

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.442 of 1999

- 1(i) Domani Devi, W/O Late Satyadeo Thakur @ Sahdeo Thakur.
1(ii) Karpuri Thakur.
1(iii) Mithu Thakur.
1(iv) Deepak Thakur. All sons of Late Satyadeo Thakur @ Sahdeo Thakur.
1(v) Savitri Devi, D/O Late Satyadeo Thakur @ Sahdeo Thakur. All residents of Village-Bhelahi, Ward No. 9, P.S. Supaul, District-Supaul.

... .. Plaintiffs-Appellants/Appellants.
Versus

- 1(i) Satya Narain Thakur.
1(ii) Pintu Thakur @ Lal Thakur. Both sons of Late Khedan Thakur, residents of Village/Mohalla-Bhelahi, Ward No. 21, P.S. and District-Supaul.
1(iii) Sita Devi, D/O Late Khedan Thakur, wife of Maksud Thakur, resident of village- Basbiti, P.O. + P.S. and District-Supaul.
1(iv) Hira Devi, D/O Late Khadan Thakur, W/O Gulo Thakur, resident of Village- Dudaha Thakaraha, P.O. Sakar, P.S. and District- Suapul.
2. Gulo Thakur, Son of Late Rati Thakur.
3(i) Khikhar Thakur.
3(ii) Bechan Thakur. Both sons of Late Phoolo Thakur, residents of Village-Bhelahi, Ward No. 21, P.S. and P.O.-Supaul, District-Supaul.
4. Jibachi Devi, daughter of Late Nagar Thakur.
.....Defendants Ist Set-Respondents Ist-Respodnents Ist Set.
Respondents Ist Set.
5. Budhiyar Devi, wife of Late Kirtan Thakur.
6. Lakshmi Thakur, son of Late Kirtan Thakur.
7. Ramadhin Thakur, son of Late Kirtan Thakur. Residents of Village-Bhelahi, Ward No. 9, P.S. and District-Suapul.

... .. Defendant 2nd Set-Respondent 2 Set-Respondent 2nd Set.

Appearance :

For the Appellants : Mr. Bhubneshwar Prasad, Advocate.
For the Respondents : Mr. Pramod Mishra, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

10 05-03-2020 Heard Mr. Bhubneshwar Prasad learned counsel for the plaintiffs/appellants/appellants under Order XLI, Rule-11 of the Code of Civil Procedure.

2. The present appeal has been filed by the



plaintiffs/appellants/appellants against the judgment and decree dated 24.07.1999 and 06.08.1999 respectively passed by learned 3rd Additional and District Judge, Saharsa in Title Appeal No. 14 of 1996 by which he upheld the judgment and decree dated 22.03.1996 and 06.04.1996 respectively passed by learned Ist Additional Munsif, Supaul in Title Suit No. 201 of 1991 whereby the suit of the plaintiff was dismissed.

3. The Plaintiff/appellant/appellant had filed title suit for declaration that the revisional survey entry over the suit land in the name of respondent Ist set party was wrong and illegal. It was contended by the Plaintiff/appellant/appellant in the plaint that C.S.P. Khata No. 236 recorded in the names of Bhabi Hajam @ Deban, Rabi Hajam, Bihari Hajam and Sonai, all sons of Mangan Hajam, Khatiyani raiyat Bihari Hajam and Sonai Hajam, both died issueless and only the heirs of Rabi Hajam and Bhabi Hajam were surviving and the heirs of both branches got moiety share in the suit land mentioned in Schedule of the plaint. The Plaintiff/appellant/appellant belongs to the branch of Khatiyani raiyat Rabi Hajam, who had a son, namely, Nebi Thakur, who died in the year 1980 leaving behind two sons, namely, Satyadeo Thakur, the sole Plaintiff/appellant/appellant and Kirtan Thakur whose heirs are defendant/respondent 2nd set



party. It is further contended on behalf of the Plaintiff/appellant/appellant that he alongwith respondent 2nd party have got $\frac{1}{2}$ share in the suit land. It is further stated that the Khatiyani raiyat Bhabi @ Deban Hajam had three sons, namely, Mahendra Thakur, Rabi Thakur and Nengru Thakur. Mahendra Thakur who abdicated the village 30 years ago since then there was no trace of his whereabouts. Rabi Thakur also died leaving behind his three sons, namely, Khedan Thakur, Fulo Thakur and Gulo Thakur who are defendants/respondents Ist set. Further case of the Plaintiff/appellant/appellant is that the respondent Ist set got the name of his father Rabi Thakur inserted in the revisional survey Khatiyani over the suit land mentioned in Schedule-I of the plaint in which the Plaintiff/appellant/appellant and defendant 2nd set had got $\frac{1}{2}$ share. The plaintiff/appellant/appellant alongwith respondent 2nd set were in joint possession over the suit land alongwith defendant 2nd set and used to pay rent as per their share.

