

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.76 of 2003

1. Mahesh Sharma Son of late Shaligram Singh
 2. Chandra Shekhar Singh
 3. Shatrughan Sharma
 4. Amrendra Kumar
All Sons of late Ram Jee Singh
 5. Rajiv Kumar Son of late Awadh Singh
 6. Kamta Sharma Son of late Sideshwar Singh
 7. Dinesh Kumar Son of late Rajendra Singh
All Residents of Village- Dadpur, Post Office- Bauri Beldari,
Police Station- Hulasganj, District- Jehanabad.
- Appellants

Versus

1. Siyamati Devi D/o of late Ram Karan Singh, W/o of Vijenyendra Sharma
Village- Umata Dharna, P.S. Maskhdumpur, Distt.Jehanabad.
2. Bhuneshwar Singh
3. Brajbhusan Singh
4. Chandra Bhusan Singh
5. Vidya Sagar Singh
All Sons of Ram Karan Singh
6. Udresh Kumar Son of Bhuneshwar Singh
7. Vimal Kumar Minor Son of Brajbhusan Singh Under the guardianship of
Brajbhusan Singh
All Residents of Village- Dadpur, Post Office- Bauri Beldari, Police Station-
Hulasganj, District- Jehanabad.
8. Padi Devi Wife of Maksudan Sharma Village- Palya, Post Office and Police
Station Makhdumpur, District-Jehanabad.
9. Sardha Kumari Wife of Surendra Sharma Village- Bharthu, Police Station-
Ghoshi, District- Jehanabad.
10. Manita Devi Wife of late Awadh Singh Village- Dadpur, Police Station-
Ghoshi, District- Jehanabad.
11. Parikha Devi Wife of Sahajanand Sharma Village- Kakorsah, Police Station-
Hulashganj, District- Jehanabad.
12. Sulan Devi Widow of late Ramanugrah Singh Village-Ekkil, Police Station-
Makhdumpur, District- Jehanabad.
13. Sabuja Devi Wife of Nawal Sharma Village- Katari, Police Station- Atari,
District- Gaya.
14. Suraj Devi Wife of Umesh Sharma Village- Pitambarpur, Police Station-
Ghoshi, District- Jehanabad.
15. Arjun Sharma Son of late Ramji Singh
16. Navin Kumar Son of late Awadh Singh
Both Resident of Village- Dadpur, Police Station- Hulashpur, District-
Jehanabad.
17. Jageshwar Manjhi Son of late Dashrath Manjhi Resident of Village- Dadpur,
Tola Fazilpur, Bhui Toli, Police Station- Hulashpur, District- Jehanabad.
18. Smt. Savitri Devi daughter of late Nunu Singh, Wife of Radhekant Sharma
Village- Narwa, Police Station- Hulashganj, District- Jehanabad.
19. Suresh Singh S/o late Mathura Singh Village- Rauna, P.S. Belaganj, Distt-
Gaya.



20. Shyamta Devi@ Phulpati Devi Daughter of late Nunu Singh, Wife of Raja Ram Singh Village- Devgaon, Police Station- Khijirsarai, District- Gaya.
 21. Smt. Piyamati Devi Daughter of late Nunu Singh, Wife of Ranvijay Kumar Village- Bheri, Police Station- Tekari, District- Gaya.
 22. Smt. Chandresh Kumari Daughter of late Nunu Singh, Wife of Birendra Kumar Singh Village- Devgaon, Police Station- Khijirsarai, District- Gaya.

... .. Respondents

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Appearance :

For the Appellants	:	Mr. Binod Kumar Singh, Advocate Mr. Mrigendra Kumar, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate
For the Respondents	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Parth Garuav, Advocate Mr. Anshu Raj Singh, Advocate Mr. Shambhavi Shakar, Advocate Mr. Mithilesh Kumar Upadhyaya, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V JUDGMENT

Date : 08-03-2018

The instant appeal is directed against the judgment dated 24.01.2003 and decree dated 11.02.2003 passed by Sri Vijay Bahadur Singh the then Subordinate Judge III, Jehanabad in Title Suit No. 159 of 1996 / 09 of 1997 whereby and whereunder the suit was decreed with cost against the contesting defendants. The defendants no. 3, 5, 6, 7, 8, 10 and 11 are the appellants whereas the plaintiffs are the respondents 1 to 8. The other defendants are the respondents no. 9 to 23.

