

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1115 of 2018

1. Jai Mangal Prasad Son of Late Awadh Bihari Kavi Resident of Village- Unwas, P.S.- Itarhi, District- Buxar.
2. Baban Prasad @ Baban Singh, Son of Late Parmanand Singh Resident of Village- Unwas, P.S.- Itarhi, District- Buxar.

... .. Appellant/s

Versus

1. Bishwanath Singh Son of Late Sakhichand Singh Resident of Village Agrerkala, P.S.- Surajpura, District- Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
2. Rajgrihi Singh, Son of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
3. Dhanraj Singh, Son of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
4. Ranvijay Kumar, Son of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
5. Ajay Kumar, Son of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
6. Sharda Devi, Daughter of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
7. Lalasa Devi, Daughter of Bishwanath Singh Resident of Village Agrerkala, P.S.- Surajpura, District Rohtas at present resident of Village Unwas, Tola Vishrampur, P.S.- Itarhi, District- Buxar.
8. Rajeshwari Devi, Wife of Late Awadh Bihari Singh Resident of Village- Arthu, P.O.- Ganjbharasara, P.S.- Dinara, District- Rohtas.
9. Bhagirathi Devi @ Mana Devi, W/o Tarkeshwar Singh Resident of Village and P.O. Patam P.S.- Dumraon, District- Buxar.
10. Parmila Devi @ Renu, W/o Sri Shiv Pd. Singh Resident of Village- Dehri, P.S.- Rajpur, District- Buxar.
11. Vasundhara Devi, W/o Jai Mangal Singh Resident of Village- Dehri, P.S.- Rajpur, District- Buxar.
12. Parnita Devi, W/o Ravi Verma Resident of Mohalla Shivala Varanasi, P.O. and P.S.- Shivala Varanasi, District- Varanashi (U.P.).
13. Sumitra Devi, W/o Late Awadh Bihari Singh Resident of Village Unwas, P.S.- Itarhi, Dist.- Buxar.
14. Bibhuti Narayan Singh, Son of Ramjit Singh Resident of Village Unwas, P.S.- Itarhi, District- Buxar.
15. Satyendra Narayan Singh, Son of Ramjit Singh Resident of Village Unwas, P.S.- Itarhi, District- Buxar.
16. Raj Narain Pandey, Son of Late Shiv Narain Pandey Resident of Village



Unwas, P.S.- Itarhi, District- Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ramadhar Singh

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 05-12-2022

Heard Mr. Ramadhar Singh, learned counsel for
the appellants.

2. The appeal has been preferred against the order dated 24.9.2018 in T.A. No. 06 of 2016 (Vishwanath Singh and Ors. vs. Jail Mangal Prasad & Ors.) by learned Fast Track Court-I, Buxar by which the order dated 23.7.2009 passed by the learned Sub-Judge-V, Buxar, in Title Suit No. 107 of 2004 (filed by the respondents 1st set) was set aside and the matter was remanded back for deciding afresh and without any delay.

3. The facts relating to the case is/are as follows:-

4. The Title Suit No. 107 of 2004 was filed by one Rashmuni Devi for decree of partition to the extent of 1/3rd share in respect of suit land, the details of which are not part of the appeal. The further case is that she died and was replaced by her heirs. Subsequently, further relief were added for declaring gift deed dated 25.10.1989 and 28.4.1989 as forged and



arbitration award dated 14.9.1996 was not binding upon the plaintiff.

5. The defendants-appellants opposed the case stating that in view of the same having been gifted in 1989, Rashmuni Devi do not have any share.

6. On 5.6.2009/23.7.2009, the said Title Suit No. 107 of 2004 filed under Order 7 Rule 11 of the CPC was rejected (Annexure-1).

7. On 7.10.2005, C.R. 1689 of 2009 which was filed before the Patna High Court which was subsequently withdrawn.

8. On 24.7.2015, the learned A.D.J.-V directed the conversion Miscellaneous Appeal into the Title Appeal No. 06 of 2006.

9. The same was challenged in Civil Miscellaneous No. 86 of 2016 which was disposed of on 3.8.2016 (Annexure-2) by which the learned coordinate bench held that the learned A.D.J.-V, Buxar, has only directed the appellant to convert the Miscellaneous Appeal in Title Appeal as the same was not maintainable against the dismissal of suit on preliminary issue. However, the learned coordinate bench observed that if any question regarding the limitation is raised



by the petitioner, the same shall be decided in accordance with law.

10. On 24.9.2018, the learned Court set aside the order dated 23.7.2009 and remanded the matter back with the following observation:

6. Learned counsel for the appellants submitted that plaintiffs were not personally party in the said arbitration proceeding and therefore the very provisions of the Arbitration and Conciliation Act, 1996 will not attract and no any petitions shall be filed for rejecting the plaint and this fact not considered by the learned court below and hence the very impugned order is liable to be set aside and the suit should be continued under this.

7. On the other hand the learned counsel for the respondents opposed the very submissions of the learned counsel for the appellants



considering the aforesaid facts and circumstances of this case specially the facts that when the plaintiffs were not the party in the said Arbitration proceeding personally then in such circumstances the suit in question will not attract from the any provisions of the said Arbitration Act and this fact has not been considered by the learned court below as such the impugned order and decree dated 23.7.2009 is hereby set aside and this appeal is hereby allowed but without cost. However the learned court below is hereby directed to expedite the suit as early as possible.

11. Mr. Ramadhar Singh vehemently submitted that learned Court erred in remanding the matter back narrating the same fact that Rashmuni Devi had no share in the property held by her grandfather namely Sukhdeo Singh. His further submission is that gift deed executed by Baldeo Singh dated 28.4.1989 and the compromise decree prepared on 14.8.1996.



Both are prior to the amendment of Hindu Succession Act, 2005 and as such she had no role to play in the matter.

12. Be that as it may, the learned Court vide an order dated 24.9.2018 did not pass any order on merit and simply observed that the plaintiffs were not the party in the arbitration proceeding and accordingly gave direction for hearing the matter afresh. All the questions/points will be available to the appellants to be raised before the concerned court.

13. As informed by Mr. Ramadhar Singh, learned counsel for the appellant that the matter is still pending before the concerned court and thus all the issues can be taken up for consideration and accordingly, whereafter order can be passed by the learned court.

14. This Court do not find any error in the order dated 24.09.2018 in T.A. No. 06 of 2006. The present appeal is without any merit and is accordingly dismissed.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2022
Transmission Date	NA

