
(2002) 07 PAT CK 0099
In the Patna High Court
Case No : Second Appeal No. 37 of 1999

Parmeshwari Barhi and Others

APPELLANT

Vs

Bindeshwari Mahto and Others

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Citation : (2002) 3 PLJR 630

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Narmadeshwar Jha and Harendra Prasad Sinha, for the Appellant;
Raj Kishore Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—This appeal is directed against the judgment of affirmance passed in M.T. Appeal No. 19 of 1990 by 6th Additional District Judge, Begusarai confirming the judgment and decree passed in Title Suit No. 26 of 1974 by Ist Addl. Munsif, Begusarai.

2. Briefly stated the case of the Plaintiffs, who are Respondents 1 and 2 herein, is that in village Sonma Tauzi No. 648, thana No. 129 lands under khata No. 315 detailed in Schedule "K" of the plaint belonged to Ram Barhi duly recorded in the record of rights. Kokil Barhi and Sonu Barhi were sons of Ram Barhi. Kokil Barhi had two sons-Kallar Barhi and Budhu Barhi. Budhu died unmarried and Kokil died during the life time of his father. Kallar also died leaving behind his son Sitaram Barhi, who is Defendant No. 4, (Defendant 2nd set). Sonu Barhi, another son of Ram Barhi, died leaving behind his two sons-Madho (Defendant No. 2) and Lalo (Defendant No. 1) and Lalo died leaving behind four daughters-Lutni, Rampyari, Dhanwa and Tanak Devi. Madho has a son-Parmeshwari Barhi (Defendant No. 3). Thus, Sitaram Barhi being the sole heir of Kokil has got eight Annas Share in the land detailed in Schedule of the plaint and he and the sons of So(sic) were coming in joint possession, although the property in suit were cultivated separately for convenience without any petition. Facing difficulty in cultivation, Sita

Barhi (Defendant No. 4) executed a (sic) deed dated 28.5.1973 in favour of Plaintiff with respect to his share 1 Bigha 18 K(SIC) 13 1/2 dhurs, who came in possession over the same. As there was no part(sic) by metes and bounds and the Plaintiff were facing difficulty in joint cultivation they asked the Defendants for partition which they refused. Hence, the suit the partition of Schedule "K" land claiming eight Annas share in it.

3. The Defendant Nos. 2 and 3 in there written statement have denied that Kokil Barhi was the son of Ram Barhi. rather he was son of Chingi Barhi of village Murraha Kokil had no concern or possession over the suit land, as such, Sitaram Barhi, the vendor of the Plaintiffs never had any concern or possession over the suit land According to them, Ram Barhi had only one son Sonu Barhi, whose heirs were Lalo Barhi and Madho Barhi. The Defended ants have claimed that one Chingi Barhi (sic) village Murraha had two sons Kokil Barhi and Janki Barhi. Kokil Barhi had two sons Budhu and Kallar and Kallar had two sons Rameshwar Barhi and Sitaram Barhi. Janki Barhi had also two daughters who (sic) alive. Kallar had no land or property (sic) village Sonma and he was never in joint possession with Sonu Barhi. These Defendants denied the story of joint passion or separate possession by connivence and the execution of sale deed date 28.5.1973. According to them, the Plaintiff never demanded any partition nor the was occasion for demanding and they are in khas possession of entire land of Schedule "K" land and Plaintiffs are not entitled to get any (sic).

4. The trial Court on consideration the pleadings as well as evidence both oral and documentary adduced on behalf of the parties came to the conclusion that the sale deed executed by Sitaram Barhi (Defendant No. 4) in favor of the Plaintiffs is genuine and valid. The Plaintiffs have proved that Sitaram Barhi is the heir of Kokil Barhi, whereas Defendant Nos. 2 and 3 have failed to prove that Kokil was the son of one Chingi Barhi of village Murraha. Hence, the Plaintiffs are entitled to get eight annas share in the suit land of Schedule "K" i.e. 1 Bigha, 18 Kathas and 13 1/2 dhurs, and, thus, decreed the suit. The lower appellate Court on appeal affirmed the findings of. the trial Court disbelieving the case of the Defendants 2 and 3.

5. Learned Counsel appearing for the Appellants has submitted that both the Courts-below have failed to appreciate that the Plaintiffs are stranger and purchaser from one Sitaram Barhi, who had got no concern or possession over the suit land, being the heirs of Kokil Barhi, who was son of Chingi Barhi of village Murraha. He further submitted that the Courts-below have not considered the oral evidence adduced by the Defendants, which has adversely affected their case.

6. The lower appellate Court in paragraph 12 of its judgment has elaborately considered the oral and documentary evidence adduced by the parties and came to the conclusion that Ram Barhi of village Sonma had two sons-Kokil Barhi and Sonu Barhi and further held that the sale deed dated 28.5.1973 executed by Defendant No. 4 Sitaram Barhi in favor of the Plaintiffs is legal and valid. The

Plaintiffs have proved that Sitaram Barhi is the heir of Kokil Barhi, whereas Defendant Nos. 2 and 3 have failed to prove that Kokil was the son of Chingi Barhi of village Murraha, and the Plaintiffs are entitled to get eight annas share in the suit land detailed in Schedule "K". Learned Counsel for the Appellants has failed to show any infirmity in the findings recorded by the Courts-below. Thus, in my opinion, the judgment of both the Courts-below are well considered and does not warrant any interference in Second Appeal.

7. As the matter stands concluded by the concurrent findings of facts by the two Courts-below, this Court does not find any reason to interfere with the impugned judgments, moreso, when no substantial question of law has been argued. The appeal is, thus, dismissed summarily.