2. The plaintiffs have filed the suit for declaration of their title on the suit land and also for declaration of six sale deeds dated 22.05.1996 executed by defendants no. 13 in favour of the defendants no. 1 to 12 and one sale deed dated 04.06.1996



executed by the defendants no. 3, 6, and 11 in favour of defendants no. 12 are null, void, inoperative, ineffective and not binding upon the plaintiffs and the same are fit to be cancelled because no title has been created in favour of the defendants by the above sale deeds and further for confirmation of possession of the plaintiffs over the suit land and in the alternative for the recovery of possession with mesne profit and for issuing the permanent injunction against the defendants as well as for the cost of the suit and other reliefs for which the plaintiffs are deemed entitled for.

3. Briefly stated, the case of the plaintiffs is that Raghunath Singh, Anant Singh, Deonath Singh were full brothers, Raghunath Singh had two sons Dhupan Singh and Harihar Singh. Harihar Singh died issueless and Dhupan Singh died leaving behind four sons namely, Ramjee Singh, Saligaram Singh, Ugra Singh and Ishwar Singh. Ugra Singh and Ishwar Singh died issueless. Mahesh Singh is the son of Saligaram Singh. Arjun Sharma, Chandrashekhar Singh, Shatrughan Sharma and Amresh Kumar are sons of Ramjee Singh. Rajiv Kumar and Navin Kumar are sons of late Awadh Singh, one of the predeceased son of Saligaram Singh. The defendants no. 1 to 9 are the descendants of Raghunath Singh. Deonath Singh had only one son Chamru Singh. Chamru Singh left behind three sons namely, Ram Khelawan Singh, Ram



Karan Singh and Ram Sevak Singh. Ram Sevak Singh is issueless widower. Ram Karan Singh had four sons namely, Bhuneshwar Singh, Braj Bhushan Singh, Chandra Bhushan Singh and Vidya Sagar Singh. Udresh Kumar is son of Bhuneshwar Singh and Bimal Kumar is the son of Braj Bhushan Singh. Thus, plaintiffs no. 1 to 8 are descendants of late Deonath Singh. Anant Singh had only one son Jangi Singh. Jangi Singh left one son Nunu Singh and one daughter Deeprani Kuer. Nunu Singh had no male issue but only five daughters namely, Savitri Devi, Lalmati Devi, Shyamata Devi @ Phulpati Devi, Piyamani Devi and Chandresh Kumari. The defendants no. 10 to 13 are strangers to the family of Raghunath Singh. Raghunath Singh, Anant Singh and Deonath Singh with their descendants were constituting a joint Hindu Mitakshra family and after their death their sons were also constituting a joint family for sometime. Jangi Singh and his wife died before the year 1927 as a member of joint family leaving Nunu Singh and Deeprani Kuer as minors under the guardianship of Dhupan Singh, the then Karta of the family. After sometimes there was partition in the joint family after which Nunu Singh became absolute owner of all the properties allotted to him in the partition. Nunu Singh as the absolute owner mortgaged, sold, purchased and exchanged some lands exclusively. His name was



recorded in the sirista of ex landlord. He paid rent and obtained rent receipts and his name was mutated in the Anchal office and paid rent and was granted rent receipts. Nunu Singh also sold some properties to plaintiffs and some to descendants of Raghunath Singh. He died in the year 1990 leaving behind his widow and his five daughters who succeeded to all the properties left by him. His widow died in the year 1995 leaving behind the five daughters as successors, thus, the five daughters of Nunu Singh became absolute owner of all the properties left by Nunu Singh and his widow. The daughters of Nunu Singh through four registered sale deeds dated 11.03.1996, 2 registered sale deeds dated 12.03.1996, two registered sale deeds dated 10.04.1996 and two registered sale deeds dated 17.05.1996 sold the entire lands in favour of the plaintiffs and those lands are the suit lands.

