

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.636 of 2010

Sudama Chaudhary, S/O Late Gopi Choudhary, R/O - Vill-Laxmipur, P.S. - Siwan Town, P.O. Siwan, District – Siwan.

Plaintiff/ Appellant/ Appellant

Versus

1. Sarashwati Devi, W/o- Late Raj Bali Chaudhary
2. Parameshwar Chaudhary, S/o Late Raj Bali Chaudhary
3. Kali Charan Chaudhary, S/o Late Raj Bali Chaudhary
4. Kumari Guddi, D/o Late Raj Bali Chaudhary
5. Jiut Choudhary, S/o Late Raj Bali Chaudhary
6. Bhikham Chaudhary, S/o Late Raj Bali Chaudhary

Respondent nos. 1 to 6 are R/O-Vill - Laxmipur, P.S. - Siwan Town, District - Siwan.

7. Billai Devi, W/o-Gorakh Chaudhary, D/o-Late Raj Bali Choudhary, R/o-Vill - Sheorajpur, P.S. Barharia, District - Siwan.

Defendants/Respondents/Respondents - 1" set

8. Sudama Choudhary, S/o Late Goga Choudhary, R/o- Laxmipur, P.S. - Siwan Town, District-Siwan.
9. Ramji Chaudhary, S/O - Late Bala Choudhary, R/o - Laxamipur, P.S.- Siwan Town, District - Siwan
10. Sheoji Chaudhary, S/o- Bala Chaudhary, R/o- Laxamipur, P.S. Siwan Town, District-Siwan.
11. Parmanand Bhagat, S/o-Late Keshwar Bhagat
12. Shanti Devi, D/o-Late Keshwar Bhagat
13. Kanti Devi, D/o Late Keshwar Bhagat
14. Fulmati Devi, W/o Kedar Sah,
R/o-Laxamipur, P.S. Siwan Town, District - Siwan
15. Malti Devi, W/o-Ram Briksha Prasad, R/o-Vill-Laxamipur, P.S. - Siwan Town, District-Siwan.



16. Usha Devi, W/o - Ram Ashish Prasad, R/o-Vill-Laxmipur, P.S. - Siwan Town, District - Siwan.

17. Smt. Naina Devi, W/o- Hridyanand Yadava, R/o-Vill- Jasauli Sagar, P.O and P.S. - Pachrukhi, District- Siwan.

18. Smt. Dewanti Devi, W/o-Baij Nath Chaudhary, R/o-Vill Hardia, P.S. - Pachrukhi, District - Siwan.

19. Malti Devi, W/o - Ram Ekbal Singh, R/o-Vill & Post-Hardia, P.S. - Pacharukhi, District - Siwan.

Defendants/ Respondents/ Respondents - 2nd Set.

20. Lalji Chaudhary, S/o- Late Rakatu Chaudhary

21. Diwakar Prasad Yadav, S/o - Lalji Chaudhary

22. Ganesh Yadav, S/o - Lalji Chaudhary

23. Ajai Kumar Yadav, S/o - Lalji Chaudhary

24. Smt. Rajanti Devi, D/o-Lalji Chaudhary

25. Smt. Bedanti Devi, D/o - Lalji Chaudhary,

R/oVill-Jiaon, P.S. Siwan Town, District - Siwan.

26. Sheorati Devi, W/o- Sheo Nath Chaudhary, R/o-Vill+P.O + P.S. - Barharia, District- Siwan.

Name of Deceased respondent no. 27 expunged v/o 14.08.2019 and heirs substituted.

27(A) Dewanti Devi - D/o - Deceased respondent no. 27 Late Kabutari Devi.

27(B) Rina Devi - D/o - Deceased respondent no. 27 Late Kabutari Devi. Both are R/o-Vill-Mishrauli, P.O-Titra, P.S. Jiradei, District-Siwan.

Defendants/Respondents/Respondents - 3rd Set.

