

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.205 of 2015

1. Most. Shail Devi, Wife of Late Awadhesh Thakur
2. Ashok Thakur, Son of Late Awadhesh Thakur
3. Madhuri Devi, Daughter of Late Awadhesh Thakur
4. Manorama Devi, Wife of Manoj Kumar, Daughter of Late Awadhesh Thakur
5. Prem Devi, Wife of Ajit Mal, Daughter of Late Awadhesh Thakur
6. Kiran Devi, Wife of Rakesh Singh, Daughter of Late Awadhesh Thakur
7. Usha Kumari @ Usha Devi, Daughter of Late Awadhesh Thakur, All residents of Village Saidpur, P.O. Dariyapur, P.S. Dariyapur, District Saran

... .. Appellants

Versus

1. Umesh Prasad Singh, Son of Late Baikunth Singh, resident of Village Bahlolpur, P.O. Latrahiya, P.S. Parasa, District Saran
2. Meena Devi, Wife of Akhilesh Singh, resident of Village Mathiya, P.O. Babu Tola Kohara, P.S. Parasa, District Saran
3. Sarita Devi, Wife of Shatrughan Singh, resident of Village Khemkaran Sirsa, P.O. Rampur, P.S. Garkha, District Saran

Plaintiffs/ Respondents 1st Set in the court below

4. Ajit Kumar Sharma, Son of Baijnath Sharma
5. Anil Kumar Sharma, Son of Baijnath Sharma
6. Sunil Kumar Sharma, Son of Baijnath Sharma
7. Vishwajeet Kumar Arun, Son of Baijnath Sharma,
No. 4 to 7 are residents of Village Bheldi, P.O. Bheldi, P.S. Bheldi, District Saran
8. Usha Devi, Wife of Vishwanath Singh, resident of Village Mujauna, P.O. Parsa, P.S. Parasa, District Saran
9. Pratima Devi, Wife of Ashok Singh, resident of Village Ramchak, P.O. Katsa, P.S. Bheldi, District Saran
10. Manju Devi, Wife of Rabindra Pandey, resident of Village Basavati, P.O. Sobepur, P.S. Bheldi, District Saran

Defendants/ Respondents 2nd Set in the court below.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Sri Prakash Srivastava, Advocate
For the Respondents No.1	:	Mr. Ajay Kumar Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 28-02-2019



The appellants filed this second appeal under Section 100 of the CPC against the judgment and decree dated 16.06.2009, passed in Partition Suit No.342 of 1997 by which the learned Sub-Judge, 6th, Chapra allowed the suit of the plaintiffs-respondents and the judgment and decree dated 30.03.2015, passed by the learned Additional District Judge-XI, Saran in Title Appeal No.96 of 2009 by which the learned Additional District Judge-XI dismissed the appeal of the appellants.

2. The appellants are the defendants in the suit. The plaintiff filed the suit for partition and allotment of 1/3 share in the lands mentioned in Schedule I of the plaint and for delivery of possession thereof. The sole plaintiff, Janki Kuwar, now deceased, and whose legal heirs are respondents no.1 to 3, 1st Set, in the present appeal sought partition of the property and allotment of 1/3 share on the ground that Raja Thakur had two sons, namely, Ramsagar Thakur and Ramdayal Thakur. Ramdayal Thakur died issueless and property of Ramdayal Thakur devolved upon his sole legal heir Ramsagar Thakur. Ramsagar Thakur had three sons, namely, Tapeswar Thakur, Kapildeo Thakur and Kamla Thakur. Tapeswar Thakur got two daughters, namely, Janki Kuwar and Fulena Devi. Kapildeo Thakur died unmarried and Kamla Thakur got one son, namely, Awadhesh Thakur. Awadhesh Thakur was



defendant no.5 and sons and daughters of Fulena Devi are defendants no.1 to 4. Sons and daughters of Fulena Devi did not contest the suit. Awadhesh Thakur, defendant no.5, and after death of Awadhesh Thakur, his legal heirs, who are appellants here in the present appeal, contested the suit. The plaintiff claimed that the plaintiff is entitled to 1/3 share as Fulena Devi died before the death of Kapildeo Thakur and she is entitled to get 1/6 share and Awadhesh Thakur is entitled to get 1/2 share. There is jointness of the property but on refusal of partition, the plaintiff filed the suit.

3. Defendant No.5, Awadhesh Thakur, contested the suit besides other grounds on the ground that the plaintiff has filed the suit for declaration of title in the garb of partition. There is no unity of title and possession. Fulena Devi was not the daughter of Tapeshwar Thakur and, therefore, her legal heirs, defendants no.1 to 4, do not belong to the family of the plaintiff and the defendant. The plaintiff is not the daughter of Tapeshwar Thakur. Tapeshwar Thakur died issueless in the year 1985 and his wife predeceased him. Tapeshwar Thakur @ Tapi Thakur was married with Dhaneshra Devi @ Janki Devi, daughter of Sewak Pandey, village Nunfar, Pandey Tola, P.S. Garkha, District Saran. Kapildeo Thakur died issueless as died unmarried on 02.02.1997. Tapi Thakur executed a registered deed of Will in favour of Shail