4. Further case of the plaintiffs is that even defendants first set had purchased some properties in the year 1987 from Nunu Singh alone, there was enmity with Rajendra Singh the father of defendants no. 11 and Kamta Singh with the plaintiffs. They brought defendants no. 1 to 9 in their collusion. They further entered into a conspiracy with defendants no. 12 Jageshwar Manjhi who was a notorious person and they brought Deeprani Kuwer sister of Nunu Singh in their camp and got executed six



sale deeds with respect to 3.70 ½ acres of land, out of the lands purchased by plaintiffs, in favour of defendants no. 1 to 11 without payment of any consideration. Defendants. Dinesh Kumar, Mahesh Sharma and Shatrughan Sharma executed a sham sale deed dated 04.06.1996 in favour of defendant no. 12 Jageshwar Manjhi for 10.5 decimal area of plot no. 771/437. The sale deeds were executed by Deeprani Kuer without having title therein and those sale deeds have not conferred any right upon defendants no. 1 to 12. Further the case of the plaintiff is that defendants no. 1 to 12 tried to disturb peaceful possession of plaintiff resulting apprehension of breach of peace and then, the proceeding under Section 144 Cr.P.C. was initiated and disposed of with an observation that aggrieved party should go to the Civil Court. Then, the plaintiffs filed the suit.

5. Defendants no. 14 to 18 in their written statement have supported the case of the plaintiffs.

6. In this suit a joint written statement has been filed on behalf of defendants no. 1 and 3 to 12 but it is not signed by Arjun Sharma, Navin Kumar and Jageshwar Manjhi, the defendants no. 2 has not filed written statement. During pendency of the suit the defendants no. 1 and 2 died and their legal heirs have been substituted but they have not filed any written statement. The



defendants no. 13 Deeprani Kuer filed a separate written statement. Deeprani Kuer died during pendency of the suit and her name has been expunged.

7. Briefly stated, the case of the defendants no. 1, 3, 5, 6, 7, 8, 10 and 11 is that the suit as framed is not maintainable. Plaintiffs have no cause of action for the suit, the suit is barred by law of estoppel, waiver and acquiescence. It is barred by law of limitation and Specific Relief Act. The genealogy details in paragraph 1, 2 and 3 have been admitted but it is stated that Jangi Singh died in the year 1939 leaving behind widow, a son Nunu Singh and a daughter Deeprani Kuer. His wife succeeded to the properties of Jangi Singh with his son Nunu Singh, his wife Mansurat Kuer @ Sharmily Devi died in the year 1972 and she was the legal guardian of Nunu Singh. Dhupan Singh was not the legal guardian of Nunu Singh. Nunu Singh acted as a co-sharer with his mother. His mother died on 06.11.1972 and after her death Deeprani Kuer acquired interest over the suit property as successor of her mother and as Mansurat Kuer was novious for outside affairs, so other family members became guardian for that purpose. Mansurat Kuer married Deeprani Kuer and Nunu Singh. Nunu Singh was performing all acts of karta of the family consisting of him and his mother and he used to take help from Indu Sharma for



executing the sale deeds with respect to the family property and used to give half share in the consideration received. Deeprani Kuer became co-sharer of Nunu singh after the death of Mansurat Kuer. She as a rightful owner for consideration transferred the suit lands to defendants no. 1 to 11, the plaintiffs did not pay full consideration to daughters of Nunu Singh and they did not come in possession over the suit property. The allegation regarding character of defendants no. 12 is incorrect. It is true that Nunu Singh died in the year 1990 and his widow died in the year 1995 but succession of their daughters over total properties is denied. The plaintiffs are not in possession over the purchased land of defendants. The defendants no. 13 in her written statement has supported the case of defendants no. 1, 3, 5, 6, 7, 8, 10 and 11.

