

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.548 of 1992

- 1.1. Digvijay Kumar Singh S/o Late Maheshwar Singh @ Maheshwar Pd. Singh Resident of Village- Bishunpur Chaklala, @ Baranti, P.S.- Biddupur (Railway Station), District- Vaishali.
- 1.2. Shrimati Malti Devi D/o Late Maheshwar Singh @ Maheshwar Pd. Singh Resident of Village- Bishunpur Chaklala, @ Baranti, P.S.- Biddupur (Railway Station), District- Vaishali.

... .. Appellant/s

Versus

- 1.1. Pramila Devi Wife of Late Nand Lal Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 1.1. Dilip Kumar Rai S/o Late Nand Lal Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 1.2. Mostt. Kamini Devi Widow of Late Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.2. Sunil Rai Son of Late Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.2. Shushil Rai Son of Late Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.2. Madhuri Devi Daughter of deceased Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.2. Maya Devi Daughter of deceased Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.2. Chanda Devi Daughter of deceased Ganga Bishun Rai @ Ganga Kishun Rai Resident of Village- Bishunpur Chak Lala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar O.P. Baranti, Dist.- Vaishali.
- 1.3. Lagandeo Rai Son of Late Monakia Devi, Wife of Late Jai Mandal Rai Resident of Village- Bishunpur, Branti, P.S.- Raja Pakar, District- Vaishali.
- 1.4. Mostt. Anita Devi Wife of deceased Lakshman Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.O.- Bidupur (Railway Station), P.S.- Raja Pakar, Dist.- Vaishali.
- 1.4. Anoj Rai Son of deceased Lakshman Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.O.- Bidupur (Railway Station), P.S.- Raja Pakar, Dist.- Vaishali.
- 1.4. Mukesh Rai Son of deceased Lakshman Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.O.- Bidupur (Railway Station), P.S.- Raja Pakar, Dist.- Vaishali.
- 1.4. Bebi Devi Daughter of deceased Lakshman Rai, W/o Rakesh Prasad



4. Resident of Village- Bishunpur Chaklala @ Baranti, P.O.- Bidupur (Railway Station), P.S.- Raja Pakar, Dist.- Vaishali.
- 1.5. Lalan Rai Son of Late Monakia Devi, Wife of Late Jai Mangal Rai Resident of Village- Bishanpur, Branti, P.S.- Raja Pakar, District- Vaishali.
- 1.6. Smt. Sumitra Devi D/o Late Monakia Devi and Late Jai Mangal Rai Resident of Village- Bishanpur, Branti, P.S.- Raja Pakar, District- Vaishali.
2. Bishwanath Pd. Rakesh, S/o Ram Swarup Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 3.1. Shakuntala Devi Daughter of Late Rameshwar Singh, W/o Fate Bahadur Singh R/o Village Ghataro (Gosin Tola), P.O.- Ghataro, P.S.- Lalganj, District- Vaishali.
- 4.1. Upendra Prasad Singh S/o Late Ram Pari Devi, W/o Late Singheshwar Singh Resident of Village Bhikhanpura, P.O.- Bhatwaliya via Deshari, P.S.- Deshari, Dist.- Vaishali.
- 4.2. Shail Devi Daughter of Late Ram Pari Devi, W/o Late Singheshwar Singh Resident of Village Bhikhanpura, P.O.- Bhatwaliya via Deshari, P.S.- Deshari, Dist.- Vaishali.
- 4.3. Dharmshila Devi Daughter of Late Ram Pari Devi, W/o Late Singheshwar Singh Resident of Village Bhikhanpura, P.O.- Bhatwaliya via Deshari, P.S.- Deshari, Dist.- Vaishali.
- 5.2. Sushila Devi D/o Late Anand Bihari Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.3. Sunil Kumar S/o Late Nagendra Singh Resident of Village- Bishunpur 1. Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.3. Sudhir Kumar S/o Late Nagendra Singh Resident of Village- Bishunpur 2. Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.3. Most. Ranjana Devi W/o Late Sushil Kumar Resident of Village- Bishunpur 3.1. Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.3. Prashant Kumar S/o Late Sushil Kumar Resident of Village- Bishunpur 3.2. Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.3. Piyush Kumar S/o Late Sushil Kumar Resident of Village- Bishunpur 3.3. Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.4. Ravindra Singh S/o Late Anand Bihari Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.5. Mostt. Raj Kumari Devi W/o Late Dharendra Singh Resident of Village- 1. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 5.5. Bipin Kumar Singh S/o Late Dharendra Singh Resident of Village- 2. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 6.2. Shivji Singh Son of Late Ramji Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 6.3. Shivnath Singh Son of Late Ramji Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 6.6. Most. Gyani Devi W/o Late Vishwanath Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.