28. Radha Devi, W/o Banke Sharma, R/o-vill-Babhnethi, Mirganj, P.O. and P.S. - Mirganj, District - Gopalganj.

29. Dhurub Sharma

30. Ratan Sharma

Both, S/o-Late Bhagwano Devi, R/o- Vill-Pakwalia, P.S.- Hussainganj at present Purana quila, Bania Toli, Siwan

Intervenor/ Respondents/Respondents - 4th Set



with
SECOND APPEAL No. 638 of 2010

1. Lalji Chuadhary, S/o Late Rakatu Chaudhary

2. Diwakar Prasad yadav, S/o Lalji Chaudhary

3. Ganesh Prasad Yadav, S/o Lalji Choudhary

4. Ajai Kumar Yadav, S/o Lalji Chaudhary

5. Smt. Rajanti Devi, D/o Lalji Chaudhary

6. Smt. Bedanti Devi, D/o Lalji Chaudhary

All resident of village Jianon, P.S. Siwan Muffasil, District-Siwan.

7. Sheorati Devi, W/o Sheo Nath Chaudhary

8(A) Dewanti Devi

8(B) Rina Devi

Both Daughter of deceased appellant no. 8 Kabutari Devi, R/o - Vill - Mishrauli, P.O. - Titra, P.S. - Jiradei, District - Siwan.

Defendants/Appellants/Appellants

Versus

1. Sarashwati Devi, w/o - Late Raj Bali Choudhary 2. Parmeshwar Chaudhary, S/o - Late Raj Bali Chaudhary

3. Kali Charan Chaudhary, S/o-Late Raj Bali Chaudhary

4. Kumari Guddi, D/o - Late Raj Bali Chaudhary

5. Jiut Chaudhary, S/o - Late Raj Bali Chaudhary

6. Bhikam Chaudhary, S/o-Late Raj Bali Chaudhary

Respondent nos. 1 to 6 are R/O-Vill-Laxmipur, P.S. Siwan Town, District-Siwan.

7. Billai Devi, W/o - Gorakh Chaudhary, D/o-Late Raj Bali Choudhary, R/o - Vill- Sheorajpur, P.S. - Barharia District-Siwan.



Defendants - Respondents 1" set 8. Sudama Choudhary, S/o Late Goga Choudhary, R/o-Laxmipur, P.S. - Siwan Town, District-Siwan.

**Heirs of deceased respondent no. 9 substituted v/o
14.08.2019**

9(i) Umesh Chaudhary

9(ii) Kmalesh Chaudhary

9(iii) Shailesh Chaudhary

9(iv) Saheb Chaudhary

All, S/o Deceased Respondent no. 9 Ramji Chaudhary R/o- Laxamipur, P.S. - Siwan Town, District - Siwan.

10. Sheoji Chaudhary, S/o-Bala Chaudhary, R/o-Laxamipur, P.S. Siwan Town, District-Siwan.

Heirs of deceased respondent no. 11 substituted v/o 14.08.2019

11(i) Mosmat Naina Devi, Widow of deceased Respondent no. 11 Late Parmanand Bhagat

11(ii) Lal Babu Prasad, Son of Late Parmanand Bhagat

11(iii) Amarjeet Prasad, Son of Late Parmanand Bhagat

11(iv) Satyendra Prasad, Son of Late Parmanand Bhagat

11(v) Anand Prasad, Minor son aged about 12 years son of late Parmanand Bhagat under the guardianship of Mother Mosmat Naina Devi.

All are R/o Laxmipur, P.S-Siwan Muffasil, District - Siwan.

**Name of Respondents no. 12. Shanti Devi & 13. Kanti Devi expunged v/o
09.03.2016**

14. Dhruva Sharma, S/o Late Ratan Sharma

15. Prabhu Sharma, S/o Late Ratan Sharma Both Resident of Baniya Toli, P.O. + P.S. Siwan Town, District - Siwan.

16. Fulmati Devi, W/o Kedar Sah

17. Malti Devi, W/o Ram Briksha Prasad

18. Usha Devi W/o Ramashish Prasad Respondent nos. 16 to 18 are resident of Vill- Lakshmipur, P.S. - Siwan Town, District- Siwan.