8. Learned court below framed the following issues for consideration:

- (i) Whether the suit as framed is maintainable ?
- (ii) Whether the plaintiffs have valid cause of action for the suit ?
- (iii) Whether the suit is barred by law of estoppel, waiver and acquiescence ?
- (iv) Whether the suit is barred by law of limitation ?



(v) Whether the suit is barred by provision of Specific Relief Act ?

(vi) Whether Jangi Singh died before coming into effect of Hindu Women Right to Property Act, 1937 or thereafter ?

(vii) Whether the plaintiffs have right title, interest and possession over the suit land as its absolute owner ?

(viii) Whether the plaintiffs are entitled for decree for confirmation of possession or in alternative recovery of the possession of the suit land ?

(ix) Whether the plaintiffs are entitled for mesne profit ?

(x) Whether the plaintiffs are entitled for permanent injunction against the defendants ?

(xi) Whether the registered sale deeds dated 22.05.1996 executed by defendants no. 13 Deeprani Devi in favour of defendants no. 1 to 11 are null and void, inoperative and not binding upon the plaintiffs ?

(xii) Whether the registered deed of sale dated 04.06.1996 executed by defendants no. 3, 6, and 11 in favour of defendant no. 12 is null and void, inoperative and not binding upon the plaintiffs ?

(xiii) Whether the plaintiffs are entitled for any other relief or releifs ?



9. Learned Trial Judge took up the issue no. vi at first and came to the conclusion that Jangi Singh died before coming into effect of Hindu Women Right to Property Act, 1937 and accordingly, decided the same in favour of the plaintiffs. Thereafter, issue nos. xi and xii were taken together and it was held that registered sale deed dated 22.05.1996 executed by defendant no. 13 Deeprani in favour of defendants no. 1 to 11 and the registered sale deed dated 04.06.1996 executed by defendants no. 3, 6, 11 and in favour of defendant no. 12 are null, void and inoperative and same are not binding upon the plaintiffs and accordingly, these two issues were also decided in favour of the plaintiffs. Thereafter, issues no. vii, viii, ix and xiii were taken up together and it was held that the plaintiffs have right, title, interest and possession over of the suit land as its absolute owner and they are entitled for decree for confirmation of their possession as well as they are also entitled for permanent injunction against the defendants but they are not entitled for mesne profit. Issues no. iii, iv and v were not pressed, thereafter, issues no. i and ii were taken and the learned trial judge came to the conclusion that the plaintiffs have valid cause of action for the suit and there is no defect in framing of the suit and accordingly, the suit was decreed with cost against the contesting defendants.



10. The contesting defendants, being aggrieved and dissatisfied with the judgment and decree, preferred this appeal challenging the maintainability of the same. Learned counsel for the appellants arguing in this appeal has submitted that Jangi Singh had died in the year 1939 and his property was succeeded half by Nunu Singh and half by Mansurat Kuer and after passing of Hindu Successions Act, Mansurat Kuer became the absolute owner of their share. Mansurat Kuer died in the year 1972 so, her daughter Deeprani became the owner of her half share. The appellants are purchaser from Deeprani Kuer so they have acquired full right, title and interest over the suit property. The learned court below has wrongly and illegally held that Jangi Singh had died before 1937. The learned court below should not have relied on Ext. 6 (application for commutation of rent) as it was a rank forgery. Ext. 6 is dated 21.10.1947 and not of 1927. Amendment in Section 40 of the Bihar Tenancy Act was brought in the year 1944, therefore, there was no possibility of filing of such application in the year 1927. In Ext. 6 year of the case number was also not given. Dhupan Singh was not the guardian of Nunu Singh, Nunu's father Jangi Singh was separate from Dhupan Singh and Chamru Singh. Jangi Singh had died in the year 1939 separately from his co-sharer. The learned court below should have