- 6.7. Prem Grand Son of Late Ramji Singh and Son of Vishwanath Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 6.8. Vikas Grand Son of Late Ramji Singh and Son of Vishwanath Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 6.9. Guriya Grand daughter of Late Ramji Singh and daughter of Vishwanath Singh Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
7. Lakshmi Kumari Sinha, D/o Late Sahdeo Singh Resident of Village- Cha Garho, P.S.- Biddupur, District- Vaishali.
- 8.1. Most. Darbi Devi W/o Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.2. Most. Parwati Devi Wife of Late Bindeshwar Pd. Sah Resident of Village- Chakbarua @ Chak Barauna, Post Office- Bidupur Railway Station, P.S.- Raja Pakar, Dist.- Vaishali.
- 8.2. Sanjay Sah Son of Late Bindeshwar Pd. Sah Resident of Village- Chakbarua @ Chak Barauna, Post Office- Bidupur Railway Station, P.S.- Raja Pakar (Baranti O.P.), Dist.- Vaishali and at present they are residing at Village- Bishunpur Chaklala @ Branti (Bidupur R.S. Market), Post Office- Bidupur (R.S.), Police Station- Rajapakar (Branti O.P.), District- Vaishali.
- 8.2. Jai Babu Sah @ Sanjeev Kumar Son of Late Bindeshwar Pd. Sah Resident of Village- Chakbarua @ Chak Barauna, Post Office- Bidupur Railway Station, P.S.- Raja Pakar (Baranti O.P.), Dist.- Vaishali and at present they are residing at Village- Bishunpur Chaklala @ Branti (Bidupur R.S. Market), Post Office- Bidupur (R.S.), Police Station- Rajapakar (Branti O.P.), District- Vaishali.
- 8.2. Rakesh Sah Son of Late Bindeshwar Prasad Sah Resident of Village- Chakbarua @ Chak Barauna, Post Office- Bidupur Railway Station, P.S.- Raja Pakar (Baranti O.P.), Dist.- Vaishali and at present they are residing at Village- Bishunpur Chaklala @ Branti (Bidupur R.S. Market), Post Office- Bidupur (R.S.), Police Station- Rajapakar (Branti O.P.), District- Vaishali.
- 8.2. Prabhakar Sah Son of Late Bindeshwar Prasad Sah Resident of Village- Chakbarua @ Chak Barauna, Post Office- Bidupur Railway Station, P.S.- Raja Pakar (Baranti O.P.), Dist.- Vaishali and at present residing at Vaishali Nursing Home, Mahua, Gajipur Road, Post Office and Police Station- Mahua, District- Vaishali.
- 8.3. Surendra Sah Son of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.4. Mithilesh Sah Son of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.5. Shakuntala Devi Daughter of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.6. Shanti Devi Daughter of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.7. Asha Devi Daughter of Late Kishun Lal Sah Resident of Village



Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.

