

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.481 of 2011

Naresh Paswan son of Late Mahabir Paswan, resident of Village-Sidheshhri,
Tola Sher, P.O. and P.S. Jhajha, Distt. Jamui

..Defendant 1st in courts below-
.. Respondent 1st set- Appellant

1. Raghunandan Mandal
2. Dashrath Mandal, both sons of Late Baudhi Mandal, resident of Village
Sher, P.O. and P.S. Jhajha, Distt. Jamui

...Plaintiffs in the courts below/
Appellants/Respondent 1st set

3. Mahendra Paswan, son of late Mahabir Paswan, resident of village
Shidheshhri tola Sher P.O. and P.S. Jhajha, Distt. Jamui

Defendant 1st set in courts below/
Respondent 2nd set

4. Yogendra Paswan son of Late Parmeshwar Paswan both residents of
Village-Sher, P.O. and P.S. Jhajha, Dist. Jamui present address 164A, Mukta
Ram Babu Street Kolkata, P.S. Jarsanko, Kolkata-700007

...Defendant 2nd set in courts below/
Respondent 2nd set/Respondent 3rd set

Appearance :

For the Appellant/s : Mr. Narsingh Tanti
For the Respondent/s : Mr. Rajesh Kumar Sinha

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 13-09-2018

Heard learned counsel for the parties.

2. This second appeal has been taken up for hearing under
Order 41 Rule 11 of the Code of Civil Procedure (hereinafter to
be referred to as ‘the Code’).

3. The defendant is the appellant in the present second
appeal and is aggrieved by the judgment of reversal passed by
the learned Additional District Judge, FTC-II, Jamui in Title



Appeal No. 29 of 2009, whereby he has reversed the judgment and decree dated 23.05.2009, passed by the learned Sub-Judge-I, Jamui in Title Suit No. 28 of 2003.

4. I have heard at length Mr. Narsingh Tanti, learned counsel, appearing on behalf of the appellant and Mr Rajesh Kumar Sinha, learned counsel representing the contesting respondents.

5. The plaintiff-respondents had filed the suit for declaration of their title and possession over the suit property with a direction to the defendants-first party to remove their possession from the suit property. According to the plaintiffs' case, as set out in the plaint, Most. Patia Devi was the *Khatiyani Raiyat* of the disputed plot nos. 139 and 1312 under khata no. 85 of village Sidheshweri Tola Shair in the district of Jamui. Patia Devi had one son namely Bideshi Paswan and two daughters namely Punia and Budhani Devi. Permashwar Paswan was the only son of Bideshi Paswan. Basanti Devi, being the widow of respondent no.1, had executed a registered sale deed dated 13.09.2002 in respect of the disputed plot. After purchase of the disputed plot, said respondent nos.1 and 2 constructed two rooms and over one of the plots namely 1312, a room constructed by Patia Devi was already existing. The plaintiffs-



respondents alleged that the defendants-first set forcibly entered into the room of respondent nos. 1 and 2 and dispossessed them, which gave them the cause of action to file the suit.

6. The appellant appeared in T.S. No. 28 of 2003 and contested the suit by filing written statement, denying that Basanti Devi (original respondent no.4/since deceased) was the wife/widow of the said Parmeshwar Paswan and, therefore, she was not entitled to execute the sale deed in favour of respondent nos. 1 and 2/plaintiffs.

7. Based on the rival pleadings, the trial court framed altogether 17 issues, including the following issue nos. 7,8,9 and 10, which were crucial for determination of the dispute.

“7. Is the Genealogical table as appended in the written statement is correct or not?

8. Whether Parmeshwar Paswan was already been dead in the life time of his parents as well as his grand mother Most. Patia Devi?

9. Whether the defendants IInd party is the heirs and successors of the khatiyani raiyat of the suit land?

10. Whether the sale deed alleged to have been executed by the defendants IInd party in favour of the plaintiffs dated 13.09.2002 is illegal, void ab initio, forged, in-operative, nominal and without consideration?”



8. The parties adduced their evidence, both oral and documentary. Learned trial court considered issue nos. 8,9 and 10 together and recorded his specific finding that the plaintiffs and the defendants-second party failed to establish that the defendant (Basanti Devi) had any relationship with Most. Patia Devi. He held Basanti Devi to be a stranger who had no relationship with Most. Patia Devi. The trial court thus rejected the plea of the plaintiffs in respect of Basanti Devi (vendor) to be legally-married wife of the deceased Permeshwar Paswan, who was admittedly the grandson of Patia Devi.

9. The appellate court, however, upon re-appreciation of evidence, has reversed the finding holding Basanti Devi to be legally married wife of Permeshwar Paswan. The appellate court below after reaching this conclusion, held that she had right, title and interest in the suit property in respect of which she had executed the sale deed in favour of the plaintiffs.

10. Based on the judgment and decree of the court below and considering the submissions advanced by learned counsel appearing on behalf of the parties, it has clearly emerged that the only dispute which the present second appeal involves is as to whether Basanti Devi was legally married wife of Permeshwar Paswan or not.