relied on Ext. A, certified copy of death register of Mansurat Devi and Ext. B series the voter lists which completely supports the case of the appellants. The learned court below has wrongly and illegally held that mother and father of Nunu Singh were not alive on 21.10.1927 and died before commencement of Hindu Succession Act, 1937. The learned court below should have held that the plaintiffs had no valid cause of action for the suit. All the issues should have been decided in favour of the appellants. The suit was bad for non-joinder of necessary parties also. None of the villagers have come forward to support the case of the plaintiffs, the court below should have rejected the evidence adduced on behalf of the plaintiffs. The witnesses adduced on behalf of the defendants are reliable and competent but have been ignored. DW 10 is Deeparani Kuer, the daughter of Jangi Singh, who is the most competent witness and DW 12 is Bataidar of Nunu Singh. Ext. 6 has not been substituted properly and alleged certified copy is not as per Civil Court Rules as provided in Rule 377 (a) of the Civil Court Rules and as such Ext. 6 is fit to be ignored. It has also been argued that Ext. 14 which is an application for execution of decree passed in Case No. 09 of 34 filed by Nankhu Pathak against Deeprani, Harihar, Chamru Singh and Nunu Singh, this application has been registered as Execution Case No. 1634/36. This



document is also not reliable but the learned court below wrongly relied upon this document. The learned Court below without any basis did not rely upon Ext. A and B series and thus, the judgment and decree passed by the learned court below are fit to be set aside.

11. On the other hand, learned counsel for the contesting respondents has argued that the judgment and decree passed by the learned court below is quite correct, proper, legal and valid. Ext. 6 and Ext. 14 are genuine documents and have been legally brought on the record. Ext. 6 was called for from Collectorate Main Record Room of Gaya at the requisition of the Court and the original was returned after substitution of photostat certified copy without any objection of defendants. The original has come from proper custody. The argument of learned counsel for the appellants that the certified copy is not as per the Rule 377(a) of Civil Court Rules is not maintainable as substituted Ext. 6 is photostat certified copy and on which signature of presiding officer is also visible. Rule 377 (a) is not applicable here and further Ext. 14 is also genuine and reliable document which finds support from other documents which are on the record. The learned court below after discussing properly has rightly come to the conclusion that Jangi Singh died before 1937 and thus, his daughter did not get any interest in the property and his son Nunu Singh only got interest.



On the basis of Ext. 6, Ext. 14 and Ext. 8, it is crystal clear that Jangi Singh and Mansurat Kuer died prior to 1927. The inference drawn from documentary evidence cannot be replaced by oral evidences. In the present case the oral evidences adduced on behalf of the plaintiffs are also trust worthy and reliable and the learned court below has rightly decided all the issues and there is no illegality. The argument of learned counsel for the appellants have got no leg to stand and thus, the judgment and decree are fit to be maintained.

12. On the basis of rival contentions of the parties, the only point for consideration in this appeal is as to whether Jangi Singh and his wife Mansurat Kuer died prior to 1927 or Jangi Singh died in the year 1939 and Mansurat Kuer died in the year 1972.

FINDINGS

13. On behalf of the plaintiffs altogether 28 witnesses have been examined. Proforma defendants no. 14 to 18 have examined 6 witnesses whereas the defendants no. 1, 3, 5, 6, 7, 8, 10, 11 and 13 have examined altogether 16 witnesses. Besides oral evidences, the plaintiffs have produced Ext. 1 to 1/u which are Zamindari receipts, Ext. 2 to 2/N are Chaukidari rent receipts, Ext. 3 to 3/Z - 26 are State rent receipts all granted in the name of Nunu Singh, Ext. 4 to 4/x are either original or certified copies of sale deeds,



