

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.35 of 2018

1. Ganesh Rai S/o- Late Bishwanath Rai.
2. Ramjanam Rai, S/o- Late Manager Rai.
3. Kamlesh Rai, S/o- Late Manager Rai.
All resident of Village- Chap Mathia, P.S.- Mirganj, District- Gopalganj.
4. Manju Devi, D/o- Bishwanath Rai, W/o- Pramod Sahi, resident of Village and
P.O.- Belthari, P.S.- Kuchaikote, District- Gopalganj.
5. Shrikant Singh, S/o- Late Anirudh Singh.
6. Prabhakar Kumar, S/o- Shrikanth Singh.
7. Nutan Kumar @ Neutan Kumar S/o- Shrikanth Singh. All resident of
Village- Khulasa, P.O.- Madarpur, P.S.- Jamu, District- Siwan.

... .. Appellant/s

Versus

1. Ambika Singh S/o- Bhagirathi Singh, resident of Village- Mairwa, P.O.-
Chainpur, P.S.- Siwan, Paragnabal, District- Siwan.
2. Ramawati Devi, W/o- Surendra Singh (D/o- Ambika Rai), resident of
Village- Pipra, P.O.- Chandparara, P.S.- Hassanpura, District- Siwan.
3. Indu Devi, W/o- Jogendra Singh (D/o- Ambika Rai), resident of Village-
Bangara, P.S.- Maharajganj, District- Siwan.
4. Malti Devi, W/o- Umesh Thakur (D/o- Ambika Rai), resident of Village and
P.O.- Saraul, P.S.- Sisuwan, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. M.N. Parbat, Sr. Advocate Mr. Vikas Ratan Bharti, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

19 21-10-2024 Heard Mr. M.N. Parbat, learned senior counsel for
the appellants.

2. This Second Appeal has been filed by the
defendants-appellants-appellants against the judgement and



decree of affirmance passed by learned Fast Track Court-II, Gopalganj in Title Appeal No. 20 of 1993 whereby, the judgement and decree dated 11.01.1993 passed in Title Suit No. 41 of 1991 by the learned Sub Judge-I, Gopalganj has been upheld.

3. The plaintiff- respondent-respondent filed Title Suit No. 41 of 1991 for partition of her half share in Schedule 1 property.

4. It is pleaded that Tilak Rai was the common ancestor of the plaintiff, he died leaving behind his two sons namely Khakhan Rai and Jagdhari Rai. Plaintiff is the daughter of Khakhan Rai and defendants are the sons of Jagdhari Rai. It is further pleaded that Khakhan Rai died in the year 1957 leaving behind his sole heir i.e. plaintiff (her mother namely, Rajkali Devi had predeceased her), in the state of separation from the sons of Jagdhari Rai. It is contended that Khakhan Rai was separate from his brother namely, Jagdhari Rai but no partition by meets and bounds had taken place between them in the ancestral properties. The property of Taluka Rai came in possession of Khakhan Rai in view of the decision passed in Title Suit No. 329 of 1938. Further case of the plaintiff is that, after the death of her father (Khakhan Rai), her land was being



cultivated by the defendants and the produced crops was being given to her by the defendant and she used to pay rent for her share but recently defendants have refused to give the produced crops to her. Plaintiff asked the defendant to partition her share but defendants didn't agree to the same. Hence, the present suit has been filed.

5. On summons, defendants appeared and filed their written statement and contested the suit, the defendants contended that the plaintiff has no cause of action and there is no unity of title and possession between plaintiff and defendants. It is further contended that the suit is also barred by principal of adverse possession and ouster. It is further case of the plaintiff that the suit property is also barred by claiming partial partition. It is vehemently submitted that plaintiff is not the daughter of Khakhan Rai rather plaintiff is daughter of Singhasan Rai of village Chapmathia. Neither plaintiff was in possession or in joint possession of the suit land. The suit property is coming in possession of the defendants since before their ancestor. It is contended that Tilak Rai had three sons namely, Rajwant Rai, Khakhan Rai and Jagdhari Rai. Rajwant Rai had a son namely, Taluka Rai whose branch became extinct. It is further submitted that Khakhan Rai also died issueless



without any male or female heir. Defendants are the sons of Jagdhari Rai and they are rightful owner of the suit property which originally belonged to Tilak Rai. Plaintiff is not the daughter of Khakhan Rai. It is further pleaded that Khakhan Rai was never separated from his brothers and nephew and he died in the year 1955. It is also contended that the entire suit property is not the ancestral property of the defendant. Taluka Rai was not the brother to the family of Khakhan Rai. The property of Taluka Rai is in possession of the defendant who filed Title Suit No. 329 of 1938 and gave the land in favour of Khakhan Rai and Jagdhari Rai. Plaintiff never came in joint possession with defendant over the suit property nor produce is given by the defendants to the plaintiff. Since the plaintiff has no right and title over the suit land so, there is no question of partition. Plaintiff has been set up by heirs of one Singhasan Rai with whom the defendants has enmity and sons of Singhasan Rai filed the suit on the instigation of interested person as their own sister to harass the defendants.

6. On the basis of pleadings of the parties and on scrutinizing the evidences adduced by the parties, the learned Trial Court has held that P.W. 3 namely, Dhananjay Singh resident of village Chapmathia has been examined in this case



and he stated that Singhasan Rai was his grandfather and Singhasan Rai had no daughter and plaintiff is the daughter of Khakhan Rai. P.W. 4 Parasnath Singh, son of Singhasan Rai, has stated in his evidence that Phoolpati Devi (plaintiff) is the daughter of Khakhan Rai and Khakhan Rai died in the month of Karthik, 1957 leaving behind his sole heir i.e. plaintiff. It is further adduced in evidence that Khakhan Rai was his cousin grandfather and his gotiya. P.W. 4 stated that his mother's name was Sita Devi.