- 8.8. Shobha Devi Daughter of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 8.9. Dropadi Devi Daughter of Late Kishun Lal Sah Resident of Village Andharwara, P.S.- Rajapakar (Hajipur), District- Vaishali.
- 9.1. Most. Basiya Devi W/o Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
- 9.2. Mahesh Sah Son of Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
- 9.3. Kamleshwar Sah Son of Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
- 9.4. Sujit Sah Son of Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
- 9.5. Jai Prakash Sah Son of Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
- 9.6. Sudha Devi Daughter of Late Brahmdeo Sah Resident of Village Andharwara Chouki, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Smt. Ganpati Devi (Daughter of Late Parsuram Thakur) wife of Satruhan Choudhary Resident of Village Nanhi Chandpura, Post Nanhi Chandpura, P.S.- Mohaddinagar, Dist.- Samastipur.
10. Mostt. Gita Devi Wife of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Lalan Kumar Thakur Son of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Ravi Shankar Thakur Son of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Sunoj Thakur Son of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Gaurav Thakur Son of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Manju Devi Daughter of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Nilu Devi Daughter of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.- Vaishali.
10. Bebi Devi Daughter of Late Maheshwar Thakur Resident of Village Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-



Vaishali.

10. Mamata Devi Daughter of Late Maheshwar Thakur Resident of Village
2.9. Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-
Vaishali.
10. Rani Devi Daughter of Late Maheshwar Thakur Resident of Village
2.1 Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-
0. Vaishali.
10. Ranjan Devi Daughter of Late Maheshwar Thakur Resident of Village
2.1 Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-
1. Vaishali.
10. Sudha Kumari Daughter of Late Maheshwar Thakur Resident of Village
2.1 Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-
2. Vaishali.
10. Suresh Thakur Son of Late Parsuram Thakur Resident of Village
3. Andharwara, P.O.- Bidupur (R.S.), P.S.- Rajapakar (Hajipur), Distt.-
Vaishali.
11. Rukmini Devi Widow of Late Bishwanath Prasad Keshari Resident of
1. Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District-
Vaishali.
11. Raj Kumar Keshari Son of Late Bishwanath Prasad Keshari Resident of
2. Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District-
Vaishali.
11. Raj Kishore Keshari Son of Late Bishwanath Prasad Keshari Resident of
3. Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District-
Vaishali.
11. Ajay Kumar Keshari Son of Late Bishwanath Prasad Keshari Resident of
4. Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District-
Vaishali.
11. Vivekanand Keshari Son of Late Bishwanath Prasad Keshari Resident of
5. Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District-
Vaishali.
12. Rajesh Kumar Keshari Son of Late Jadunath Pd. Keshari Resident of Village
2. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
12. Om Prakash Keshari Son of Late Jadunath Pd. Keshari Resident of Village
3. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
12. Jai Prakash Keshari Son of Late Jadunath Pd. Keshari Resident of Village
4. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
13. Most. Gaura Devi W/o Late Raghunath Prasad Keshari Resident of Village
1. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Rajmuni Devi W/o Late Buban Prasad Keshari Resident of Village
2.1. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Rinku Devi Daughter of Late Buban Prasad Keshari Resident of Village
2.2. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Pinki Devi Daughter of Late Buban Prasad Keshari Resident of Village
2.3. Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.