Kumari Devi, wife of Awadhesh Thakur, defendant no.5, on 09.06.1980 in which he disclosed that he has no son or daughter. Tapi Thakur, Kapildeo Thakur and Kamla Thakur, the father and uncles of defendant no.5 got one house in Bakarganj, P.S. Pirbahore, District Patna. The plaintiff was residing as a tenant in two rooms of the house. The defendant asked the plaintiff to vacate the suit premises only thereafter the plaintiff filed the suit for partition. The defendant no.5 and his wife and son are the owners of the entire property belonging to Tapi Thakur, Kapildeo Thakur and Kamla Thakur. The learned Sub-Judge framed issues including the issue whether Janki Kuwar and Fulena Devi are the daughters of Tapeswar Thakur and the plaintiff is entitled to get partition? The learned Sub-Judge on the basis of the oral evidence as well as the documentary evidence in which one Nag Narayan Singh had filed Title Suit No.14 of 1996 for specific performance of contract against Kapildeo Thakur, after death of Kapildeo Thakur, Awadhesh Thakur, son of Kamla Thakur, defendant no.5, and Janki Kuwar, daughter of Tapi Thakur, plaintiff were made defendants as legal heirs of Kapildeo Thakur and held that defendant Awadhesh Thakur admitted in the aforesaid suit filed by Nag Narayan Singh that Janki Kuwar is the daughter of Tapi Thakur and concluded the findings that from the evidence on



record, the plaintiff and Fulena Devi were the daughters of Tapi Thakur and there is unity of title and possession between the plaintiff and defendants and accordingly, allowed the suit holding that the plaintiff is entitled to get 1/3 share in the suit property mentioned in the Schedule of the plaint and after the defendant and after his death his legal heirs filed title appeal being Title Appeal No.96 of 2009 and the learned Additional District Judge-XI after reappraising the entire oral as well as documentary evidence on record return the same finding that Janki Kuwar and Fulena Devi were the daughters of Tapi Thakur and Janki Kuwar is entitled to get 1/3 share in the suit land and thus dismissed the appeal. Thereafter the appellants, legal heirs of Awadhesh Thakur filed this second appeal.

4. Mr. Sri Prakash Srivastava, the learned counsel for the appellants submits that the judgments of both the courts are illegal and bad on account of non-consideration of material evidence adduced on behalf of the appellants. The appellants brought on record the registered deed of Will executed by Tapi Thakur in favour of Most. Shail Devi, wife of Awadhesh Thakur but both the courts did not take into account the execution of registered Will by Tapi Thakur and held that the entire property of Tapi Thakur is required to be partitioned amongst his legal heirs. It is further



submitted that the learned court below have misinterpreted the evidence in order to decide the question whether the plaintiff, Janki Kuwar and Fulena Devi are the daughters of Tapi Thakur by by misconstruing the oral and documentary evidence.

5. Contending the submissions of the learned counsel for the appellants, learned counsel for the respondents 1st Set submits that there is no substantial question of law involved in the present second appeal. Both the courts have held that Janki Kuwar and Fulena Devi were the daughters of Tapi Thakur on consideration of the cogent and impeccable oral evidence as well as on documentary evidence. The letter of Kapildeo Thakur, one of the uncle of the plaintiff and defendants and the order of Title Suit No.14 of 1996 in which Nag Narayan Singh filed substitution petition of the legal heirs of Kapildeo Thakur after death of Kapildeo Thakur in the suit, Awadhesh Kumar, defendant no.5 of the plaint and Janki Kuwar, the plaintiff were jointly substituted as the legal heirs and daughter of Tapi Thakur and son of Kamla Thakur respectively. Awadhesh Thakur, the defendant, never disputed the fact that Janki Kuwar is not the daughter of Tapi Thakur and, therefore, she is not entitled to be substituted in the suit as legal heirs of Kapildeo Thakur. On such admitted facts, the



court held that Janki Kuwar and Fulena Devi are the daughters of Tapi Thakur.

6. Having considered the submissions of both sides and on perusal of the judgments of both the courts, I find that the defendant, 2nd Set, appellants contested the suit filed by Janki Kuwar, the plaintiff on the premises that Janki Kuwar and late Fulena Devi are not the daughters of Tapi Thakur but from perusal of both the judgments, I find that both the courts have discussed the oral evidence of the witnesses and the documentary evidence and thereafter held that Janki Kuwar and Fulena Devi were two daughters of Tapi Thakur. Mr. Sri Prakash Seivastava, the learned counsel for the appellant could not be able to show the non-consideration of any material evidence either documentary or oral by the courts below in arriving at the conclusion that Janki Kuwar and Fulena Devi were two daughters of Tapi Thakur. It is apparent from perusal of the judgments that both the courts considered the documentary evidence such as letters of Kapildeo Thakur, transfer of gas connection from the name of Tapi Thakur/Kapildeo Thakur to the name of Janki Kuwar and admission of Awadhesh Thakur in the substitution petition filed in Title Suit No.14 of 1996 in which Janki Kuwar and Awadhesh Thakur, the defendant no.5, now deceased, and husband of appellant no.1 and fathers of appellants



no.2 to 6 were jointly substituted as legal heirs of Kapildeo Thakur, who is said to have died issueless and his property devolved upon the legal heirs of his two brothers, namely, Tapi Thakur and Kamla Thakur. Late Awadhesh Thakur, defendant no.5, did not object anywhere at any time in Title Suit No.14 of 1996 after substitution of Janki Kuwar that Janki Kuwar was not the daughter of Tapi Thakur. This amounts to admission of Awadhesh Thakur that Janki Kuwar is the daughter of Tapi Thakur. Thus, I find that both the courts have on good and sound reasoning after appreciation of the evidence on record held that the plaintiff and Fulena Devi are the daughters of Tapi Thakur and there is unity of title and possession and the plaintiff is entitled to get partition of the property as claimed by her. Hence, I find that no substantial question of law is involved in the case and the second appeal is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
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