

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.507 of 2010

Ram Chandra Lal, Son of Late Satrugan Lal, at present residing at Mohalla Mehsaul, Ward No.24, Sitamarhi, P.S. and District Sitamarhi.

... .. Appellant

Versus

1. Ram Naresh Kumar Singh, Son of Ram Swarath Singh, Resident of Village Rasalpur Majhaulia, P.S. Dumra, District Sitamarhi, at present residing at Mohalla Juran Chapra, P.O. Head Post Office Muzaffarpur, P.S. Brahampura, District Muzaffarpur.
2. Bindeshwar Mishra, Son of Late Ram Niranjana Mishra, Resident of Village Rasalpur, P.S. Dumra, District Sitamarhi, presently residing at Village Gosaipur Majhaulia, P.S. Dumra, District Sitamarhi.
3. Most. Bindeshwari Devi, Wife of Late Upendra Mishra.
4. Hira Mishra, Son of Late Upendra Mishra.
5. Raman Mishra, Son of Late Upendra Mishra.
6. Shibu Mishra, Son of Late Ram Niranjana Mishra.
7. Ram Chandra Mishra, Son of Late Ram Niranjana Mishra.
8. Jairup Devi, Wife of Late Ashok Mishra.
9. Rakesh Mishra, Son of Late Ashok Mishra.
10. Anchala Devi, Wife of Sunil Kumar Singh, Daughter of Late Ashok Mishra.
Res. Nos.3 to 10 residents of Village Majhulia Tola, Rasalpur, Choka, P.S. Dumra, District Sitamarhi.
11. Rinku Devi, Wife of Bijay Kumar Mishra, Daughter of Late Ashok Mishra, Resident of Sabauli Gaon, P.O. Nand Nagar, P.S. Harsh Vihar, New Delhi-93.
12. Baby Devi, Wife of Mukesh Kumar Jha, Daughter of Late Kishundeo Mishra, Resident of Village Purhaliya, P.S. Harnahiya, via- Riga, P.S. Sahiyara, District Sitamarhi.
13. Premshila Devi, Wife of Kishundeo Mishra.
14. Pawan Mishra, Son of Kishundeo Mishra.
15. Santosh Mishra, Son of Kishundeo Mishra.
Res. Nos.13 to 15 residents of Village Gosaipur Majhaulia, P.S. Dumra, District Sitamarhi.
16. Shanti Devi, Wife of Rudra Narain Mishra, Daughter of Kishundeo Mishra, Resident of Village Govind Fandah, P.O. & P.S. Riga, District Sitamarhi.
17. Most. Indu Devi, Wife of Late Ram Kripal Mishra.
18. Mukesh Mishra @ Chandan Mishra, Son of Late Ram Kripal Mishra.
Res. Nos.17 and 18 residents of Village Gosaipur Manjhalia, P.S. Dumra, District Sitamarhi.
19. Reena Devi, Wife of Manoj Jha, Daughter of Late Ram Kripal Mishra, presently residing at Village Marpa Kachor, P.S. Pipra, Dadan, Via- Bhuran, P.S. Kanhauli, District Sitamarhi.
20. Krishna Kumar, Son of Late Satrugan Lal, Resident at Mohalla Pratap Nagar, P.S. & District Sitamarhi.
21. Smt. Madhuri Devi, Wife of Pashupati Kumar, Daughter of Late Satrugan Lal at present residing at Village Sujalpur, Via- Charahat, P.S. Madhawpur, District Madhubani.



22. Smt. Indu Devi, Wife of Raj Narayan Lal, Daughter of Late Satrugan Lal at present resident of Village Jaleshwar, Ward No.6, P.S. Jaleshwar, District Mohtari (Nepal).