13. Munna Prasad Keshari, Minor Son of Late Buban Prasad Keshari Under the guardianship of his mother, Most. Rajmuni Devi, Resident of Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Uday Chand Keshari Son of Late Raghunath Prasad Keshari Resident of Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Prem Chand Keshari Son of Late Raghunath Prasad Keshari Resident of Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
13. Renu Kumari Daughter of Late Raghunath Prasad Keshari Resident of Village Bishunpur Chaklala @ Baranti, P.S.- Rajapakar, District- Vaishali.
14. Most. Rajpati Devi, W/o Late Bhawani Lal Pd. Keshari Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
15. Sheoji Rai, S/o Jhimi Lal Rai Resident of Village- Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.
16. Most. Sumitra Devi W/o Late Ram Sarekh Sharma Resident of Village Ajmatpur, Seni, P.S.- Rajapakar (Hajipur), District- Vaishali.
16. Dilip Sharma Son of Late Ram Sarekh Sharma Resident of Village Ajmatpur, Seni, P.S.- Rajapakar (Hajipur), District- Vaishali.
16. Arvind Sharma Son of Late Ram Sarekh Sharma Resident of Village Ajmatpur, Seni, P.S.- Rajapakar (Hajipur), District- Vaishali.
16. Indu Devi Daughter of Late Ram Sarekh Sharma Resident of Village Ajmatpur, Seni, P.S.- Rajapakar (Hajipur), District- Vaishali.
16. Nirmal Devi Daughter of Late Ram Sarekh Sharma Resident of Village Ajmatpur, Seni, P.S.- Rajapakar (Hajipur), District- Vaishali.
17. Krishna Mohan Sah @ Girwal Sah Son of Late Anuth Lal Sah R/o Village- Chak Thakurashi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, District- Vaishali, at present residing at Girwal Hardware, Chak Barua, Near Sheo Mandir Pethia Gachhi, Bidupur Railway Station Road, P.O.- Bidupur R.S., P.S.- Rajapakar Baranti O.P., District- Vaishali.
17. Sharda Devi W/o Mahendra Sah, Daughter of Late Anuth Lal Sah R/o Village- Chak Thakurashi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, District- Vaishali, at present residing at Village- Murgia- Chak, P.O.- Kheshrahi, Via- Patepur, P.S.- Patepur, District- Vaishali.
18. Mostt. Monakiya Devi Widow of Late Hari Kishun Sah Resident of Village Chak Thakursi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.- Vaishali.
18. Braj Kishore Sah Son of Late Hari Kishun Sah Resident of Village Chak Thakursi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.- Vaishali.
18. Krishna Nandan Kumar Son of Late Hari Kishun Sah Resident of Village Chak Thakursi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.- Vaishali.
18. Dhananjay Kumar Son of Late Hari Kishun Sah Resident of Village Chak Thakursi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.- Vaishali.
18. Shrimati Sangita Devi Daughter of Late Hari Kishun Sah Resident of Village Chak Thakursi @ Kushiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.- Vaishali.



18. Shrimati Meera Devi Daughter of Late Hari Kishun Sah Resident of Village
6. Chak Thakursi @ Kusiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.-
Vaishali.
18. Shrimati Punam Devi Daughter of Late Hari Kishun Sah Resident of Village
7. Chak Thakursi @ Kusiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.-
Vaishali.
18. Shrimati Puspa Devi Daughter of Late Hari Kishun Sah Resident of Village
8. Chak Thakursi @ Kusiya, P.O.- Bidupur R.S., P.S.- Bidupur, Dist.-
Vaishali.
19. Mostt. Urmila Devi Wife of Late Radhasaran Singh Resident of Village
1. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
19. Shashi Bhushan Singh Son of Late Radhasaran Singh Resident of Village
2. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
19. Shashi Nath Singh Son of Late Radhasaran Singh Resident of Village
3. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
19. Deo Nath Singh Son of Late Radhasaran Singh Resident of Village
4. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
19. Baijanti Devi Daughter of Late Radhasaran Singh R/o Village Ram Dauli
5. Tola, Karmopur, P.O. and P.S.- Bidupur, District- Vaishali.
20. Harischandra Singh Son of Late Dip Narain Singh Resident of Village
1. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
20. Sanjiv Kumar Singh Son of Late Dip Narain Singh Resident of Village
2. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
20. Sanjay Kumar Son of Late Dip Narain Singh Resident of Village Bishunpur
3. Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja Pakar, Dist.-
Vaishali.
20. Rekha Kumari Daughter of Late Dip Narain Singh Resident of Village
4. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
21. Sulekha Devi Wife of Late Chandeshwar Singh Resident of Village
1. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
21. Nitish Kumar Son of Late Chandeshwar Singh Resident of Village
2. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
21. Prabhat Kumar Son of Late Chandeshwar Singh Resident of Village
3. Bishunpur Chaklala @ Baranti, P.O.- Bidupur Railway Station, P.S.- Raja
Pakar, Dist.- Vaishali.
22. Rama Kant Singh, Son of Late Baleshwar Singh Resident of Village-
Bishunpur Chaklala @ Baranti, P.S.- Rajapakar (Hajipur), District- Vaishali.



... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bind Keshari Kumar, Sr. Advocate with Mr. Gopal Pandey, Advocate Mr. Kumar Ravi, Advocate
For the Respondent nos. 9(ii) to 9(iv)	:	Mr. Rakesh Kumar Ranjan, Advocate
For substituted heirs	:	Mr. Ramesh Kumar Chaudhary, Advocate Mr. Ashok Kumar Sinha No. 2, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 24-11-2023

This Second Appeal has been filed by the plaintiff no. 2/appellant against the judgment and decree dated 29.09.1992 passed by the learned Vth Additional District Judge, Vaishali at Hajipur in Title Appeal No. 7 of 1988, allowing the appeal and setting aside the final decree dated 26.09.1987 passed by the Subordinate Judge-1st Vaishali at Hajipur in Title Suit No. 20 of 1973/ 30 of 1975, whereby report of the Pleader Commissioner was confirmed.

2. On 08.12.1993, the following substantial question of law was formulated while admitting the appeal:-

“Whether the final decree in partition suit can be set aside in appeal at the instance of a party who has neither preferred any appeal against the preliminary decree nor contested the suit and / or filed objection before the advocate commissioner or, thereafter, against the said



report before its confirmation and passing the final decree?”

3. The Partition Suit No. 20 of 1973/ 30 of 1975 was filed by, Baleshwar Singh, plaintiff no. 1 and Maheshwar Singh, plaintiff no. 2 (original appellant). The said Baleshwar Singh is the brother of plaintiff no. 2/appellant, for partition of the property described in schedule 1 of the plaint in which 3/8th share was declared in favour of plaintiffs, 1/8th share of defendant no. 1 and 1/2 share of defendant no. 2 to 3. In the said partition suit, preliminary decree was passed on 10.03.1979. Against the preliminary decree dated 10.03.1979, some of the defendants filed Title Appeal No. 39 of 1979 which was dismissed vide judgment and decree dated 02.04.1985 and preliminary decree was affirmed. Thereafter Pleader Commissioner was appointed, who submitted his report on 17.08.1987 in the lower court whereafter the learned court below invited objection against the Pleader Commissioner's report. However, no objection was filed by any of the parties against the Pleader Commissioner's report. Accordingly the report of the Pleader Commissioner was accepted on 26.09.1987 by the lower court, and accordingly final decree was prepared on 10.12.1987.

4. Against the said final decree dated 26.09.1987 passed by Sub Judge-1, Vaishali at Hajipur in Partition Suit No. 20 of 1973/ 30 of 1975, filed by Monakiya Devi and Vishwanath Prasad Rakesh,



Title Appeal No. 7 of 1988 was filed. Both the appellants, namely, Monakiya Devi and Vishwanath Prasad Rakesh had purchased plot no. 692 from defendant no. 1 Runa Kunwar, but since Runa Kunwar has been given share in plot no. 690, so these two appellants were compelled to console themselves with plot no. 690, which is open land. Hence, the aforesaid title appeal was filed challenging the allotment of Runa Kunwar, defendant no. 1. It is further mentioned that in paragraph no. 24 of judgment of preliminary, there is specific direction of the court that Runa Kunwar shall get her share in plot no. 692, which will be accommodated amongst the purchasers from Runa Kunwar, but the learned court below as well as Pleader Commissioner have completely ignored the direction of the court below and has misdirected itself by depriving Runa Kunwar and her vendees from plot no. 692 in its allotment. It is further contended that the final decree is not in consonance with the preliminary decree.