4. It is pertinent to state here that the defendant/respondent/respondent-2nd set did not appear nor did file written statement in the court below to buttress the contention of the plaintiff/appellant/appellant. The defendant respondent Ist set appeared and contested the suit by filing their



common written statement. The defendant/respondent Ist set admitted the averment of the plaintiff that the suit land stood in the names of four brothers in the C.S. Khatiyani. The genealogical table furnished by the plaintiff/appellant/appellant was admitted. Further case of the respondent Ist set is that the survey entry in the revisional Khatiyani is correct. It has further been stated that Bhabhi Hajam, Rabi Hajam, Bihari Hajam and Sonai Hajam partitioned the suit land long long ago and they came into possession over their respective share. The widow of Sonai Hajam, namely, Mostt. Domani Devi came into the possession over her share. Further case of the defendant Ist set is that Bihari Hajam adopted Mahendra Thakur and by virtue of that he stepped into the shoe of his adoptive father. Mahendra Thakur sold his entire share and went to Forbisganj where he died leaving behind his son Mishri Thakur, who was not impleaded party in the suit. Further case of the defendant/respondent is that Rabi Hajam, one of the Khatiyani raiyats and predecessor-in-interest of the Plaintiff/appellant/appellant sold his entire share in the year 1921 vide registered sale deed in the name of another Khatiyani raiyat Bihari Hajam. After sale in the year 1921, Rabi Hajam had no share in the suit land and the claim of the



Plaintiff/appellant/appellant is without foundation. It is further stated that Mostt. Domani Devi widow of Khatiyani Raiyat Sonia Thakur, sold her entire share vide registered sale deed dated 20.08.1968 in favour of Rabi Hajam, father of the defendant/respondent Ist set. Bihari Hajam sold 2 Katha of Plot No. 3289, 3 Katha of Plot No. 4243 and 4 Katha in Plot No. 3487 or under Khata of 263 vide registered sale deed of 29.09.1983 in favour of Rabi Thakur. The remaining land of Bihari Thakur came into the possession of Mahendra Thakur, who sold the same to different persons and went to live in the district of Araria. Further case of the defendant/respondent is that they are title holder and in possession over the suit land by virtue of inheritance and purchase from other Khatiyani raiyats. Further case of the respondent/defendant Ist set is that C.S. Plot No. 3648 which is Basgit Jamin stands in the name of all the co-sharers even in the revisional survey khatiyani as per their possession as they are living over that land by constructing their house. This revisional survey khatiyani was prepared in the name of plaintiff/appellant also. On amongst these facts the respondent Ist set urged to dismiss the suit with exemplary costs.

5. The learned Additional Munsif formulated the following issues for adjudication which run as follows:



- (i) Is the suit as framed maintainable ?
- (ii) Has the plaintiff valid cause of action?
- (iii) Is the suit barred by law of limitation or from other legal infirmity?
- (iv) Has the plaintiff got subsisting title and possession over the suit land?
- (v) Is the plaintiff entitled to get the decree as claimed?
- (vi) To what relief or reliefs to which the plaintiff is entitled?

6. After framing of the issues both parties have adduced oral and documentary evidence in support of their case and according to the learned court below after considering the oral and the documentary evidence of both parties has dismissed the suit filed by the plaintiff/appellant/appellant. The plaintiff/appellant/appellant preferred Title Appeal No. 14 of 1996 against the judgment and decree of the trial court which was also dismissed. Hence, this appeal is being filed.

7. Learned counsel for the appellants has proposed following substantial questions of law assailing the judgment and the decree of both the courts below which are as follows:-

I. Whether Mostt. Domni a widow whose



husband died prior to coming into force of the Hindu Women's Rights to Property Act, 1937, had the right to transfer any property out of the joint family property or she could only have the right to maintenance?

II. Whether the alleged transfer by Bihari to Rabbi Thakur through unregistered sale deed could have any evidentiary value. So far as transfer of right, title and interest in the said property through the said document is concerned ?

III. Whether story of adoption of Mahendra by Bihari having not been relied upon by the appellate court, he committed error in coming to the conclusion that it did not make any difference to the case of the parties because once the property remained in the hands of Bihari who died issueless, the plaintiff will definitely have interest and share in at least all those lands which



were not transferred by Bihari out of the
1/4th share to which he is entitled ?

