

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.150 of 2015

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1. Keshwar Prasad Yadav, S/o Late Bhadai Rai
 2. Subodh Kumar
 3. Vivek Kumar Both S/o Keshwar Prasad Yadav, all Resident of Village Nimoea, Tola Dhum Nagar, P.O. Nimoea, P.S. Ghorasahan, District East Champaran.

... .. Appellant/s

Versus

1. Narsingh Rai, S/o Late Anat Rai
2. Jhaliya Devi W/o Baidyanath Rai (D/o Late Anat Rai)
3. Laxman Rai S/o Late Banhu Raut
4. Amar Lala S/o Late Raktu Raut, all Resident of Village Nimoea, Tola Dhum Nagar, P.O. Nimoea, P.S. Ghorasahan, District East Champaran.
5. Baidyanath Rai S/o Late Jangbir Rai, R/o Village Ekdari, P.O. Chhauradano, District East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uma Shankar Singh, Adv.
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 10-11-2025 Heard learned counsel for the parties.

2. This Second Appeal has been filed against the judgment of affirmance dated 15.04.2015 passed by the learned Additional District Judge-III, Motihari, East Champaran in Title Appeal No. 60 of 2012/2015.

3. The plaintiffs/appellants had filed suit for declaration that Pal Raut, died in the year 1934 in the state of jointness with his three brothers, namely, Banhu Raut, Tanhu Raut and Anurag Raut and further for declaration that gift deed



dated 10.09.1985 executed by Late Manturwa Devi in favour of defendant no. 1 is illegal and inoperative and also for decreeing the suit with respect to one-third share of the plaintiffs in the suit property, which was dismissed by the Trial Court on the preliminary issue of maintainability of the suit under Order XIV, Rule 2(2) of the Code of Civil Procedure Code on 20.07.2011 and held that there is no any issue to be decided in this case. All the issues involved in this suit were decided the Title Suit No. 95 of 1991 and the matter travelled upto the Hon'ble Apex Court. Hence, Title Suit No. 237 of 2010 is not maintainable and this Court has no jurisdiction to decide the case.

4. Against the said judgment and order dated 20.07.2011 passed by the learned Sub-Judge-V, Motihari, the plaintiffs/appellants filed Title Appeal No. 60 of 2012/2015 which was also dismissed by the learned first Appellate Court. The learned Appellate Court below upon considering the pleadings of the plaintiffs as well as the defendants and materials on record, noted that following facts do not appear to be disputed which are as follows:-

I. Appellants/plaintiffs had earlier filed a Title Suit No. 95 of 1991 against the contesting respondent/defendant no. 1 and others for the same facts and relief as sought in Title Suit



No. 237 of 2010, which has been dismissed and appellants have preferred instant appeal against that.

II. Title Suit No. 95 of 1991 was dismissed by Sub-Judge-V, Motihari dated 17.2.1998.

III. Appellants/plaintiffs had preferred First Appeal bearing no. 22 of 1998 which was also dismissed on 20.7.2001 by Addl. District Judge-IVth, Motihari.

IV. Appellants/plaintiffs, further preferred Second Appeal bearing no. 319 of 2001 before the Hon'ble High Court against the judgment and decree passed by the first Appellate Court in First Appeal no. 22 of 1998 which was also dismissed *vide* order dated 5.7.2002.

V. Again appellants filed a writ application bearing C.W.J.C. No. 14604 of 2004 before the Hon'ble Court for declaration that judgment and decree passed by Sub-Judge, Motihari in Title Suit No. 95 of 1991, which was also dismissed observing that the plaintiffs/appellants have already availed remedy of appeal under the law up to the Hon'ble Supreme Court and has lost.

VI. Thereafter plaintiffs/appellants filed the present suit bearing no. 237 of 2010 against the contesting respondent Narsingh Rai and others who were parties in previous Title Suit



No. 95 of 1991 on the basis of facts as pleaded in previous suit bearing Title Suit No. 95 of 1991, the present Title Suit no. 237 of 2010 was dismissed by the Sub-Judge-V, on 20.7.2011 after framing preliminary issue on the point of maintainability and jurisdiction of the court.

VII. Appellants preferred the Civil Revision bearing no. 161 of 2011 against the judgment/order dated 20.7.2011 passed by Sub Judge-V in Title Suit No. 237 of 2010 which was disposed of as not maintainable observing that appropriate course for the plaintiffs/appellants would be to prefer an appeal against the judgment and order dated 20.07.2011 against the judgment and order dated 20.07.2011.