5. On the other hand, plaintiff-appellant raised objection with regard to the death of respondent no. 14, namely, Ganesh Lal Prasad Keshri, who died prior to the admission of Title Appeal and the appellants had not prayed for his substitution within time. In reply, the appellants-respondents have not sought any relief against Ganesh Lal Prasad Keshri, so there is no need of substitution. Simply the name of Ganesh Lal Prasad Keshri would be expunged from the



memo of appeal, and the learned lower appellate court allowed the prayer for expunging the name of Ganesh Lal Prasad Keshri.

6. The learned lower appellate court after analysing the impugned final decree and materials on records found that the Pleader Commissioner has not allocated separate patti to all the parties correctly in accordance with the value of the land, in question, and has held that Pleader Commissioner report is not proper and justified, rather, it is arbitrary and one sided, and accordingly allowed the aforesaid Title Appeal and directed the lower court to appoint Pleader Commissioner for allotting patti to the parties concerned in accordance with their share on the strength of proper assessment of the value and price of the suit property.

7. So far substantial question of law that failure to file appeal against the preliminary decree would operate as a bar in an appeal filed against final decree is concerned, the provision of Section 97 of the Code of Civil Procedure is that the preliminary decree, so far as the matter covered by it are concerned, is regarded as embodying in the final decision of the court passing that decree. The final decree should be passed by the trial court on the basis of preliminary decree after satisfying the division of the suit schedule properties by metes and bounds unless the appeal is filed by the aggrieved parties against such preliminary decree regarding its correctness. The same would become final in view of Section 97 of



the Code of Civil Procedure as has held by the Hon'ble Supreme Court that in case in which it has held that after determination of the right of the parties in the partition suit and after passing of a preliminary decree is the final decision in so far as the rights of parties existed as on the date. The Apex Court has reiterated the view of Hon'ble Supreme Court in the case of *Mool chand Vs. Deputy Director Consolidation*, reported in (1955) 5 SCC 631. The Apex Court after considering the three judges Bench Judgment and also considering the provision under Section 97 of the Code of Civil Procedure and Order 20 Rule 18 Sub Rule 1 and 2 of the Code of Civil Procedure, has reiterated the legal principle enunciated in the earlier judgment.

8. It is well settled that where any party aggrieved by the preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree as provided under Section 97 of the Code of Civil Procedure. The appellants of the Title Appeal have not challenged the correctness of the preliminary decree passed in partition suit. Therefore, any aggrieved party, who has not filed any appeal against the preliminary decree with regard to right, title and interest or shares can challenge final decree in appeal with regard to "Rai", Simt and valuation as well as the same not being in consonance with the



preliminary decree. Reference in this regard may be made to a decision of the Madras High Court in case of **S.A. (MD) No. 1028 of 2008 and M.P. (MD) No. 1 of 2008, Abdul Rasheed and Ors. Vs. Abdul Jabbar and Ors.**, decided on 18.07.2018 (**Manupatra**) in which it has been held that even a litigant who does not file objection in trial court in an appropriate case (though not as a general rule) can raise the same at the appellate stage.

9. From perusal of the final decree, it appears that the pleader commissioner has not followed the direction given in preliminary decree and the learned lower court has ignored the direction given in preliminary decree.

10. In the facts and circumstances of the case, the substantial question of law formulated is, therefore, answered against the appellant.

11. Thus, this Second Appeal has got no merit and accordingly, it is dismissed.

(Khatim Reza, J)

premchand/-

AFR/NAFR	NAFR
CAV DATE	06.10.2023
Uploading Date	01.12.2023
Transmission Date	N/A

