

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.627 of 2017

- 1.1. Kameshwar Sah Son of late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.2. Suresh Sah Son of late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.3. Nageshwar Sah Son of late Bali Sah, Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.4. Sipahi Sah Son of Late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.5. Parmeshwar Sah Son of Late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.6. Ramawati D/o late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.
- 1.7. Prabhawati D/o late Bali Sah Resident of Village Kalyanpur, P.O. Baijalpur, P.S. Sonapur, District- Saran.

... .. Appellant/s

Versus

Tej Narayan Sah Son of Bhagwan Sah, Resident of Village- Kalyanpur, P.O.- Baijalpur, P.S.- Sonapur, District- Saran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nagendra Rai, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 04-11-2025 This Second Appeal has been filed against the judgment of affirmance dated 31.07.2017 passed by learned A.D.J.-10, Chapra in Title Appeal No. 7 of 2016 whereby the learned Appellate Court has upheld the judgment and decree dated 29.10.2015 passed by learned Sub-Judge-3, Chhapra in Partition Suit No. 345 of 2008 whereby the said Partition Suit was decreed.

2. The case of the plaintiff-respondent, in brief, is that one Duna Sah had four sons, namely Damari Sah, Durga Sah,



Jalim Sah and Most. Lagani widow of late Lal Jawahir Sah (son of Duna Sah). It is further pleaded that Most. Lagani died issueless just after publication of revisional survey and hence the plaintiff and original defendant are co-sharer to the extent of 1/2 and 1/2 share in the suit property. It is also stated that Schedule I land consists of surveyed land, whereas Schedule II relates to topo (unsurveyed) land. The plaintiff-respondent claims to be the grandson of Jalim Sah, while the original defendant-appellant is the grandson of Damari Sah. The branches of the other two brothers, namely Durga Sah and Lal Jawahir Sah, are said to have become extinct. Accordingly, the plaintiff and the original defendant are entitled to equal (half and half) shares in the suit property.

3. The case of the original defendant-appellant, in brief, is that the plaintiff's father is the *Dagarua* son (the son of a remarried woman from her first husband) of Jalim Sah. It is further pleaded that Bhagwan Sah was not the son of Jalim Sah, however he was a *Dagarua* son of Jalim Sah who found him in Kali Temple at Calcutta and brought him up like his son. It is further contended that 1/4th share for his maintenance was given to him. It is vehemently submitted that plaintiff and his mother had sold their entire share (1/4th) and now have no share left.



The mother of plaintiff viz., Rekha Kuer @ Chitrarekha Kuer has sold 3 kathas of Plot No. 2143 and 4 katha of Plot No. 2141 (approximately 1/4th) share to the sons of original defendant. It is further pleaded that Damari sah, Durga Sah and Lal Jawahir Sah were joint and Jalim Sah was separate from the joint family. Widow of Bhagwan Sah had already sold more than her share (1/4th) as the plaintiff has no share in the suit property.

4. On the basis of the pleadings and materials on record as well as the submissions advanced by the parties, the learned Trial Court framed the issues and decreed the partition suit by holding that the plaintiff is entitled to half share in the suit property. It was further held that the portion of the property sold by the plaintiff's mother would be adjusted against the plaintiff's share. The Trial Court also recorded a finding that Bhagwan Sah was the son of Jalim Sah and that the original defendant had failed to establish his plea that Bhagwan Sah was the *dagarua* son of Jalim Sah.

5. Being aggrieved by the judgment and decree of the learned Trial Court, the original defendant preferred a Title Appeal before the Court of the District Judge, Saran at Chapra. The learned First Appellate Court, upon reappraisal of the



materials on record, affirmed the findings of the Trial Court. It was observed that the original defendant himself as well as his son (DW-8), had admitted that plaintiff Tej Narayan is the descendant of Jalim Sah, which completely falsified the case of the defendant that Bhagwan Sah was the *dagarua* son of Jalim Sah. The learned First Appellate Court further held that the defendant had failed to prove that Jalim Sah was issueless. Reference was also made to Exhibit 3, which revealed that the plaintiff and Yadu Sah (father of the original defendant-appellant) have equal shares in the *Jamabandi* records. Consequently, the learned First Appellate Court found no reason to interfere with the well-reasoned judgment and decree passed by the learned Trial Court.

6. Having considered the submissions advanced by learned counsel for the appellants as well as the materials on records including the judgment and decree of the courts below, it is apparent from the judgment of the appellate court which is final courts of facts, the learned appellate court below clearly held that the defendant himself admitted in his cross-examination that Bhagwan Sah is the son of Jalim Sah. D.W.-2 accepts the status of Bhagwan Sah as son of Jalim Sah. There is specific case of the defendant that Bhagwan Sah is not the son



of Jalim Sah but he is his *Dagarua* son and the defendant completely failed to establish that the Bhagwan Sah was not the son of Jalim Sah. There is unity of title and possession between the parties and accordingly, the learned trial court rightly decreed the Partition Suit in favour of the plaintiff to the extent of half share and directed to prepare the decree with regard to the half share in the suit property. The judgment passed by the learned trial court has been affirmed by the learned First Appellate Court and dismissed the appeal of the defendants.

7. Considering the aforesaid facts of the case as well as materials on records, it is quite apparent that the impugned judgments and decree of the courts below are covered by findings of facts and no question of law, much less substantial questions of law, arises for consideration in the instant Second Appeal.

8. Accordingly, this Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

(Khatim Reza, J)

Premchand/-
Shyambihari/-

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