

**(2003) 01 PAT CK 0085**

**Patna High Court**

**Case No:** Second Appeal No. 455 of 1999

Yogendra Shah and Another

APPELLANT

Vs

Sri Ramjee Prasad Mahto and  
Another

RESPONDENT

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**Date of Decision:** Jan. 14, 2003

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11, 100

**Citation:** (2003) 4 ALT 28 : (2003) 51 BLJR 429

**Hon'ble Judges:** P.K. Deb, J

**Bench:** Single Bench

**Advocate:** P.K. Shahi, for the Appellant; S.K. Mazumdar, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

P.K. Deb, J.

It appears from the records that once this case came up before a Bench of this Court (Hon"ble Mr. Justice R.N. Sahay) under Order XLI, Rule 11 of the CPC and a unique procedure was followed which notices were issued to the respondents and records of the Court below was also called by proposing substantial questions of law in the following manner vide order dated 20-1-2000 :

(1) Whether the Court below failed to appreciate that the defendants/appellants had no title and possession over the suit premises by virtue of Mahadanama dated 14-10-1982 and subsequently the vendor Sri Govind Chaudhary had executed a registered sale-deed dated 6-11-1985 in favour of the defendants?

(2) Whether the Court below failed to appreciate that in absence of a specific case of title over the suit premises which was to be firstly established by the plaintiffs, the suit ought to have been rejected out rightly?

(3) Whether the Court below has not failed to appreciate that though there was family settlement in the year 1945 in between Ramsaki Chaudharain, Kedar Nath Chaudhary, Saraswati Chaudharain, Govind Choudhary and Raghunath Choudhary and in the said settlement the entire land of plot No. 391 and 392 was incorporated still the plaintiff claim that the suit premises was transferred in favour of their ancestral late Bib Mahto in the year 1915 through or oral sale was of no substance and false and fake claim of the plaintiff/respondents?

2. From the trend of the order passed on 20-1-2000 it very much appears and also conceded by the learned Counsel for both the parties that no substantial question of laws were ever framed rather some proposal was made regarding formation of substantial question of law and notices were issued either to confirm or reject such substantial question of law as proposed or not. I may mention here that there is no scope under the CPC of invoking such sort of unique procedure. However, it has been considered by the learned Counsel for both the parties that the matter may be heard under Order XLI, Rule 11 of the CPC in the light of the proposed questions being framed by a Bench of this Court for the purpose of admission of the appeal as contemplated u/s 100 of the Code of Civil Procedure. To appreciate the proposed substantial question of law as framed by a Bench of this Court some broad facts of the case are required to be stated. The present suit is filed against the concurrent findings of both the Courts below granting decree in favour of the plaintiff-respondents, The claim of the plaintiff-respondents in Title Suit No. 101/85 was that the suit premises belonging to the plaintiffs and that defendants are only tenants in respect of the monthly tenant thereon on a rental of Rs. 10/- per month and that as the plaintiff's title was being denied by the defendants so that title of the plaintiffs should be declared in respect of the suit premises and defendants should be evicted and then also for realisation of rent from May, 1983 to November, 1985 amounts to Rs. 310/-. The defendants-appellants appeared in the suit and filed written statement and denying the title of the plaintiffs they claimed title in themselves. The plaintiffs tracing of title is in the following manner : The suit plot No. 391 was recorded in the survey khatian in the names of Sidheshwar Jha and Lalji Jha and after their death it came in the possession of Ram Lochan Jha, son of Sidheshwar Jha, and Yadu Rani Kuerl, wife of Lalji Jha. Yadu Rani Kueri sold the land to Nirsu Choudhary on 8-4-905 and Nirsu Choudhary purchased it through sale-deed in the name of his wife Devi Kueri and came in possession of it, Nirsu Choudhary had one daughter, namely, Sarjug Choudharaine from his first wife. Devi Choudharaine and Sarjug Choudharaine had two sons, namely, Govind Choudhary and Raghunath Choudhary. After the death of Devi Choudharaine, Nirsu Choudhary married another lady from whom he got a daughter Saraswati Choudharaine who died unmarried. After death of the second wife, Nirsu Choudhary married third time a lady, namely, Ramsaki Chaudharaine from whom there was no issue and she adopted Kedar Nath Choudhary as her son. According to the plaintiffs, in the year 1915 Ramsaki Chaudharaine had orally sold 1 khatta 2 dhoors of land to the