Ext. 5 to 5/P are revisional survey khatian, Ext. 6 is certified copy of application under Section 40 of B. T. Act dated 21.10.1927, the photostat certified copy which has been substituted. Ext. 6/A is a rent schedule dated 28.08.1928, Ext. 7 is original mortgage deed dated 28.09.1939 executed by Dhupan Singh and others in favour of Bishundeo Narain Singh, Ext. 8 is a notice dated 17.02.1953 in the name of plaintiff Ram Karan Singh, Ext. 9 is certified copy of application for copy with a report regarding the certified copy of death register of Mansurat Kuear, Ext. 10 is Police Report submitted by Grijeshwar Rai, officer incharge of Hulasganj for initiating a proceeding under Section 144 Cr.P.C. Ext. 10/A is a list of lands attached with Ext. 10, Ext. 11 is a report of Deputy Collector, Collectorate Record Room, Gaya. Ext. 11/A is report submitted by Judge-in-Charge, Record Room, Gaya. Ext. 12 to 12/I are notices under Section 10 of Consolidation Act in the name of Nunu Singh, Ext. 13 to 13/I are registration receipts handed over by defendants no. 14 to 18 to plaintiffs after endorsement of satisfaction of consideration for handing over original sale deeds, Ext. 14 is a copy of execution application filed by Nankhu Pathak against Dhupan Singh and others for service upon judgment debtors, Ext. 15 is a judgment of GR Case No. 286 of 1967 / Trial No. 51 of 1972, Ext. 16 and 16/A are certified copy of depositions



of Rajendra Singh and Parsuram Singh in Sessions Case No. 60 of 1980 / 23 of 1983, Ext. 18 is certified copy of order passed in Execution Case No. 1637 of 1936, Ext. 18/A is a writ of delivery of possession with report in Execution Case No. 1637 of 1936, Ext. 18/B is certified copy of orders of S.D.O. passed in proceeding under Section 144 Cr.P.C. in between Nankhu Pathak first party and Dhupan Singh and others as second party. Ext. 19 is certified copy of Police Report bearing Non FIR No. 7 of 1942, Ext. 20 is a certified copy of an order passed in Execution Case No. 1634 of 1936, Ext. 20/A is certified copy of writ of delivery of possession with report from record of Execution Case No. 1634 of 1936. Ext. 21 is original Challan of Case No. 9 of 1934-35 deposited by Nankhu Pathak, Ext. 22 and 22/A are certified copy of voter list of village Dadpur.

14. On behalf of contesting defendants Ext. A is certified copy of death register of Mansurat Devi and Ext. B and B/1 are certified copy of voter list.

15. The case of the plaintiffs is that Jangi Singh and his wife Mansurat Kuerr died prior to 1927 in the state of jointness with Dhupan Singh, Harihar Singh and Chamru Singh leaving behind one son Nunu Singh and one daughter Deeparani Kuer as minors under the guardianship of Dhupan Singh. Therefore, whatever



interest Jangi Singh had came in the hand of Nunu Singh and after the death of Nunu Singh and his wife the same was succeeded by his daughters, the plaintiffs are purchasers from the daughters of Nanu Singh.

16. On the other hand, the case of the defendants is that Jangi Singh died in the year 1939 leaving behind his son Nunu Singh, his widow Mansurat Kuer and daughter Deeprani Kuer and Mansurat Kunwar died in the year 1972, so after her death Deeprani Kuer became owner of half share in all the property and half remained to Nunu Singh. The defendants no. 1 to 11 are purchasers of half share of all the properties from Deeprani Kuer.