23. Smt. Seema Devi, Wife of Arun Kumar Sinha, Daughter of Late Satrugan Lal, at present resident of Mela Road, Sitamarhi, P.S. & District Sitamarhi.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Rajiv Nayan Singh
For the Respondent/s : Mr.Sheo Kumar Prasad

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

10 16-08-2019 Heard Mr. J.K. Verma, the learned counsel for the appellant and Mr. Surendra Kishore Thakur, the learned counsel appearing on behalf of the respondents.

Appellant is the plaintiff. The appellant filed appeal against the judgment and decree passed by learned Additional District Judge, F.T.C. No.3, Sitamarhi on 21.05.2010 in Title Appeal No.52 of 2006 by which the learned Additional District Judge affirmed the judgment and decree passed by Additional Munsif, Sitamarhi in Title Suit No.55 of 1991 and dismissed the appeal.

The appellant-plaintiff brought the suit for declaration of his title over the land described in Schedule 3 and 3K containing C.S. Plot No.929, corresponding to R.S. Plot No.1850 and 1850/1997 and for recovery of possession as well as for declaration that the order dated 07.11.1990, passed by the Circle Officer, Dumra issuing *Baskit Purcha* in favour of the



defendants illegal and also for declaration that the entry made in the revisional survey with regard to C.S. Plot No.929 in the name of the defendants is illegal and without any basis.

The case of the plaintiff is that Chandidutt Das had two sons, namely, Jhumak Das and Jagulal Das. Jagu Lal Das got one son Subansh Lal who died issueless. Jhumak Das got five sons, namely, Bhagwat Lal, Pitamber Lal, Faudi Lal, Sarban Lal and Chintaman Lal. Pitamber Lal and Sarban Lal died issueless. Bhagwat Lal left behind his sole son, Ram Udar Lal who got two sons, namely, Vishwanath Lal and Hari Nath Lal and Faudi Lal left behind his one son, Baidyanath Lal. Baidya Nath Lal got one son, Surendra Lal and Anup Lal got one son, namely, Shatrughan Lal, the plaintiff-appellant (now deceased) and his legal heir is appellant. Subansh Lal died issueless and the land in question and other lands fell in his share devolved upon the ancestor of the plaintiff and thus the sale deed executed by Triloki Das and Ram Autar Das claiming themselves to be the sons of Jagu Lal Das is forged, fabricated and not binding on him.

The defendants contested the suit denying the genealogical table given by the plaintiff and stated that Jagu Lal Das and Jadu Lal was one and same person and he was not son



of Chandi Dutt Das. Chandi Dutt Das had two sons, namely, Jhumak Das and Rampreet Das. Jagu Lal Das @ Jaddu Lal Das was the son of Bhattu Das and he had three sons, namely, Triloki Das, Ram Autar Das and Subansh Lal. Subansh Lal died issueless and the property devolved on Triloki Das and Ram Autar Das who executed one sale deed in favour of Ram Sewak Singh and Ram Swaroop Singh and another sale deed in favour of Ram Niranjana Mishra with regard to the entire 26 decimals lands of C.S. Plot No.929 on 07.11.1933 and 05.01.1934. Accordingly, during the course of revisional survey, two plots R.S. Plot No.1850 and R.S. Plot No.1850/1997 were carved out from C.S. Plot No.929 and recorded in the name of the defendants and they have been coming in possession and *Basgit purcha* was issued duly in favour of defendants-respondents no.7 to 10.

The learned Munsif while dismissing the suit held that the plaintiff could not be able to prove the genealogy of Subansh Lal and also fail to prove his dispossession from the lands in the year 1990 and held that the defendants by virtue of the sale deed executed by Triloki Das and Ram Autar Das in the year 1933 and 1934 came in possession and subsequently during the revisional survey, their names were entered into the record



of rights. The appellate court while dismissing the appeal of the appellant also concurred with the findings of the learned Munsif and held on the basis of the documentary evidence, Khatihan of the land in question and the Khatihan of adjoining lands 9/a and 9/b, held that Subansh Lal was son of Jadu Lal and Jadu Lal was the son of Bharthu Lal and held that that the property of Subansh Lal devolved on Triloki Das and Raw Autar Das and the appellant did not produce any documentary evidence and even on the basis of oral evidence, the appellant-plaintiff could not be able to prove that Subansh Lal was the descendant of Chandi Dutt Das and dismissed the appeal.