19. Smt. Dewanti Devi, W/o-Baij Nath Chaudhary, R/o-Vill Hardia, P.S. - Pachrukhi, District-Siwan.

20. Smt. Naina Devi, W/o- Hridyanand Yadava, Pachrukhi, District-Siwan. R/o-Vill-Jasauli Sagar, P.O and P.S. -

21. Malti Devi, W/o- Ram Ekbal Singh, R/o-Vill & Post - Hardia, P.S. - Pacharukhi, District - Siwan. R/o-Laxmipur, P.S. - Siwan Town,

22. Sudama Choudhary, S/o Late Goga Choudhary, District - Siwan.

23. Radha Devi, W/o - Banke Sharma, R/o-vill-Babhnethi, Mirganj, P.O. and P.S. - Mirganj, District - Gopalganj, at present Siwan Dakshin Tola, P.S. - Siwan Town, District – Siwan.

Defendants/Respondents/Respondents

Appearance :

(In SECOND APPEAL No. 636 of 2010)

For the Appellant/s : Mr. Anant Prasad Srivastava

For the Respondent/s : Mr. Raghav Prasad

(In SECOND APPEAL No. 638 of 2010)

For the Appellant/s : Mr. Anant Prasad Shrivastava

For the Respondent/s : Mr. Shiv Sager Sharma

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

18 27-08-2024 Heard learned counsel for the parties.

2. Both the Second Appeal have been filed against the judgment and decree of affirmance.

3. The Second Appeal No. 636 of 2010 has been filed by the plaintiff/appellant against the judgment and decree of affirmance passed in Title Appeal No. 2 of 1995 by the learned Additional District Judge (Fast Track Court-I, Siwan) on 30.06.2010.

4. The Second Appeal No. 638 of 2010 has been filed by the defendant/appellant against the judgment and



decree of affirmance passed in Title Appeal No. 18 of 1995 by the learned Additional District Judge (Fast Track Court-I, Siwan) on 30.06.2010.

5. Both the aforesaid two Second Appeals have been filed against the common judgment and decree dated 30.06.2010 passed by learned lower Appellate Court whereby the judgment and decree dated 02.01.1995 passed by Sub-Judge- Vth, Siwan in Title Suit No. 217 of 1987 has been affirmed whereby the learned Sub-Judge & dismissed the suit on contest with cost.

6. The plaintiff's case, in short, is that one Param Choudhary had two sons, namely, Gopi Choudhary and Goga Choudhary. Goga Choudhary separated after having his share in the lifetime of his father, namely, Param Choudhary. The said Param Choudhary died living jointly with Gopi Choudhary. It is further pleaded that Gopi Choudhary had acquired landed property over which he had title and possession. The said Gopi Choudhary died on 10.12.1964 leaving behind his one son, namely, the plaintiff and wife Jhulena Devi and after his death his entire property was owned and possessed by the plaintiff and his mother



Jhulena Devi and Jhulena Devi also died in the month of Oct, 1980 leaving behind her son, the plaintiff. It is further contended that the first marriage of plaintiff's mother Jhulena Devi was with one Bhagan Choudhary. She got one son Rajbali Choudhary (defendant no. 1). The said Bhagan Choudhary deserted her as she was suffering from Asthma and neglected her since then she resided in her Naihar with her son Rajbali and Bhagan Choudhary married another women Fulwatia Devi. It is further case of the plaintiff that Bhagan Choudhary died at young age. After his death, Jhulena Devi entered into second marriage with Gopi Choudhary and from their wedlock the plaintiff was born. It is further case of the plaintiff that after the marriage with Gopi Choudhary, Jhulena Devi had brought her son Rajbali Choudhary with her to the place of Gopi Choudhary and at that time Rajbali Choudhary was aged about 8 years and since then defendant Rajbali Choudhary has been living at the house of the plaintiff. The plaintiff's father Gopi Choudhary before his death was suffering from paralysis due to which he had become unconscious and at that time, the plaintiff had gone out of his native place in search of



service. The defendant Rajbali Choudhary brought the plaintiff's father to Siwan for his treatment and got a forged Will into existence on 09.12.1964. It has been further stated that the defendant no. 1 in collusion with the officials of Registration office took the LTI of the plaintiff's father when he was unconscious and got it admitted by some strangers. The plaintiff denied the execution of the deed of Will by his father and has termed the same to be absolutely forged and fabricated. It has also been alleged that Gopi Choudhary was a literate man but deed of Will allegedly contained LTI of his father. It is further pleaded that Gopi Choudhary died on 10.12.1964 in unconscious state of mind. In the deed of Will, plaintiff's share in the property has been shown to the extent of 10 annas while that of defendant no. 1 has 6 annas which is wrong and illegal and that plaintiff's father had never any intention and wish to execute any Will nor did he do so. The mother of the plaintiff executed several forged deeds along with defendant no. 1 which have been prepared to create evidence and those are without any consideration and are inoperative. It is further contended that defendant no. 1 has executed certain