VIII. Thereafter, appellants have preferred the title appeal stating therein, in brief, in memo of appeal is that judgment/order passed by the court below in Title Suit No.237 of 2010 is bad in law and erroneous on facts and the court below has also failed to consider that issue involved in the suit cannot be decided as preliminary issue as issue in the suit depended on facts and law, both.

5. In order to determine the matter in its correct perspective, it is necessary to briefly restate the case of the parties.



6. The case of the plaintiffs is that Musan Raut had four sons, namely, Banhu Raut, Tanhu Raut, Anurag Raut and Pal Raut out of which Pal Raut died issueless in the year 1934 in the state of jointness with other three brothers. Hence, the appellants-heirs of Tanhu Raut had got one-third share in the entire properties left by Musan Raut. The deed of gift dated 10.09.1995 executed by one Manturwa Devi claiming herself as daughter of Pal Raut in favour of Narsingh Rai is invalid and inoperative because she had not inherited the property of Pal Raut. It is further case of the plaintiffs that in previous Title Suit No. 95 of 1991, several issues were decided by the court below but the issue whether Pal Raut died in the year 1934 in the state of jointness with his other brothers was not decided after framing a separate issue which requires to be decided by the Trial Court and relief has been sought to declare that Pal Raut died in the year 1934 in the state of jointness with his brothers Banhu Raut, Tanhu Raut and Anurag Raut and for further declaration that gift deed dated 10.09.1985 executed by Manturwa Devi in favour of defendant no 1 is illegal and inoperative including one-third share in the suit property.

7. On the other hand, defendant/respondent no. 1 contested the suit and appeal and contended that Pal Raut died



in the year 1938 in the state of jointness with his three brothers leaving behind his daughter Manturwa Devi, who inherited the property i.e. the suit land from her father and she has validly executed her share in favour of respondent no. 1. The defendant/respondent no. 1 further contended that the suit is barred by limitation and *res judicata* as the plaintiffs had earlier filed Title Suit No. 95 of 1991 / 184 of 1997 which was dismissed. The relevant issues of the matter has already been decided in the suit. The issues raised by the plaintiffs in the instant suit relating to non-deciding of the issue whether Pal Raut died in the year 1934 in the state of jointness with his brothers and deed of gift executed by Manturwa Devi (daughter of Pal Raut) was already decided and cannot be looked into the instant suit.

8. The learned Appellate Court, which is the final court of facts, clearly held that Title Suit No. 95 of 1991(Exhibit 1) shows that partition in the family took place towards the end of the year 1938 as per the case of the defendants, during lifetime of Pal Raut in four equal shares and accordingly each of them came in possession of their lands as per the schedule and the plaintiffs/appellants are not entitled for the relief of partition of the suit property and also held that Manturwa Devi is



daughter of Pal Raut and deed of gift dated 10.09.1985 executed by her is genuine and valid document. The present title suit was filed for declaration that Pal Raut died in the year 1934 in the state of jointness with his brothers Banhu Raut, Tanhu Raut and Anurag Raut as also for declaration that deed of gift dated 10.09.1985 executed by Manturwa Devi in favour of defendant no. 1 is illegal and inoperative as well as for relief of partition in the suit property to the extent of one-third share of the plaintiffs. Exhibit 1 shows that all the above issues raised by the plaintiffs in the instant case have already been decided by the court below at the time of disposal of Title Suit No. 95 of 1991 (Exhibit 1) between the same party for the same subject matter.

9. Having considered the submissions made by the appellants as well as materials on record including the judgments of the courts below, this Court is of the view that the issue with regard to whether Pal Raut died in the year 1934 in state of jointness with other three brothers has already been decided in the earlier suit i.e. Title Suit No. 95 of 1991. It is apparent from the aforesaid judgment that sale deed dated 25.07.1989 (Ext. B in previous suit) executed by Bhadai Raut, father of the plaintiff in favour of Narsingh Rai, would suggest that Manturwa Devi is daughter of Pal Raut. It is apparent from



the impugned judgment that partition took place towards the end of 1938 during lifetime of Pal Raut in four equal shares which proved that at the time of partition in the year 1938, Pal Raut was alive. There is no question of further deciding the matter whether Pal Raut died in the year 1934. This fact has already been decided in Title Suit No. 95 of 1991. The question of daughtership of Manturwa Devi has already been decided in Title Partition Suit No. 186 of 1986. These questions could not be agitated in a subsequent suit.

10. Considering the aforesaid facts and circumstances, I am not inclined to interfere with the concurrent findings of the courts below and there is no question of law much less substantial question of law involved in this case.

11. Accordingly, this Second Appeal is dismissed at the stage of hearing under “Order XLI Rule 11 C.P.C.”.

(Khatim Reza, J)

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