

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.328 of 2008

1 (a) Mohan Prasad,
1 (b) Kanhaiya Prasad
1 (c) Soshila Devi, sons and daughter of Bindhyachl Prasad
2. Mukha Devi, W/o Bindhyachal Prasad, both are R/o Mohalla-Turhatoli,
Ward No.2(old) Buxar, P.O. & P.S.Buxar, District Buxar
... Appellants(Defendants-Respondents)

Versus

1. Lal Muni Devi W/o Late Sumer Prasad
2. Anapurna Devi W/o Late Munna Prasad
3. Champa Kumari
4. Jyoti Kumari, daughters of Late Munna Prasad
5. Dipak Kumar
6. Prakash Kumar, sons of Late Munna Prasad, through natural guardian of
mother Annapurna Devi
7. Shivanand Prasad S/o Late Sumer Prasad
8. Bishwanath Prasad S/o Late Sagar Bhar,
9. Rameshwar Prasad S/o Late Ram Brat Bhar, all residents of Mohalla Civil
Lines Turhatoli, Ward No.2(old) Buxar, P.O. & P.S.Buxar, District Buxar

... Respondents(Plaintiffs-Appellants)

with

Second Appeal No. 323 of 2008

1 (a) Mohan Prasad
1(b) Kanhaiya Prasad
1(c) Soshila Devi sons and daughter of Bindhyachl Prasad
2. Mukha Devi, W/o Bindhyachal Prasad, both are R/o Mohalla-Turhatoli,
Ward No.2(old) Buxar, P.O. & P.S.Buxar, District Buxar
... Appellants(Defendants-Respondents)

Versus

1. Bishwanath Prasad S/o Late Sagar Bhar
2. Lal Muni Devi W/o Late Sumer Prasad
3. Anapurna Devi W/o Late Munna Prasad
4. Champa Kumari
5. Jyoti Kumari, both minor daughters of Munna Prasad
6. Dipak Kumar
7. Prakash Kumar, minor sons of Munna Prasad, through natural guardian of
mother Annapurna Devi
8. Shivanand Prasad S/o Late Sumer Prasad
9. Rameshwar Prasad S/o Ram Barat Bhar, all residents of Muhalla-Civil
Line Turha Toli, Buxar, Ward No.2(old) Buxar Municipality, P.O. and P.S.
Buxar, District Buxar

... Respondents(Plaintiffs-Appellants)



Appearance :

(In Second Appeal No. 328 of 2008)

For the Appellant/s : Mr. R.C. Sinha
Mr. Manendra Kr. Sinha

For the Respondent/s : Mr. Shailendra Kr. Jha

(In Second Appeal No. 323 of 2008)

For the Appellant/s : Mr. R.C. Sinha
Mr. Manendra Kr. Sinha

For the Respondent/s : Mr. Shailendra Kr. Jha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 10-05-2018

These appeals have been placed for hearing under Order XLI Rule 11 of the Code of Civil Procedure (hereinafter to be referred to as 'the Code').

2. Aggrieved by the judgment and decree dated 31.05.2018, passed in Title Appeal Nos. 30 of 2005 and 27 of 2005 by the learned Additional District Judge, FTC-III, Buxar, whereby he has affirmed the judgment and decree dated 12.04.2005, passed by the learned 2nd Munsif, Buxar, in Partition Suit No.31 of 1987, the appellants have preferred this second appeal.

3. The appellants herein were the defendants before the trial court. Title suit was filed by the plaintiffs/respondents seeking a decree of partition by metes and bounds claiming their share in respect of the two plots, as described in Schedule-2 of the plaint, appertaining to Khata No.168, Plot No.2032, area 20 Kari, Khata No.582,



Plot No. 2033, area 170 Kari and Plot No.2034, area 83 Kari of same Khata situate under Buxar Municipality, Ward No.2.

4. It transpires from the judgment and decree passed by the courts below that the defendants took a plea that the common ancestor of the plaintiff(s) and the defendant(s), namely, Mathura Bhar had got his title over the Plot Nos 2033 and 2032 only. As regards Plot No. 2034, the defendant(s) took the plea that it was his self-acquired property. It was pleaded by the defendant(s) in the written statement that Sagar Bhar, the common ancestor, had purchased two katha 1 dhur two dhurki of land of Khata No.333, Plot No.2034 from Munshi Jwala Prasad from his own earning, whereafter the said Sagar Bhar came in possession. Sagar Bhar acquired title over Plot No.2032 through adverse possession. He also claimed that the plaintiff had separated from the joint family in the year 1970 and came in separate possession over his share. The defendant further pleaded that he stayed with his mother and came in possession over the said Plot No.2034.

5. Learned trial court, on the basis of the rival pleading, framed altogether 07 issues, including issue nos.



4,5 and 6 as under:-

“4. Whether the ancestral property has been partitioned between the plaintiffs and defendant no.1?

5. Whether the plaintiff no.1 can get his share in the land purchased by Sagar Bhar, the father of plaintiff no.1, of his own earning?

6. Whether plaintiffs are entitled for their shares in Plot No.2034 and whether the Plot No.2034 was purchased by Sagar Bhar by his own earning?”

6. The trial court, upon appreciation of evidence adduced by the parties, recorded the finding that Plot No.2033 was only ancestral property in respect of which partition had already taken place. Plot No.2034 was purchased by Sagar Bhar out of his own earning. In that background, the trial court held that after the death of Sagar Bhar, the plaintiff became entitled to 1/3rd of the share in Plot No.2034.

7. Learned counsel, appearing on behalf of the appellants, has submitted that the courts below misconstrued the registered sale deed dated 15.04.1937, through which the disputed land of Plot No.2034 was purchased by Sagar Bhar. He submits that misconstruction of the said registered



sale deed involves a substantial question of law. He has relied on a Supreme Court's decision in the case of **Sk. Bhikan Vs. Mehamoodabee**, reported in **2017 (2) PLJR (SC) 164**. I do not find any merit in the submission which has been advanced on behalf of the appellants. The Supreme Court's decision in the case of **Sk. Bhikan** (supra) does not have any application in the facts and circumstances of the present case, as there is no question of construction of sale deed dated 15.04.1937 is involved here. This was admitted by both the parties that the said registered sale deed was executed in favour of Sagar Bhar, the common ancestor of the plaintiff, and the defendants. The only question in respect of the dispute over the said plot before the courts below was in respect of devolution of the said plot after the death of Sagar Bhar, on his successors.

8. From the judgment and decree passed by the courts below, it is easily noticeable that the courts below have accepted the plea of the defendants that the plaintiff had separated in 1970 itself. There would have been no question of partition in respect of Plot No.2034 which was the self-acquired property of Sagar Bhar. After the death of Sagar Bhar, the said property devolved on his heirs. The



concurrent findings of fact recorded by the courts below, in my view, cannot be said to be perverse or otherwise suffering from any error of law, requiring this Court's interference in the present second appeal.

9. The appeal has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16. 05.2018
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