sale deeds on the basis of the deed of Will in the favour of defendant 2nd set who are his associates and friends and those deeds are without any consideration and are inoperative. It is further alleged that defendant no. 1 has got no right title and possession over the property of Gopi Choudhary nor the defendant 2nd set has got any right, title and possession on the basis of sale deed executed by defendant no. 1 in their favour.

7. On summons, defendant no. 1 Rajbali Choudhary appeared and filed his written statement and contested the suit. According to the case of defendant no. 1, the suit land was owned and possessed by Gopi Choudhary, who died about 3 years ago leaving behind his two sons, namely, the plaintiff and defendant no. 1 and they partitioned their land half and half. It is further case of the defendant that the lands allotted to the plaintiff in Bakhudaha partition has been detailed in Schedule-I of written statement and that of the defendant has been coming in separate possession over the land allotted in Bakhudaha partition. It is further case of the defendant that his title to the Schedule-II land and the written statement has been



perfected by virtue of adverse possession. It is further contended that it is false to say that Gopi Choudhary died on 10.12.1964 rather he died in March, 1965 leaving behind his two sons plaintiff and defendant and his widow Jhulena Devi. After his death, these heirs came in possession of his property. After two years of the death of Gopi Choudhary defendant no. 1 separated from the plaintiff and divided their lands and came in possession over their share. Jhulena Devi died not in the year 1980 rather she died in the year 1981. It is further contended that Jhulena Devi married only Gopi Choudhary and both the plaintiff and defendant no. 1 were born from their wedlock and she was never married with the said Bhagan Choudhary nor defendant no. 1 is the son of Bhagan Choudhary and the plaintiff in order to grab the property of defendant no. 1 has wrongly averred in the plaint. It is further pleaded that he is not son of Bhagan Choudhary from Jhulena Devi before she married Gopi Choudhary. It has been further stated that the mother of the defendant had first of all a female issue, namely, Ram Sawaria Devi and after her birth, the defendant was born and Ram Sawaria got married by Gopi Choudhary and she



died issueless. It is contended that the deed of mortgage was executed by the plaintiff, Jhulena Devi and defendant no. 1. It is also contended that plaintiff himself got executed conditional sale deed from the defendant but the plaintiff has concealed all these facts. The mortgage deed executed by the plaintiff, Jhulena Devi and defendant no. 1 is valid and mortgagee are in possession of the mortgage land. It has been contended that the plaintiff's in-laws house is situated in village Sakara Navrang and Jalim Choudhary is his father-in-law. Jalim Choudhary has got four daughters, namely, Deoratia Devi wife of Lalji Choudhary, Sheoratia Devi wife of Shivnath Choudhary, Kabutri Devi wife of Bholu Choudhary and Kalawati Devi wife of Sudama Choudhary (plaintiff) and that the former three are sisters-in-law of the plaintiff but the plaintiff has set up those three to be daughters of Gopi Choudhary to take share of this defendant and after admitting to be sisters got a partition. These three daughters are the sisters-in-law of the plaintiff.

8. On the other hand appellant nos. 1, 2, 3, 4, 5, 6 and 8 are the heirs of defendant nos. 10 and 12, however defendant no. 11 is the appellant no. 7 in Second Appeal



No. 638 of 2010 they are alleged to be daughters of said Gopi Choudhary, who filed their written statement to the effect that Gopi Choudhary died in the year 1964 leaving behind not only the plaintiff and his widow but also his daughters i.e. defendant nos. 10 to 12 and after the death of Gopi Choudhary these daughters also came in possession of the property of the Gopi Choudhary along with plaintiff and mother Jhulena Devi. Jhulena Devi died in the year 1980 leaving behind plaintiff and defendant nos. 10 to 12 as her heirs and they came in joint possession of the property. It is further contended that defendant no. 1 has got no right in the property of Gopi Choudhary nor he has right to execute any deed with respect to the property of Gopi Choudhary.

