

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.91 of 2014

1. Lakhiya Devi, Wife of Ranjeet Sharma, Village- Mahanandpur, PO- Mahanandpur, PS- Deepnagar, District- Nalanda.
2. Fulo Devi, wife of Arbind Sharma, Town and PO and PS- Sohsarai, District- Nalanda.
3. Indu Devi, Wife of Nageshwar Sharma, Village- Dasti PO and PS- Harnaut, Distt- Nalanda.
4. Manju Devi, Wife of Trilochan Sharma, village Nagarnausha PO and PS- Nagar Nausha, District- Nalanda
5. Nandu Mistry, Son of Raghu Mistry
6. Pawan Mistri, Son of Raghu Mistru
7. Mithilesh Mitry, Son of Raghu Mistry
8. Vijay Mistry, Son of Raghu Mistry
9. Kamalesh Mistry, Son of Raghu Mistry
10. Raju Mistry, Son of Nandu Mistry
11. Rakesh Mistry, Son of Nandu Mistry
12. Ranjan Mistry, (Minor) Son of Pawan Mistry
13. Chintoo Mistry, (Minor) Son of Mithilesh Mistry
14. Pintoo Mistry, Minor Son of Vijay Mistry
all resident of Village- Caurapar, PS- Chandi, District Nalanda at present Mohalla Noorsarai Bazar PO and PS Noorsarai, District- Nalanda.
15. Ashok Mistry, Son of Late Arjun Mistry
16. Umesh Mishtry, Son of Late Arjun Mistry
17. Rajesh Mistry, Son of Late Arjun Mistry
18. Mantoo Mistry, Minor Son of Ashok Mistry
15 to 19 are resident of village- Caurapar PS chandi, District Nalanda at present Mohalla Noorsarai Bazar PO and PS Noorsarai, District- Nalanda.
19. Manoj Kumar, Son of Mangal Gope, Village Ratanpura at present village- Saidi, PO and PS Noorsarai, District- Nalanda.
20. Ambika Devi, Wife of Jainandan Mistry, Village PS and PO- Noorsarai, District- Nalanda.
21. Sheroo Gope, Son of Mathura Yadav, Village Brijpur, PO, PS- Noorsarai, District- Nalanda.
22. Raj Kumari, Devi Wife of Raghubansh Narayan Singh, Village- Tribhuwan Bigha, PO Basdih, PS- Chandi, District- Nalanda.
23. Smt. Meena Devi, Wife of Subhash Yadav, Resident of village- Brijpur and PO and PS- Noorsarai, District- Nalanda.

... .. Appellants

Versus

1. Most. Keshari, Devi W/o late Fakira Mistry
2. Awadhesh Sharma, S/o Late Fakira Mistry
3. Sanjay Kumar, S/o Late Fakira Mistry
4. Arbind Kumar, S/o Late Fakira Mistry
All resident of Village- Kewlatar, Maksudpur, PO and PS- Fatuha, District- Patna.
5. Smt. Kanti Devi, D/o Late Fakira Mistry, W/o Late Ramesh Sharma Village- Bahadurpur, P.S- Athmalgola, District- Patna.



6. Smt. Malti Devi, W/o Mahendra Sharma, Village- Bakaur, PS- Islampur, District- Nalanda.
7. Ramdeo Mistry, Son of Sukhu Mistry, Village- Pariuna, P.S- Noorsarai, District- Nalanda at present Mohalla- Khatmandu, PS Noorsarai, District- Nalanda.
8. Sobha Devi, Wife of Satendra Prasad, Mohalla Kathmandu Noorsarai, PS- Noorsarai District- Nalanda.
9. Ramkali Devi, Wife of Brijnandan Tanti, Tola Amba Nagar, Noorsarai, PS- Noorsarai, District- Nalanda.
10. Gauri Shankar Mistry, Son of Late Ram Suhawan Mistry, Village- Santan Bigha, PS- Chandi, District Nalanda at present Mohalla Kathmandu Noorsarai, PS- Noorsarai, District- Nalanda.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli
		Mr. Vinay Mistry
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date : 01-02-2018

This second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been preferred against the judgment and decree, dated 25.01.2014, passed by learned 1st Additional District Judge, Nalanda, at Biharsharif, in Title Appeal No. 58 of 2005, reversing the judgment and decree, dated 26.12.2005, passed by learned Sub Judge I, Biharsharif, Nalanda, in Title Suit No. 122 of 2003.

2. Learned Counsel appearing on behalf of the appellants, while vehemently arguing that the findings recorded by the appellant court below, in the impugned judgment, reversing the



findings of the Trial Court are perverse, has submitted that following are the two substantial questions of law, which this second appeal involves:-

- i. Whether, in the facts and circumstances of the case, learned appellate court below committed grave error in holding Exhibit-B (the Yadadast Batwara), dated 01.04.1975, to be inadmissible in evidence, on the ground of the same being unregistered document and at the same time, admitting the memorandum of partition made by panches, dated 21.04.1970 (Exhibit-12) as evidence?
- ii. Whether recitals in sale deed of 1968 executed in favour of Ragho Mistry could be discarded and merely on the basis of oral evidence of plaintiff could it be held to be joint family property, more so when the purchaser was residing separate in mess and business as also residence and had ample source of income?

3. In order to consider the submissions advanced on behalf of the appellants, a brief account of the case of the rival parties needs to be taken note of.