grand-father of plaintiff No. 2, Bilo Mahto in the plot No. 391 for Rs. 75/- and in the-said land Bilo Mahto constructed a house and after the death of Bilo Mahto It came to the possession of the plaintiffs, In the year 1945 there was registered family partition including Ramsaki Chaudharine, Kedarnath Choudhary, Sarjug Chaudharine and her two sons namely Govind Choudhary and Raghu Nath Choudhary, In the said partition 8 annas share came in possession of Kidarnath Choudhiry ind 7 annas share went to Govind Choudhary, Righunath Chsudhary and Sarjug Choudharine and Ramsaki Choudharine had not taken any share and as per that registered family settlement the entire plot No. 391 came in the share of Kedar Nath Choudhary. In the year 1954, Kedarnath Choudhary sold 2 Katthas 16 dhoors and 14 (torn) land in plot No. 391 to Govind Choudhary and Raghunath Choudhary through registered sale-deed dated 29-11-1954 as there was no document regarding the oral sale by Ramsaki Choudharine in respect of one kattha two dhoors of land from plot No. 391. Kedarnath Choudhary executed a registered sale-deed on 8-11-1982 in favour of the plaintiffs. Besides this Raghunath Choudhary had also executed a registered sale-deed on 2-4-1984 in favour of Smt. Sabitri Devi wife of plaintiff petitioner which is adjacent to the south of 1 kattha 2 dhoors of land, After the execution of the sale-deed on 8-11-1982 the land was mutated in the name of the plaintiff and he is paying rent. Further case of the plaintiff is that the defendants took the suit house on a monthly rent and thereafter they were living and paying rent. However, they failed to pay rent since the month of April, 1983 and started denying the title of the plaintiff and hence, the present suit.

3. The defendants in the written statement admitted the genealogical table given by the plaintiffs and also admitted that there was registered family settlement in the year 1945 and also regarding the shares of Kedar Nath Choudhary and others as per that registered settlement. But they wanted to show that there was only 8 katthas of land amalgamated by plot Nos. 391 and 392 in favour of the Kedar Nath Choudhary and Ramsaki Choudharine and that Ramsaki Choudharine died leaving behind the only adopted son Kedar Nath Choudhary who sold away 8 katthas 2 dhoors of land of plot Nos. 391 and 392 by virtue of Kewala dated 30-11-1954 in favour of Govind Choudhary by Raghunath Choudhary and Ramsaki Choudharine from their own share in plot Nos. 391 and 392 according to the family settlement and the defendants had entered Into an agreement on 14-10-1982 by a Mahadanama when Govind had purchased all the suit premises and on the basis of that sale-deed was executed in favour of the plaintiffs on 6-11-1985 and thus the defendants are having title over the suit property and denied all other averments regarding their status as monthly tenants or settlement thereof or payment of rent as claimed from the side of the plaintiff, Thus, practically there remains the only question as to whether the whole of the suit property, as mentioned, falls into the share of Kedarnath or not as per family arrangement rather the same had been admitted from the side of the defendants in their written statement. But they wanted to show that there was a family arrangement in the year 1945 and the same was not being implemented as

there were subsequent sales conjointly by the cosharers in the year 1947 and for that Ext. "C" was produced but both the Courts below had rejected such sort of plea. The family arrangement when being admitted and even if there was a joint execution of the sale-deed by the cosharers after the family settlement then that does not take away the family settlement itself. Admittedly, the whole of the plot No. 391 had fallen into the shares of Kedarnath Choudhary and in that way, Raghunath Choudhary and others can have no share in plot No. 391 and in that way, whether there was a Mahadanama earlier or not that does not create any right on the subsequent purchase in favour of the defendants in respect of the suit property. Moreover, admittedly, Mahadanama does not create any title. The possession has been claimed by the plaintiffs since the possession of their grand-father Bilo Mahto on the basis of oral sale by Ramsaki Choudharine who did not take any share although a party in the family arrangement and the whole plot No. 391 was given to her adopted son Kedar Nath Choudhary and in the averments of the purchase deed of the plaintiffs in the year 1982 very well denotes the earlier oral sale by his mother, In that way, both the Courts below had relied on the plaintiffs' averments of possession since before they have purchased it and It is a factual aspect and both the Courts had found the said facts in favour of the plaintiffs. In that view of the matter, the proposed substantial questions of law as per order dated 20-1-2000 i.e. Nos. 1 and 3 have got no bearing in the position and circumstances when those mentioning about the factual aspect alone and when those factual aspects have been decided by the Courts below in favour of the plaintiffs-respondents.

4. Regarding the second proposed substantial question of law has also got no bearing on the face of it as because the plaintiffs have claimed specifically regarding their title and their cause of action is to deny the plaintiffs' title over the suit premises and the tracing of the title is very much their in the plaint itself. In that way, the second proposed question of law is a misnomer on the face of the records.

5. Practically, on going through the judgments of both the Courts below, I do not find that any important question of law is involved rather the decisions of both the Courts below relate to the factual aspects and both the Courts below had given concurrent findings about the factual aspects. In that way, I do not find any substantial question of law being involved in the Second Appeal and there is no force in the Second Appeal and the same is rejected under Order XLI, Rule 11 of the Code of Civil Procedure. The records of the lower Court may be returned back immediately.