9. The learned Trial Court after considering the pleadings and evidence adduced by the parties and materials on record came to a clear finding that the plaintiff has not been able to adduce consistent, convincing and credible evidence and not even a chit of paper to establish that the defendant no. 1 (Rajbali Choudhary) is son of Bhagan Choudhary and not the son of Gopi Choudhary. The



evidence of DW-10 Ramchandra Choudhary, who has returned the mortgage deed after redemption of mortgage to the plaintiff, has also admitted that defendant no. 1 Rajbali Choudhary is the son of Gopi Choudhary. On the other hand defendant no. 1 adduced cogent, consistent and convincing evidence coupled with unimpeachable documentary evidence and has been able to controvert and revert the plaintiff's case and proved that he is son of Gopi Choudhary. The plaintiff has failed to prove that defendant no. 1, Rajbali Choudhary, is not son of Gopi Choudhary. Moreover, the plaintiff's witnesses have supported the case of defendant no. 1 and have admitted him to be the son of Gopi Choudhary. The oral evidence adduced on behalf of defendant no. 1 includes own nephew of Gopi Choudhary and there is no reason as to why he will depose against the plaintiff. More so, all the DWs are of independent character except of Vendee of the defendant no. 1. It has further been held that from Ext.D/2 and Ext. F/6, the plaintiff is stopped from challenging that the defendant no. 1 Rajbali Choudhary is not the son of Gopi Choudhary. Ext.D/2 is of the year 1965, which was executed by the plaintiff,



defendant no. 1 and their mother Jhulena Devi together. So far Ext.-F/6 is concerned, the plea of the plaintiff cannot be accepted that it was created for evidence. The deed is of the year 1986 before filing of the suit. So far the issue with regard to defendant nos. 10 to 12 whether they are the daughters of Gopi Choudhary or of Jalim Choudhary, the learned Trial Court after scrutinizing the evidence of the parties especially evidence adduced on behalf of defendant nos. 10 to 12 held that defendant nos. 10 to 12 are not the daughters of Gopi choudhary. The defendant nos. 10 to 12 have claimed that they have been coming in joint possession of the suit land after the death of their father Gopi Choudhary along with the plaintiff, but it has come in the cross examination of the defendants that the suit land is not cultivated by them. Not only this, they have asserted that the purchasers of defendant no. 1 are also in possession. The evidence adduced on behalf of defendant nos. 10 to 12 such as DW-10, namely, Jalim Choudhary, who is father-in-law of the plaintiff, has stated in his cross examination that he does not know the name of the daughters of Gopi Choudahry. DW-31, Magan Choudhary has claimed to be



Bhagna (sister's son) of Gopi Choudhary. The said witness has deposed in his cross examination that Gopi Choudhary had two sisters but has failed to say the name of his another sister (mausi of DW-31). He has further failed to disclose the name of plaintiff's father-in-law. DW-33 is Shivnath Choudhary claiming to be husband (son-in-law of Gopi Choudhary) of Shivrati Devi. He has stated that he had attended marriage of Devrati Devi and stated that Devrati Devi was eldest daughter of Gopi Choudhary. In the aforesaid facts, how DW-33 could have attended her marriage and also he claimed to have attended the marriage of Kabutri Devi, when she had been the age of 20 years. It has come in the evidence that at present Kabutri Devi was aged about 20 years. Further, he deposed that Param Choudhary was grandfather of Gopi Choudhary and again stated that Param Choudhary was his father but from his evidence it appears that he is not acquainted with the family of Gopi Choudhary. DW-36 and DW-37 claimed herself to be daughters of Gopi Choudhary. DW-37 in her evidence has stated that her father was suffering from paralysis and had suffered eight days before his death and he was treated by



