

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.86 of 2009

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1. Sahdeo Pandit, Son of Ram Gulam Pandit.
 2. Ambika Pandit, Son of Bhikhari Pandit.
 3. Bhogiya Devi Wife of Shambhu Pandit, Daughter of late Sheo Pujan Pandit.
Resident of Village-Jalalpur, Post Office-Methwaliya, Police Station-Revelganj,
District-Saran.
 4. Siyawa Devi Wife of Sheo Narayan Pandit daughter of Late Sheo Pujan Pandit,
Resident of Village-Phulwaria, P.O.-Ferusa, P.S.-Garkha, District-Saran.
 5. Sawariya Devi Wife of Mahesh Pandit daughter of Late Sheo Pujan Pandit,
resident of Village and P.O.-Pirauna, P.S.-Garkha, District-Saran.
 6. Chandrika Pandit, Son of Bhikhari Pandit, resident of village- Jalalpur, Post
Office-Methwaliya, Police Station-Revelganj, District-Saran.

.... Appellants

Versus

1. Hira Devi wife of Ram Ashray Pandit daughter of Late Mahabir Pandit.
2. Rajendra Pandit Son of Ram Ashray Pandit.
Both are resident of village- Jalalpur, Post Office-Methwaliya, Police Station-
Revelganj, District-Saran.

.... Respondents

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Appearance :

For the Appellant/s : Mr. NAGENDRA PRASAD YADAV-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-04-2017

Heard Mr.Kamla Prasad Rai, learned counsel
appearing for the appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance granting the decree to
the plaintiffs as prayed.

After considering the submissions and perusal of
the judgments of both the courts below, it is manifest that the main
note of discord between the parties is the assertion by the defendant
that the plaintiffs are strangers to the family of Ramphal Bhagat. The



plaintiffs have asserted themselves to be the descendants of one of the sons of Ramphal Bhagat from his first marriage and the defendants to be sons of Ramphal Bhagat from his second wife. The plaintiffs have claimed their title and possession over the suit land on the basis that there had already been partition and the suit property has been allotted to them in their share.

Both the courts below have returned the findings of facts on the basis of evidence on record in favour of the plaintiffs holding that the plaintiffs are not strangers to the family of Ramphal Bhagat as put forth by the defendants and further that the plaintiffs have acquired valid title and possession over the suit property after the partition and allotment of the same in their share.

Mr. Rai, learned counsel appearing for the appellants has emphatically submitted that the findings by both the courts below are based upon surmises and conjectures. It has been contended that the learned courts below have not considered the statements in cross examination of the witnesses of the plaintiffs on the crucial issue regarding the status of the plaintiffs as strangers to the family of Ramphal Bhagat. The learned counsel has placed the cross examination of some of the witnesses in order to persuade this Court to take the view that the plaintiffs have failed to establish the genealogy as set up by them. It has been further argued that in survey



khatian also the names of Shiv Nandan Pandit alongwith his brother has only been recorded and the name of Jaibhuwan Pandit or his sons has not been mentioned which leads to the inference that the plaintiffs are not the descendants of the son of Ramphal Bhagat from his first wife. The learned counsel has also elaborately read out the deposition of the plaintiff no.1 Hira Devi examined as P.W.11 and has submitted that she has denied to have any documentary proof regarding the status of Jaibhuwan and Shiv Nandan Pandit as son of Ramphal Bhagat or any documentary evidence for partition as claimed by the plaintiffs. The learned counsel for the appellants has further submitted that the matters requires consideration at the second appellate stage as both the courts below have not property considered the evidence and have also omitted from consideration the material evidence in the nature of rent receipts which were 32 in numbers filed on behalf of the defendants supporting the case of the defendants.

The perusal of the judgments of both the courts below demonstrates that both the courts below have scrutinized the oral and documentary evidence on behalf of the parties. From the judgment of the appellate court below, it further transpires that the appellate court below has also taken into notice the statements made by the material witnesses in cross examination. Both the courts below



have also taken into notice the Ext.2 which is a sale deed of the year 1956 which has been executed by Mahavir Pandit (predecessor of the plaintiffs) in favour of the wife of one of the defendants with regard to the part of the lands of Khata No.516 which is also subject matter of the present suit. The submission of the learned counsel for the appellants in this regard is that the said sale deed is a void transaction as Mahavir Pandit died in the year 1955 itself. This Court, however, does not find that such plea or objection has been raised either in the appellate court below or in the trial court or mentioned in the deposition by the witnesses examined on behalf of the defendants. This sale deed has been relied upon by the courts below as demonstrating inter se transaction between the parties. The findings of facts have been recorded by both the courts below on the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to hold the concurrent findings by the courts below to be perverse or unreasonable in any manner. In fact, the entire submission on behalf of the appellant has centered around reappreciation of evidence at the second appellate stage .

This Court, therefore, does not find that any substantial questions of law arises for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