17. I have considered oral evidences as well as documentary evidences adduced on behalf of the parties. Learned Trial Judge after careful consideration of the evidences available on the record has come to the conclusion that Jangi Singh and his wife Mansurat Kuer died prior to 1927 and as such Deeprani Kuer did not acquire any right, title and interest. From the side of the plaintiffs, in support of death of Jangi Singh and his wife Mnasurat Kurr prior to 1927, the main documents are Ext. 6 and Ext. 14. Ext. 6 is an application under Section 40 of B. T. Act filed by Dhupan Singh, Harihar Singh, Chamru Singh and Nunu Singh, minor under the guardianship of Dhupan Singh. It was filed for the commutation of



Bhaulti rent into Nagdi rent for the lands of Khata No. 30 area 18.97 acres belonging to them in the Zamindari of one Shyam Prakash Singh @ Lal Babu. This application was filed on 21.10.1927 and registered as Rent Commutation Case No. 69. This is a joint application by branch of all coparcenery having share in Khata No. 30. In this application Nunu Singh has been described minor son of late Jangi Singh under the guardianship of Dhupan Singh. Thus, it supports the case of the plaintiffs that Jangi Singh and his wife Mansurat Kuer died prior to 1927. The learned Trial Judge has considered this document in the light of challenge made by contesting defendants and has rightly come to the conclusion that by way of amendment only the mode of calculation of average rent has been charged, thus, it is clear that the provision for commutation was not newly added in the year 1946. The B. T. Act was in existence since its enactment in the year 1985, hence, an application under Section 40 of B. T. Act in the year 1927 was also maintainable. The date of application is entered as 21.10.1927 and this document in original was called for from Collectorate Record Room, Gaya at the requisition of the Court and original application was marked as Ext. 6 and its photostat certified copy has been substituted without any objection of defendants. This documents bears signature of Dhupan Singh



father of Ramjee Singh contesting defendants. On the side of contesting defendants the signatures of Dhupan Singh has not been challenged and thus, it can safely be held that Ext. 6 is a genuine document. Further Ext. 6/A is a rent schedule dated 28.08.1928 prepared in the court of Revenue Officer, Gaya on the basis of order for commutation passed in connection with prayer made by the applicants through Ext. 6. This fact also proves that Ext. 6 is a genuine document. From Ext. 7 which is a registered mortgage deed dated 28.09.1939 it reveals that the land described which is of Khata No. 30 is Kast Nagdi Kayami, Barue Dafa 40 Kanun Tawadala Lagan and it also proves that under Section 40 of the B. T. Act the rent was commuted.

18. The learned court below has rightly considered all these aspects in his judgment and there is no need of any repetition. Further from Ext. 14 which is an application for execution of decree passed in case No. 9 of 1934 filed by Nankhu Pathak against Dhupan Singh, Harihar Singh, Chamru Singh and Nunu Singh. This application had been registered as Execution Case No. 1634 of 1936. In this execution application Nunu Singh had been described as son of Late Jangi Singh. This application also indicates that in the year 1936 Jangi Singh was not alive. From Ext. 20/A this Ext. 14 is proved as genuine.



19. The learned Trial Judge has discussed everything in detail in his judgment which appears quite correct, proper and legal. From the side of defendants no reliable documentary evidence has been produced on the point of death of Jangi Singh. Apart from the documentary evidences, the oral evidence on this point from the side of plaintiffs are also reliable which are well discussed in the judgment. Ext. A filed on behalf of the contesting defendants and Ext. B and B/1 have rightly been not relied upon by the learned court below and the learned Trial Judge has discussed everything in detail in the judgment. Besides that Ext. 8 is notice issued from High Court in Civil Revision No. 512 of 1952 wherein Mansurat Kuer has not been shown as party. Thus, it can safely be held that Jangi Singh died prior to 1927 and his wife Mansurat Kuer also died prior to 1927, resulting, Nunu Singh was shown under the guardianship of Dhupan Singh in the year 1927 in the application filed under Section 40 of B. T. Act.

20. The argument advanced by the learned counsel for the appellants appears not convincing. Here, substituted Ext. 6 is photostat certified copy of Ext. 6. So, Rule 377 (a) of Civil Court Rules is not applicable. In the result, the point formulated above is decided against the appellants and in favour of the contesting respondents.



21. The learned Trial Judge has rightly decided all the issues after careful consideration of the facts and evidences available on the record and there is no need of any interference of this Court. In the result, finding no merit in this appeal, the same is hereby dismissed on contest but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

avin/-

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