Dr. Iqbal. While DW-36 stated that he was treated by Dr. B.L. Das. There is not even a single dependable and credible witness whose evidence could have inspired confidence that these defendants are daughters of Gopi Choudhary. These defendants have been set up by plaintiff after failing in his abortive attempt to discard the defendant no. 1 as son of Gopi Choudhary. The learned Trial Court further held that out of the witnesses examined on behalf of these defendant nos. 10 to 12 such as DW-39 (resident of Misrauli), DW-30 (resident of Buddi Chapra), DW-31 and DW-32 (resident of Makdhusarai), DW-33(resident of Barhahri), DW-34 (resident of Kulhasa), DW-35 (resident of Jiyam), all these Dws are either residents of different village or resident of their husband's village. Not a single witness has come from village of Gopi Choudhary i.e. Laxmipur to support these defendants although a number of persons both octogenarian and Centenarian have been examined on behalf of the plaintiff and defendant no. 1. The agnates of plaintiff Sudama Choudhary, son of Goga Choudhary has been examined on behalf of the defendants but he has not supported the case of these defendants



(defendant nos. 10 to 12). No any person from the alleged Nanhiyal of the defendant has come to support their case. It is clear that there is not even a single evidence to prove the fact that defendant nos. 10 to 12 are the daughters of Gopi Choudhary. It is evident from the evidence that the witness have come at the instance of plaintiff. The learned Trial Court after analysis of the evidence adduced by the parties held that defendants (defendant nos. 10 to 12) are not the daughters of Gopi Choudhary. Other issues were also decided against the plaintiff and accordingly the suit was dismissed.

10. Against the dismissal of the suit and finding against the daughters, two Title Appeals were filed one by the plaintiff (T.A. No. 02 of 1995) and other was filed by defendant nos. 10 to 12 (T.A. No. 18 of 1995). Both the Title Appeals were heard analogously and disposed of by a common judgment dated 30.06.2010. After considering the submissions made by the parties and materials on record as well as judgment of Trial Court, the learned Appellate Court has held that the documents filed on behalf of the parties it appears that none of the documents filed on behalf of the



plaintiff/appellant goes to show that defendant no. 1 Rajbali Choudhary was born from wedlock of Jhulena Devi and Bhagan Choudhary. On the other hand, several documents have been filed on behalf of defendant no. 1 executed by him in which his father's name got mentioned as Gopi Choudary. Some of document filed on behalf of defendant no. 1 goes to show admission of the plaintiff that defendant no. 1 is his full brother and born from the wedlock of Jhulena Devi and Gopi Choudahry. The registered deed of mortgage dated 17.02.1969 which was executed jointly by defendant no. 1 as well as plaintiff in favour of Shashi Bhushan in which father's name of both of them is mentioned as Gopi Choudhary. Similarly, Ext.-D mortgage deed dated 10.06.1965 was jointly executed by defendant no. 1, plaintiff and their mother Jhulena Devi in favour of Babulal Prasad in which the name of father of defendant no. 1 as well as plaintiff was mentioned as Gopi Choudhary. Ext.-F is certified copy of Bemiyadi deed dated 21.05.1986 which was executed by defendant no. 1, namely, Rajbali Choudhary in favour of none else but the plaintiff itself and in the said document, the name of father of plaintiff and



defendant got mentioned as Gopi Choudhary. Ext.-K and K1 are the voter list of 1975 and 1980 prior to filing of the suit goes to show that the name of defendant no. 1 Rajbali Choudhary alongwith the plaintiff as their mother Jhulena Devi. Defendant no. 1 Rajbali Choudhary has been shown as son of Gopi Choudhary. Considering the above evidence, the Appellate Court has held that defendant no. 1, namely, Rajbali Choudhary is the son of Gopi Choudahry. These issues were affirmed by the learned Appellate Court.

11. So far second issue framed by the learned Appellate Court that whether the defendant nos. 10 to 12, namely, the appellants in T.A. No. 18 of 1995 are the daughters of Gopi Choudhary is concerned, the defendant nos. 10 to 12 examined altogether ten witnesses in support of their pleadings out of which DW-36, 37 and 38 are the defendants themselves and DW-29, 33 and 35 are their respective husbands. DW-30 Jalim Chouhdary is the father-in-law of the plaintiff. He belongs to a distant village from the village of plaintiff and he had no personal knowledge regarding the members of the family of plaintiff prior to the marriage of his daughter to the plaintiff. DW-31 Magru