4. The dispute relates to a piece of land, appertaining to Khata No. 301, Chak 1257, ad-measuring 14 decimals. Ragho Mistry (Original defendant) and Arjun Mistry, sons of Jawahar Mistry,



were full brothers. Respondent no. 1 is the daughter of said Jawahar Mistry. The husband of respondent no. 1, Fakira Mistry, the plaintiff, had purchased the said suit property through a registered sale deed, dated 04.10.1989, executed by Arjun Mistry. The suit property, admittedly, stood in the name of Ragho Mistry, which was purchased in his name through registered sale deed, dated 25.04.1968 from one Mahabir Sah. Since certain disputes were being raised questioning title of the plaintiff over the suit property and competence of Arjun Mistry to execute the sale deed, dated 04.10.1989 in favour of Fakira Mistry, the plaintiff filed the suit for declaration of their title and confirmation of possession and also for a decree of recovery of possession, if the plaintiffs stood dispossessed during the pendency of the suit.

5. What transpires from the judgments and decrees passed by the courts below that altogether 07 (seven) issues were framed, including the issue nos. 4, 5 and 6, which read thus:-

“4. Whether the family partition in between the heirs of Jawahar Mistry had taken place in the year 1970?

5. Whether the sale deed executed on 09.03.1989 (sic. 04.10.1989) by Arjun Mistry in favour of Fakira Mistry is valid, genuine, for consideration and the disputed property was joint family property?



6. Whether the plaintiffs have valid title and possession over the suit land?"

6. It transpires that the defendants/appellants had taken a plea before the Trial Court that the suit property was self-acquired property of Ragho Mistry and, therefore, Arjun Mistry did not have the competence to executed sale deed in respect of the suit property. It was the specific case of the plaintiffs that the suit property was acquired by the father of the defendant, Ragho Mistry, on 25.04.1968. On the date of purchase of the suit property by the father of Ragho Mistry, Arjun Mistry was minor and, therefore, the purchase was made in the name of Ragho Mistry. The plaintiff had also taken specific plea that there was partition in the family in the year 1970, as a result of which, the suit property had fallen in the share of Arjun Mistry and, therefore, Arjun Mistry was competent to execute the sale deed in respect of the said suit property.

7. Learned Trial Court decided the aforesaid Issue Nos. 4, 5 and 6 in favour of the plaintiffs on recording a finding that the disputed plot was self-acquired property of Ragho Mistry and it was not a joint family property.

8. On the point of partition in the joint family, learned Trial Court recorded the finding that the partition of 1970 never came in



operation and final partition had taken place in the year 1975 among the heirs of Jawahar Mistry, i.e. Ragho Mistry and Arjun Mistry. The suit, assigning the aforesaid reasons, was dismissed by the learned Sub Judge I, Biharsharif, Nalanda, by the judgment and decree, dated 26.12.2005, passed in Title Suit No. 122 of 2003. The respondents-plaintiffs preferred appeal, which has been allowed by the impugned judgment and decree, dated 25.01.2014, by learned 1st Additional Sessions Judge, Nalanda, at Biharsharif.

9. On perusal of the impugned judgment of the appellate court below, I notice that learned appellate court below formulated following three points for determination:

1. Whether the disputed plot is self-acquired property of Ragho Mistry or joint family property?
2. Whether the story of partition propounded by the plaintiff is correct or whether the story of the subsequent partition in 1975 propounded by the defendant Ragho Mistry is correct?
3. Whether the sale deed executed by Arjun Mistry on 09.03.1989 (sic. 04.10.1989) is valid and on the basis of the same the plaintiff has valid title and possession over the suit land?

10. On the question as to whether the suit property was self-acquired property of Ragho Mistry or not, it transpires from the judgment of the appellate court below that he took note of the evidence of Ragho Mistry (DW 5) himself, wherein he admitted



that he was aged nearly 20 years on the date of acquisition of the said suit property and there was huge gap of 20-25 years of age between him and Arjun Mistry. The Court below took note of the admission of the defendant himself that his father, Jawahar Mistry, had purchased land in the names of the family members.

11. Upon consideration of the said evidence and other corroborative evidence on record, the appellate court below reached the conclusion that the disputed land was acquired as joint family properties in the name of Ragho Mistry, he being the eldest son of Jawahar Mistry and the Karta of the family.

12. Considering the second point for determination, as to when the partition, in the family, had taken place, it is manifest from the judgment of the appellate court below that the defendant himself had admitted, in his written statement, that partition had taken place in 1970. In view of the said admission of the defendant, in the written statement, learned appellate court below recorded his finding that the partition had taken place in the year 1970, as a result of which, the suit property had fallen in the share of Arjun Mistry.

13. I do not find any infirmity in the findings recorded by the appellate court below on the point as to whether the suit property



was self-acquired property of Ragho Mistry or not and the year when the partition in the family had taken place.

14. In my view, in the backdrop of these conclusive findings, recorded by the appellate court below, it cannot be said to be perverse. In my view, the substantial question of law, as framed in the memo of the present second appeal, do not arise. These were the two fundamental points, which required determination in the proceedings before the learned Courts below. The appellate court below, in my view, has rightly reversed the findings of the Trial Court.

15. I do not any infirmity in the impugned judgment and decree of the appellate court below. Since the present second appeal does not involve any substantial question of law, it does not deserve admission and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07-03-2018
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