Rule 1 CPC as well as Order 41 Rule 33 CPC the courts below have committed error of jurisdiction in not deciding those issues arising between the parties in the suit. Elaborating his submission the learned Counsel has drawn the attention of the Court to page 9 of the memo of appeal where the genealogical table has been given and has submitted that in earlier T.S. No. 46/56 the issue that Jeo Nandan died prior to coming into force of Hindu Adoption Act and Lachchmina being only the maintenance holder was already decided between the adoptive mother of the plaintiff as well as the family of the natural father of the plaintiff and in that view of the matter in order to avoid multiplicity of the proceeding the learned courts below ought to have recorded their finding on those issues as well. No other submission has been made on behalf of the appellant.

6. After considering the submission and perusal of the judgments of both the courts below it is manifest that the suit has been filed by the plaintiff claiming his title over the suit property as being the adopted son of Dharm Nath Prasad Singh. After consideration of the evidence adduced on behalf of the parties both the courts below came to the conclusion that the plaintiff is not the adopted son of Dharm Nath Prasad Singh as claimed. Accordingly the plaintiff has not been found entitled to the relief for declaration of title over the suit property as



claimed. The submission with regard to the requirement for deciding other issues pertaining to the date of death of Jeo Nandan Bhagat or his wife Lachchmina being only the maintenance holder would have arisen only after the finding that the plaintiff is the adopted son of Dharm Nath Prasad Singh as claimed would have been recorded in favour of the plaintiff. The submission on behalf of the appellant in this regard is misconceived for the simple reason that the remaining issues could have arisen between the plaintiff and the defendants only after the decision of the main issue in favour of the plaintiff pertaining to his claim of the property of the branch of Jeo Nandan Bhagat on the basis of adoptive son. This Court, therefore, does not find that the submission on behalf of the appellant on the basis of provisions of Order 15 Rule 1 or Order 41 Rule 33 CPC has got legal substance. As the finding on the main issue pertaining to adoption has been recorded by the courts below on the basis of evidence which were acceptable and could have been relied upon, therefore, this Court does not find that any substantial question of law arises for consideration in this appeal.

7. In result this appeal is dismissed.

(V. Nath, J.)

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