Choudhary and DW-32 Hemnarayan also belong to distant village and they stated themselves as Bhagna of Gopi Choudhary and in course of their statement they supported the case of the plaintiff that they are the daughters of Gopi Choudhary but during course of cross examination they failed to disclose the name of all the members of family of Gopi Choudhary. DW-34 Gorakhnath stated that Gopi Choudhary was his Mausa and he also supported the claim of above plaintiff. But during cross examination he also failed to even disclose the name of all the family members of Gopi Choudhary. Even they did not disclose the name of another sister of Gopi Choudhary. The learned Court has held that they are neither members of the family of Gopi Choudhary nor his villagers and they have also no other means of knowledge on the fact that whether defendant nos. 10 to 12 are daughters of Gopi Choudhary. It is further held that their conduct don't fulfill the essential condition of Section 50 of the Evidence Act as it has not come in their evidence regarding the above facts that they have got any special means of knowledge regarding the same fact. The learned Appellate Court came to the conclusion that



defendant nos. 10 to 12 are not the daughter of Gopi Choudahry. This point has been decided against the appellant in T.A. No. 18 of 1995 (appellant of Second Appeal No. 638 of 2010). Accordingly, both the Title Appeals have been dismissed.

12. On perusal of the case records, it seems that respondent nos. 9 and 11 in both the appeals have died during the pendency of this appeal and the heirs of respondent nos. 9 and 11 in S.A. No. 638 of 2010 have been substituted but no steps have been taken for substitution of the heirs of respondent nos. 9 and 11 in S.A. No. 636 of 2010. Thus, Second Appeal No. 636 of 2010 has abated as against the respondent nos. 9 and 11.

13. After hearing the averments made on behalf of the parties and after perusing the materials on record including the judgment of learned courts below, it appears that both the courts have held that plaintiff has failed to prove that Rajbali Choudhary is the son Bhagan Chudhary. The lower Appellate Court which is the final Court of facts. After considering the pleadings of the parties and evidence adduced by them, came to a clear finding that plaintiff



himself admitted in registered mortgage deed dated 10.06.1965 and Ext.-F/6 Bemiyadi deed dated 21.05.1986 about his relation with defendant Bhagan Choudhary in both the deed plaintiff and defendant no. 1 were party to that document. In the said document the name of father of plaintiff and defendant no. 1 got mentioned as Gopi Choudhary. In other documents/exhibits also the name of Rajbali Choudhary was mentioned as son of Gopi Choudahry.

14. So far oral evidence of the plaintiff is concerned, the evidence led by him was not in conformity with Section 50 of the Indian Evidence Act.

15. So far concurrent finding with regard to original defendant nos. 10 to 12 (appellant in Second Appeal No. 638 of 2010) is concerned, the deposition of Dws 30, 31, 32 and 34 have not fulfilled the requirement of Section 50 of the Evidence Act and both the courts accordingly held that the defendant nos. 10 to 12 are not the daughters of Gopi Choudary. The evidence adduced by the plaintiff as well as defendant nos. 10 to 12 has rightly been held to be not in conformity to the requirement of Section



50 of the Evidence Act in view of the decision of Apex Court in the case of *Doglgobinda Paricha Vs Nimai Charan Mishra* reported in *AIR 1959 SC 914*. The essential requirements of Section 50 of the Evidence Act are as follows:-

(i). There must be a case where the Court had to form an opinion as to the relationship of one person to another;

(ii). In such a case, the opinion expressed by conduct as to the exercise of such relationship is a relevant fact;

(iii). But the person whose opinion expressed by conduct his relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfill the condition laid down in the latter part of the section. If the persons fulfill that condition then there what is relevant is his opinion expressed by conduct. Opinion means something more than more retailing of gossip or hearsay; it means judgment of belief, i.e. a belief or conviction resulting from what one thinks of a particular



question. Now the 'belief' or 'conviction' may manifest itself in conduct or behaviour which indicates the existence of belief or opinion. This view has been taken Hon'ble Supreme Court in the case of *Bant Singh and anr. VS. Niranjana Singh (D) by Lrs and anr.* reported in *Civil Appeal No. 7162 of 2005*.

16. Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that judgment and decree of the courts below are covered by the findings of facts and no question of law much less substantial question of law arises for consideration in the both the Second Appeals.

17. Accordingly, both the appeals (Second Appeal No. 636 of 2010 and Second Appeal No. 638 of 2010) are dismissed.

(Khatim Reza, J)

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