11. Learned counsel, appearing on behalf of the appellant, agrees that if the answer to the said questions is in negative, only then the appellant has any case, else the appellant does not have any case to succeed in the present second appeal. This is to be noted that the finding of the trial court on this point is in favour of the appellant holding that Basanti Devi was a stranger to the family of Patia Devi and it could not be established that she was ever married to Parmeshwar Paswan and was thus widow of the said Parmeshwar Paswan. The finding of the appellate court below, based on re-appreciation of evidence, is otherwise, inasmuch as it has been specifically held that the said Parmeshwar Paswan was married to Basanti Devi. It was the case of the present appellant before the courts below that Parmeshwar Paswan had renounced the world and deserted his house at the age of 15 years and remained traceless for 50 years. It was known, however, that he had died of an accident

12. Mr Narsingh Tanti, learned counsel, appearing on behalf of the appellant, has submitted that the question of law, which the present second appeal involves is as to whether the finding recorded by the appellate court below that Basanti Devi was married to Parmeshwar Paswan is perverse. In support of his submission, he contends that the plaintiffs could not



establish at the trial the marriage of Basanti Devi with Permashwar Paswan. He contends that the witnesses could not even disclose the date of marriage of Permashwar Paswan with Basanti Devi and Basanti Devi faltered in her evidence on the point of time and death of Permashwar Paswan.

13. In addition, he has submitted that there are other questions of law involved, which are substantial. According to him, the first appellate court dealt with issue nos. 8,9 10 and 11 only and left out other issues from adjudication. According to him, the sale deed executed by Basanti Devi in favour of the Plaintiffs-respondent nos. 1 and 2 is forged and fabricated. He has lastly submitted that the defendant had proved the date of death of Permashwar Paswan as 20.10.1999 by adducing documentary evidence by way of Ext.A, a death certificate issued by the Municipal Corporation, Kolkata, whereas in her evidence the said Basanti Devi deposed that Permashwar Paswan had died nearly two years back This evidence of Basanti Devi at the trial was apparently not believable in view of documentary evidence i.e. the death certificate, showing the date of death of Permashwar Paswan as 20.10.1999.

14. Mr Rajesh Kumar Sinha, learned counsel, appearing on behalf of the contesting respondents, on the other hand, has



taken a plea that the finding of the first appellate court below cannot be said to be suffering from any perversity which are based on due appreciation of oral and documentary evidence.

15. In order to consider the rival submissions on behalf of the parties, in view of the case as pleaded and canvassed on behalf of the parties, let me first examine the submission on their behalf on the point of the finding recorded by the appellate court on the issue of marriage of Basanti Devi with Permeshwar Paswan, what is evident is that the finding recorded by the court below on the point of marriage of Basanti Devi with Permeshwar Paswan is based on the documentary evidence i.e. Ext.A, Ext.B, Ext.C and Ext.C/1 produced by the defendants-second set namely Basanti Devi and others. Ext. A is the death certificate of Permeshwar Paswan and Ext. B is the residential certificate of Basanti Devi issued by the Kolkata Municipal Corporation. Ext. C was brought on record at the trial being the deposition of one Sudamia Devi in Complaint Case No. 78C of 2003 wherein she had admitted that she had gone to jail in a case lodged by Basanti Devi, wife of Permeshwar Paswan. The said Sudamia Devi, the first appellate court had found to be the aunt of defendant-first party (appellant). One Mahendra Paswan had also deposed in the said complaint, whose evidence in the



said complaint was proved at the trial as Ext.C/1. He had deposed that his brother had been to Kolkatta to verify that Permeshwar Paswan was dead. The first appellate court opined that the death certificate of Permeshwar Paswan exhibited as Ext.A by the defendant second set stood proved, in view of the evidence at Ext.C, i.e. evidence of Sudamia Devi. Ext. B which was proved by the defendants-first set being the residential certificate of Basanti Devi, showing Basanti Devi as wife of Permeshwar Paswn, son of Bideshi Paswan. Based on the evidence in its entirety, the appellate court below conclusively held that Permeshwar Paswan died in Kolkata and that Basanti Devi was his wife. The finding recorded by the first appellate court to this effect cannot be said to be perverse, as the same is based on appreciation of such evidence which was relevant for adjudication. I do not, therefore, find any substance in the submission advanced by the learned counsel for the appellant that the finding arrived at by the first appellate court in this regard is perverse. I also notice from the judgment of the first appellate court that the first appellate court has recorded specific reasons for taking a view different from the view taken by the trial court. The appellate court has pointed out the deficiencies in the judgment and decree of the trial court as is evident from



paragraph 26 of the judgment under appeal.

16. I do not find any merit in the contention that the first appellate court's judgment needs interference by this Court in the present second appeal, since the appellate court below considered only four issues namely issue nos. 8,9,10 and 11, though 16 issues were framed by the trial court. What I notice is that the first appellate court, as statutorily required, framed two points for consideration in paragraph 23 of the impugned judgment and has dealt with those issues which were crucial for deciding the points for determination. I do not find any irregularity on that count.

17. A second appeal under Section 100 of the Code deserves to be entertained only if it involves a substantial question of law worth adjudication. Though perversity in the finding recorded by the first appellate court may raise a substantial question of law, an erroneous finding of fact does not. I am of the considered view that the finding recorded by the first appellate court is based on appreciation of such evidence which was relevant for adjudication and no finding of the first appellate court can be said to be contrary to the evidence available on record. The decision rendered by the first appellate court on the material question of relationship of Basanti Devi with



Permashwar Paswan, in my view, does not violate any settled proposition of law.

18. In view of the above-noted discussions, in my view, the present second appeal does not involve any substantial question of law.

19. This second appeal is accordingly dismissed being devoid of merit.

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27. 09.2018
Transmission Date	