Mr. Jitendra Kishore Verma, the learned counsel appearing on behalf of the appellant submits that Jagu Lal and Jadu Lal Das was not one and same person. Defendants are admittedly purchasers from Triloki Das and Ram Autar Das vide sale deed dated 07.01.1933 and 05.01.1934 but the witnesses PW7, PW9 and DW4 have stated that Jagu Lal was descendant of Chandi Dutt Das but the appellate court wrongly interpreted Ext.9/b and 9/a and held that Jagu Lal Das and Jadu Lal Das was one and same person and he was son of Bharthu. Jagu got three sons, namely, Subansh Lal, Triloki Das and Ram Autar Das. The finding is based on interpretation of Ext.9/a and 9/b



and, therefore, the finding recorded by both the courts are erroneous and illegal.

Mr. Surendra Kishore Thakur, the learned counsel for the respondents submits that both the courts have recorded the same finding on the basis of the evidence and there is no substantial question of law involved in this appeal.

Having considered the submissions and on perusal of the judgments of both the courts, it is admitted fact that the land in question was recorded in the name of Subansh Lal and from disputed plot C.S. Plot No.929, R.S. Plot No.1850 measuring 14 decimals and R.S. Plot No.1850/1997 measuring 12 decimals were carved out.

The case of the appellant-plaintiff is that Chandi Dutt Das got two sons, namely, Jhumak Das and Jagu Lal Das. Jagu Lal Das got one son, namely, Subansh Lal Das in whose name C.S. Plot No.929 was recorded. Jhumak Das got five sons and the appellant is descendant of one of the sons of Jhumak Lal Das. The appellant claimed the land on the basis that Subansh Lal died issueless but the defendants denied the genealogy of the plaintiff and submitted that Jagu Lal Das was not the son of Chandi Dutt Das. In fact Jagu Lal and Jadu Lal was one and same person. Jagu Lal got three sons, Triloki Das, Ram Autar



Das and Subansh Lal. After death of Subansh Lal, the property belonging to Subansh Lal devolved upon his two brothers. The learned Munsif has held that the plaintiff could not be able to prove the fact that Subansh Lal was the descendant of Chandi Dutt Das. The first appellate court also on the basis of the Khatihans held that Subansh Lal Das got two lands C.S. Plot No.929 and 933 and when Ram Autar Das and Triloki Das sold the land of Plot No.929, he described the one of the boundary of the plot to be their owns and on the basis of such entry made in the record of rights. The appellate court also held that Subansh Lal was the brother of Ram Autar and Triloki Das and they executed the sale deed in the year 1933 and 1934. There is no reliable oral evidence of the plaintiff to prove the fact that Subansh Lal was the descendant of Chandi Dutt Das. Mr. J.K. Verma drew my attention on the evidence of PW7, PW9 and DW4. On bare perusal of their evidence, it appears that their evidence are hearsay and they could not be able to say with their own knowledge about the fact that Subansh Lal was grandson of Chandi Dutt Das. The onus is on the plaintiff-appellant to prove this fact but this fact has not been proved and both the courts on the basis of the evidence inferred that Subansh Lal was one of the sons of Jagu Lal and Jagu Lal and Jadu Lal was one and



same person. Section 100 of the Code of Civil Procedure does not permit to reappraise the oral evidence and come to different findings which may be possible for disturbing the concurrent finding of both the courts, therefore, I find that no substantial question of law arises for consideration in this appeal. Consequently the second appeal is dismissed being de void of merit.

(Prabhat Kumar Jha, J)

S.KUMAR/-

U			
---	--	--	--

