

(2014) 09 JH CK 0045

Jharkhand High Court

Case No: Second Appeal No. 102 of 2010

Dhorai Mandal

APPELLANT

Vs

Manik Mandal

RESPONDENT

Date of Decision: Sept. 3, 2014

Citation: (2014) 4 JLR 416

Hon'ble Judges: Dhruv Narayan Upadhyay, J

Bench: Single Bench

Advocate: Rajeeva Sharma and Kanchan Jaiswal, Advocate for the Appellant; M.S. Akhtar, B.K. Prasad and Alok Lal, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dhruv Narayan Upadhyay, J.

This second appeal has been preferred against the judgment and decree dated 18.6.2012 passed by District Judge-I, Sahibganj in connection with Title Appeal No. 5 of 2011. The appellants are plaintiff whereas 1st party-respondent Nos. 1 to 4 are the legal heirs and successors of original defendant No. 1 Subol Mandal and these respondents were substituted during pendency of the trial. Respondent Nos. 1 to 9 in this appeal were originally plaintiff before the trial court, but during pendency of Title Appeal No. 5 of 2011, they abandoned their claim and made a prayer to transpose them from the appellants to respondents and it was accordingly allowed and they were transposed as third party respondent Nos. 1 to 9. It appears from the lower court records the plaintiffs were initially 14 in number and they brought a suit vide Title Suit No. 31 of 1996 before the Court of learned Sub-Judge-I, Sahibganj with a prayer:--

(i) to declare defendant No. 1 as not the owner of the suit land and the properties which were recorded in the name of Gowardhan Mandal and Phagu Mandal devolved upon the plaintiffs since no descendant of Gowardhan Mandal and Phagu Mandal was alive;

(ii) for permanent injunction restraining the original defendant Nos. 1 and 2 from interfering with the peaceful possession of the plaintiffs over the suit land;

(iii) cost of the suit;

(iv) any other relief or reliefs which the court thinks equitable, fit and proper.

2. The facts available on record is that the plaintiffs are the descendants of the Kishun Mandal, whereas the defendants claimed themselves to be the descendants of Ami Mandal. It is contended that Ami Mandal had two sons--Gowardhan Mandal and Phagu Mandal and the properties were separately settled in their name. So far the land settled in the name of Gowardhan Mandal, according to plaintiff, the last descendants upon whom the properties of Gowardhan Mandal devolved upon, were Bechni and Rai Chand and both of them died issueless and thereafter, said property devolved upon the plaintiffs. It is specifically contended that Subol Mandal original defendant No. 1 has been claiming his right, title and interest over the property, claiming himself to be the son of Bechni.

3. On the other hand, the respondents-defendants have made out a case that Bechni, Raichand and Sonia were step-brother and sisters and that, Bechni was born from first wife whereas Rai Chand and Sonia were born through second wife of Gowardhan Mandal. Rai Chand and Sonia died issueless whereas Bechni had one son Subol Mandal and therefore, the entire property which was recorded in the name of Gowardhan and Phagu Mandal devolved upon him.

4. Both the parties have adduced their evidence and produced documents in support of their respective claims and trial court after considering evidence, pleadings and documents on record, dismissed the suit. Thereafter plaintiffs preferred Title Appeal No. 5 of 2011 before the District Judge and during pendency, 3rd party-respondent Nos. 1 to 9 abandoned their claim and sought for to transpose them from the column of appellant to the column of respondents and it was accordingly allowed.

5. The learned lower appellate court confirmed the findings of the trial court and the appeal stood dismissed and hence this second appeal.

6. The learned counsel for the appellants has submitted that the learned lower appellate court did not apply its mind and reproduced the judgment and findings of the trial court in verbatim. Both the courts had wrongly relied upon Exhibit-B. It is nowhere admitted by the plaintiff in Exhibit-B that Subol Mandal is the son of Bechni, rather in paragraph 4 of the said Exhibit-B, it is clearly stated that Subol Mandal is alleged son of Bechni and that does not mean that the appellants have admitted him to be son of Bechni. It is further contended that after some manipulation another certified copy of the said (Exhibit-B) was obtained and in the genealogical table name of Subol Mandal was inserted. Since the findings of both the court is based on error, substantial question of law is involved and that is

required to be decided by this Court. The findings of both the courts are perverse and liable to be set aside.

7. I have gone through the judgment and decree passed by trial court in Title Suit No. 31 of 1996 as well as judgment and decree passed in the Title Appeal No. 5 of 2011. Apparently the submissions made by the learned counsel for the appellant appears incorrect. The lower courts have not given findings for coming to the conclusion of the issues only relying on Exhibit-B, rather both the courts have considered all the materials, documents and evidences adduced by the parties. It is appearing from the trial court judgment that PW-2 who was examined on behalf of plaintiffs has admitted that the Subol Mandal is the son of Bechni. Furthermore, the evidence of P.W. 1 and other witnesses have also been considered by the lower courts. The points which the learned counsel has raised before this Court, are all appear to be question of facts and that cannot be decided in this second appeal and no substantial question of law is appearing. In the result, this second appeal stands dismissed.