

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.116 of 2018

1. Nand Kishore Rai
2. Sitaram Rai
3. Fulena Rai
4. Umesh Rai
5. Lalan Rai
6. Ravindra Rai All sons of Late Natho Rai resident of village Sikandarpur Rajaura, P.S. Begusarai Muffasil, District Begusarai.
7. Bimla Devi wife of Late Mishrilal Singh, daughter of Late Natho Singh resident of village Bijuliya, P.S. Shambho, District Begusarai.
8. Most. Raj Kumari Devi wife of Late Brahmdeo Singh, daughter of Late Natho Singh resident of village Manjhaul, P.S. Cheriya Bariyarpur, District Begusarai.

... .. Appellant/s

Versus

1. Ram Udit Rai
2. Ram Lalit Rai Both sons of Late Shivadhin Rai resident of village Rajaura, P.S. and District Begusarai.
3. Bechu @ Bechan Sah son of Late Bilat Sah
4. Biso Sah son of Late Gulo Sah
5. Mahendra Sah son of Late Gulo Sah All residents of village Badi Sankh, P.S. and District Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dronacharya, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 28-09-2022

This Second Appeal has been preferred against the judgment and decree dated 29.11.2017 and 16.12.2017 respectively passed by learned Additional District Judge – VIII, Begusarai in Title Appeal No. 06/06 affirming the judgment and de-



cree dated 25.03.2000 and 07.04.2000 respectively passed by Sub Judge VI, Begusarai in Title Suit No. 110 of 1995, whereby the suit of the plaintiff was dismissed on context with cost.

Legal heirs of original plaintiff Late Natho Rai are appellants herein. The plaintiff filed title suit for getting declaration that plaintiff has got right, title and interest over his ancestral land described in Schedule VI of the plaint and defendants have got no concern with the same in any manner whatsoever. Plaintiff further sought relief that all the six sale deeds, (details given in schedule VII of the plaint) executed by defendant first party in favour of defendant second party are illegal, void, inoperative and not binding upon the plaintiff and defendant second party did not acquire any right and title over schedule VII land on the basis of those sale deeds.

The detail facts of the case are given in the judgment of the courts below which is not required to be reproduced herein. As per the plaintiff one Sundar Rai alias Rudar Rai had two sons namely, Jiwan Rai and Nunu Rai and Gopal Rai was not son of Rudar Rai. Except on the point of Gopal Rai, the defendants accepted the genealogy given by the plaintiffs. The plaintiff has given details in the plaint about the alleged partition and allotment of the share. It is claimed that after partition the family of the de-



defendant first party had no concern with the suit property in any manner but the defendant 1st party executed 6 registered sale deed in the name of the defendant 2nd party without the knowledge of the plaintiff by giving wrong boundaries and wrong plots belonging to plaintiff.

On the other hand, as per the defendants Sundar Rai had three sons namely Gopal Rai, Jiwan Rai and Nunu Rai and not two sons as stated by the plaintiff. As per the defendants three brothers constituted Joint Hindu Family and Gopal Rai was the eldest son who died in jointness with his brothers living behind his only son Shrawan Rai before the survey operation. According to the defendants the plaintiff managed to obtain the rent receipt fraudulently of a larger area over which either plaintiff or his ancestors had never any right, title and possession and those rent receipts are forged and fabricated. The defendant 1st party claims to have executed the said six sale deed, to the vendees on payment of consideration and in respect of his land of his share which was in his possession.

The learned trial court framed 7 issues in which issue no. 6 is the main issue as to whether the story of partition and allotment of share in the plots as stated by the plaintiff is correct or not?



After discussing the evidence both oral and documentary the trial court found that the story of partition and allotment of share in the plots as stated by the plaintiff is not correct at all. The plaintiff wanted to get something out of nothing on the basis of collusive entry in Khatian after influencing the survey authority and accordingly, issue no. 6 decided against the plaintiff.

The learned first appellate court also find that plaintiff has miserably failed to prove the genealogy as given in the plaint as well as the story of partition and allotment of share in plots as stated in the plaint.

Learned counsel for the appellant submits that the impugned judgments and decrees passed by the court below is bad in law as well as on facts. Learned courts below have took the evidence of plaintiff in part instead of reading the whole evidences harmoniously in accordance with law. The courts below miserably failed to appreciate the effect of Section 6 of Hindu Succession Act 1956 as amended by Amendment Act, 2005 with effect from 9.9.2005.

Having heard learned counsel for the appellant and on perusal of the judgments of both trial court and the appellate court, it appears that both the courts below have given concurrent finding on the basis of evidences that the plaintiff has not proved the ge-



nealogy as given in plaint as well as the story of partition and allotment of share as given in plaint. The courts below have applied their judicial mind and the finding of facts based on evidence cannot be stated as perverse. There is no perversity or unreasonableness in the concurrent findings of both the courts below. No substantial question of law arises in this second appeal which is required to be determined by this Court.

Accordingly, the second appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
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