IV. Whether the learned courts below
committed error in not appreciating that it
would not have made any difference
whether the property was joint or separate
in so far as devolution of 1/4th interest of
Bihari on other surviving co-sharers
including the plaintiff was concerned as
admittedly Bihari had died issueless ?

8. From perusal of the record of this appeal, it appears
that this appeal has been preferred against the concurrent
findings and facts of two courts below whereby both the courts
below have dismissed the suit of the plaintiff. It is settled
principle of law that in second appeal where there is concurrent
findings of the facts by the courts below, the power of this Court
to interfere with the findings of the courts below is very limited
and as per the provisions of Section 100 of the Code of Civil
Procedure, this Court is not empowered to re-appreciate the
evidence of the parties without formulating the substantial
question of law and without coming to the conclusion that the
findings of the courts below are perverse. In this regard, reliance



can be placed upon the following decisions: (i) AIR 1959 SC 57 (Deity Pattabhiramaswamy v. S. Hanymayya Ayyar and Ors.): (ii) MANU/SC/0016/1962:[1963]3 SCR604 (V. Ramachandra Ayyar and Anr. v. Ramalingam Chettiar and Anr.) (iii) MANU/SC/0278/1999: [1999]2 SCR 728 (Kondiba Dagadu Kadam v. Savitribai Sopan Gujara and Ors.) and (iv) 2005 (2). BBCJ (iv) 420 (Monicka Poosali (D) by Lrs v. Anjalai Animal and Anr).

9. Thus, on the basis of the decisions cited above, I have no hesitation to hold that this Court in second appeal can only interfere with the findings of the courts below when it is found that the findings are perverse or based on no evidence or misreading of evidence or the appeal having any substantial question of law.

10. The learned counsel for the appellant though has formulated many questions of law but has only relied upon question nos. 1 and 2 and as such have to see that there was any substance in the submission of the learned counsel for the appellant or not?

11. It appears from the pleading of both the parties that the plaintiff claiming to be $\frac{1}{2}$ share upon the entire land claiming, that though Mangan Hajam has four sons Bhabi



Hajam, Rabi Hajam, Bihari Hajam and Sonai Hajam but Bihari Hajam and Sonai Hajam died issueless, hence share of two brothers was got vested in remaining two brothers, contrary to the pleading of the plaintiff, it is a case of defendant that wife of Sonai Hajam namely Domani Devi has executed a Sale Deed in favour of other co-sharer, and admittedly the plaintiff has not challenged those Sale Deeds executed by, Most Domani, that the wife of Sonai Hajam got no right to execute Sale Deed and, those Sale Deeds are operative, still has not been challenged and as such in absence of any pleading, it cannot be said to be void, inoperative, hence submission of the learned counsel for the appellant that though Sonai Hajam died before coming into force of Hindu Women's Rights to Property Act, widow of Sonai Hajam has got no right. I find, in absence of any pleading, the questions of law formulated by the learned counsel for the appellant is misconceived, though while considering the Issue No. 4 formulated by the Trial Court, also adopted by the Appellate Court the courts below has well considered the exhibits that, was marked as Ext.-A series and having concurrent finding of facts, I find no substance in this question of law.

12. So far the second question of law formulated by the



learned counsel for the appellant that alleged transfer by Bihari Hajam to Rabi Hajam through unregistered Sale Deed having any evidentiary value or not, I find that the learned court below has not relied only on the basis of statement of unregistered Sale Deed executed by Bihari Hajam to Rabi Hajam rather has also considered the Ext.-A series the registered Sale Deed dated 20.08.1968 and Ext.-C rather it appears that Domani Devi wife of Sonai Hajam sold her entire share by a registered Sale Deed dated 20.08.1968 in favour of Rabi Hajam father of the defendant, Bihari Hajam sold 2 Katha of Plot No. 3289, 3 Katha of Plot No. 4253 and 4 Katha in Plot No. 3437 under Khata No. 263 by a registered Sale Deed dated 29.09.1983 in favour of Rabi Hajam, remaining land of Bihari Hajam and came in possession, Mahendra Thakur who sold the same to the different persons and went to live in the district of Araria. The defendant-1st set categorically stated that predecessor in the interest of plaintiff sold his 1/4th share in the year 1921, in favour of other joint recorded tenant namely Bihari Hajam who came in possession. So far the argument of the learned counsel for the appellant that Bihari Hajam executed oral sale in favour of Rabi Hajam the plaintiff has not asserted in the pleading nor had brought on record any evidence on this point nor the said



Sale Deed has been marked by the plaintiff, and as such in absence of any pleading and onus to discharge his liability by proving this fact I find that the plaintiff has failed to prove this fact and as such the appeal is dismissed at the admission stage itself. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

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