7. On the other hand defendant also adduced witnesses in this case, his witnesses stated that plaintiff's mother name was Sita Devi, who was wife of Singhasan Rai but he cannot say when Sita Devi died. Defendant stated in his cross examination that he had neither got copy of parivarik pustika nor find any voter list. Jagadhari Rai died in the year 1945 but he cannot say when his mother died. He has got no documents to show that Khakhan Rai died in the year 1955. He did not disclose that when Rajkali Devi, wife of Khakhan Rai died. According to the statements of the witnesses of defendant, it appears that plaintiff's mother name was Sita Devi, who was wife of Singhasan Rai but it is not clear that when Sita Devi died. If the witness of the defendants cannot say about the time



of death of his family members including his mother how he can definitely say that Khakhan Rai died in the year 1955. Defendant no. 3 Basudeo Rai agnate of Singhasan Rai has been examined on behalf of the defendants, who stated that plaintiff is the daughter of Singhasan Rai and plaintiff's marriage ceremony was performed by Singhasan Rai. Khakhan Rai had no issue at all. The witnesses of the defendant also did not disclose that when Jagdhari Rai and wife of Khakhan Rai died.

8. On analyzing the evidences and materials on record, the Trial court held that Khakhan Rai died in the year 1957. Plaintiff was the only heir to the property of her father whereas, according to defendant Khakhan Rai died in the year 1955 and the plaintiff is not the daughter of Khakhan Rai. Both the sides, plaintiff and defendants could not give details about the date of birth and death of the family members of the litigating parties and Singhasan Rai. It was also submitted on behalf of the defendants that case has been between Khakhan Rai and Jagdhari Rai on the one hand and Singhasan Rai on the other in which Singhasan Rai lost and it is also clear that litigation lasted from 1938 to 1940. It is clear from the evidences that Singhasan Rai died in the year 1945 therefore, it is evident that no litigation existed between the defendants and



family of Singhasan Rai after 1940.

9. Considering the aforesaid facts and evidences, the learned Trial Court has held that plaintiff is the daughter of Khakhan Rai, who died in the year 1957 and she is entitled to half share over the disputed land and decreed the partition suit and accordingly, preliminary decree was passed.

10. Being aggrieved by the judgement and decree the defendants- appellants filed title appeal before the lower Appellate Court which too was dismissed. After considering the entire facts and materials on record, the title appeal was filed on the point whether plaintiff is the daughter of Khakhan Rai who died in the year 1957 and whether unity of title and possession exists between the parties.

11. On the point of date of death of Khakhan Rai, learned Appellate Court stated that both the parties had not filed any documents with regard to death of Khakhan Rai. As per the evidences of P.W. 2 Khakhan Rai died in the month of Kartik in the year 1957. P.W. 4 also stated in his evidence that Khakhan Rai died in the month of Kartik, 1957. Per contra defendant witness nos. 2 and 3 have stated that Khakhan Rai died in the year 1955. Plaintiff's witnesses supported the factum of death of Khakhan Rai in the year 1957. D.W. 2 (defendant no. 1) denied



the distribution of crops while D.W. 3 and D.W. 5 did not say anything about the distribution of crops. Oral evidence of P.W. 2 supported the case of distribution of produced crops and possession of the plaintiff.

12. The learned lower Appellate Court further held that there is no proof of partition between Khakhan Rai and Jagdhari Rai. The name of Khakhan Rai and Jagdhari Rai has been mentioned in the Survey Khatian (Ext.1), which shows joint possession of the same two persons. Since the plaintiff is declared as daughter of Khakhan Rai and the said Khakhan Rai died in the year 1957 therefore, she is entitled to half share over the disputed land and there is unity of title and earlier partition has not been proved by the defendants. Accordingly, the learned Appellate Court has affirmed the preliminary decree of trial court and dismissed the appeal filed by the defendants-appellants.

13. After hearing the averments made on behalf of the appellants and after perusal of materials on record including the judgements of the court below, it is apparent that the learned Court of Appeal below, which is the final court of facts, after considering the pleadings of the parties and evidences adduced by them came to a clear finding that original plaintiff Phoolpati



Devi is the daughter of Khakhan Rai and Khakhan Rai died in the year 1957. The name of Khakhan Rai and Jagdhari Rai was recorded into Revisional Survey Khatiyani, which shows that the suit property belongs to the said two brothers having equal share of the said property. Defendants failed to prove that there was an earlier partition between the two brothers. Since the father of the original plaintiff died in the year 1957, she being the sole heir is entitled to half share over the suit property. After her death her heirs are entitled to half share over the said property.

14. In the instant appeal, the question of daughter-ship and year of death of Khakhan Rai have been concurrently decided by both the Courts below, both the question is a question of fact, which has been concurrently decided by both the Courts below. Hence, there being no legal perversity in the finding nor there being any error of law or record or even non-consideration of any material, there is no occasion for this Court to interfere with the said findings.

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



Appeal, which is accordingly dismissed at the stage of hearing
under Order XLI Rule 11 CPC.

(Khatim Reza, J)

Sankalp/-

U			
---	--	--	--

