

District: Siwan

IN THE COURT OF DISTRICT JUDGE-II, SIWAN

Title Appeal No. 39/1999

(From the Judgment and Decree passed in T.S. No. 145/1982)

(C.I.S. No. 04/2016)

IN THE MATTER OF:-

Parvati Kuwar & Ors.....Appellants/Defendants

Vs.

Brijendra Pandey & Ors.....Respondents/Plaintiffs

Appearance:

Counsel for the Appellant : Sri Nagendra Kumar Mishra

Counsel for the Respondent: Sri Shailesh Kumar Rai

JUDGMENT DATED THE 10th DAY OF MARCH, 2026

PRESENT:-

SANTOSH KUMAR

DISTRICT JUDGE-II, SIWAN

J U D G M E N T

1. The instant appeal has been preferred by appellant against the judgment pronounced on 09.04.1999 and the decree drawn on 23.04.1999 passed by then subordinate judge – V, Sri K.K. Chaubey whereby and where under the then Ld. Subordinate judge has decreed the Title Suit No. 145/82 in favour of the plaintiff.
2.
 - i. The judgment of the learned Lower Court is challenged as being bad in law and fact, against the weight of evidence, and based on surmises and conjectures rather than legal principles. It suffers from significant legal infirmities.
 - ii. The court failed to appreciate the respective cases of the parties in their true perspective and took an erroneous view of the matter in the context of the dispute.

- iii.** The court failed to discuss the issues properly to arrive at just findings and failed to frame proper and important issues necessary for the case.
- iv.** The court failed to reach definite findings on consecutive issues (specifically Issues V, VII, IX, and X) together.
- v.** The court failed to decide Issue No. 6 (the most vital issue regarding separation) and wrongly recorded that Issues 1, 2, 3, 4, 6, and 8 were "not pressed," which is factually incorrect.
- vi.** The court completely ignored and failed to discuss the oral evidence adduced by the parties. This non-discussion led the court to fall into a grave error of judgment.
- vii.** The entire findings are vitiated because the court scrutinized evidence based on "wrong and arbitrary assumptions" of so-called admitted facts.
- viii.** The court failed to correctly establish the sequence of death of Nanda Mishir, which is the foundation of the succession claim.
- ix.** The court erred at the very outset by accepting Jileba Kuer as the admitted daughter of Nanda Mishir. The appellants specifically pleaded that she is the daughter of Rambachan Mishir, not Nanda Mishir.
- x.** The court wrongly held that the genealogy was admitted, despite it being a major point of contention.
- xi.** Because Jileba Kuer is the daughter of Rambachan Mishir, she had no right, title, or interest to dispose of Nanda Mishir's property via a Gift Deed.
- xii.** The court wrongly held that the property devolved upon the widow, Ramsundra Kunwar, and ultimately went to Jileba Kuwar.
- xiii.** The court failed to hold that Nanda Mishir died in 1933 in jointness with his brother Rajkumar Mishir. Since his sons also died in jointness prior to 1937, the entire property of Nihora Mishir vested in Rajkumar Mishir by survivorship.
- xiv.** The court should have held that Ramsundra Kunwar was only a maintenance holder and that she died in 1955.
- xv.** The court wrongly held that the Deed of Gift in favor of the Plaintiff was valid. The appellants contend that it is invalid under Section 28 of the Indian Registration Act.
- xvi.** Since Jileba Kuer lacked title and any deed executed by her is legally inoperative and void.

- xvii.** The court's approach was erroneous regarding the findings on various issues taken up together.
- xviii.** The court wrongly decreed the suit in favor of the Plaintiff.
- xix.** The court failed to see that there was no unity of title or possession between the parties and that the Defendants/Appellants are the exclusive owners of the disputed property.
- xx.** The suit must fail as it suffers from non-joinder of necessary parties.
- 3.** The facts of the case of the plaintiff in short is that there was one Ram Nihor Mishra who had got two sons Nanda Mishra and Raj Kumar Mishra & r.s khatian was prepared in their name. Nanda Mishra died in the year 1943 leaving behind his wife Most. Ram Sundra Kuwar and three sons Rachha Mishra, Sitaram Mishra & Thakur Mishra & a daughter Zeeleba. Nanda Mishra & Raj Kumar Mishra separated after r.s operation & after the death of Nanda Mishra property devolved upon his three sons & wife. All the three sons of Nanda Mishra died unmarried and after their death the entire property of Nanda Mishra was succeeded by Ram Sundra Kuwar. Ram Sundra Kuwar died in year 1957 leaving behind her daughter Zeeleba Kuwar and on the death of Ram Sundra Kuwar the entire property of Ram Sundra Kuwar & Nanda Mishra devolved upon Most. Zeeleba Kuwar & she has dealt with the property. Raj Kumar Mishra had a son Nathuni Mishra who died in year 1970 leaving behind his widow Parvati Kuwar (deft-1) and two daughters namely Usha Devi & Neelam Devi (deft no. 2 & 3). Parvati, Usha, & Neelam (deft no. 1, 2 & 3) had succeeded the property of Nathuni. Zeeleba Kuwar was aunt of the plaintiff & she had no issue & so she was maintain & surved by the plaintiff. And so Zeeleba Kuwar has executed a deed of gift for the property from her husband and her mother to the plaintiff through registered deed of gift dated 26-06-81 and she has delivered the possession to the plaintiff. The plaintiff has got share in the suit land to the extant of $\frac{1}{2}$ share in the property mentioned in schedule no. 1 & 2 of the plaint. Nathuni Mishra has executed sale deed to defendant no. 4 to 16 and so they have been made party in the suit. Defendants are annoyed with the plaintiff due to deed of gift & so they often damage to crop of the plaintiff & so the plaintiff has requested the defendant to partition the suit land but as they have refused to do so hence the necessity of filing of the instant suit.

4. On the other hand, defendant no. 1 & 2 have contested the suit & have filed the w.s stating interalia therein that the suit as framed is not maintainable. The plaintiffs have got no cause of action or right to sue. The suit is barred by ouster and adverse possession. The plaintiff has filed the suit for the declaration of his right title interest over the suit land in the garb of partition suit and so unless the plaintiff pay proper advolorem court fee upon the proper valuation of the suit land the suit can't proceed. The suit is barred u/s 34 of the specific relief Act. There is no unity of title & unity of possession among the party. Jileba Kuwar never came in possession of the suit land. As a matter of fact the entire suit land remained in the possession of Nathuni Mishra who died in the year 1968 leaving behind his wife and two daughters. Nathuni Mishra had executed deed of will on 05-06-67 & the defendant no. 3 was born after the execution of deed of will. Jileba Kuwar was not the daughter of Nanda Mishra & Ramsundra Kuwar was not the mother of Jileba Kuwar. Jileba Kuwar was the daughter of Ram Bachhan Mishra of village-Ushari Bhagawan. Nanda Mishra died in year 1933 in jointness with his brother Raj Kumar Mishra & so his entire property devolved upon Raj Kumar Mishra by way of survivorship. Sabha Mishra & Gopi Mishra died unmarried during their minority. Ram Sundra Kuwar died in year 1955 & her last ritual was performed by Nathuni Mishra. Nathuni Mishra never separated with his brother. The property of Nanda Mishra was never succeeded by his wife & sons. The sons of Nanda Mishra died prior to year 1937 in jointness with Nathuni Mishra. Raj Kumar Mishra also died some time after the death of Nanda Mishra. Ram Sundra Kuwar was only the maintenance holder and she was living jointly with Nathuni Mishra and she was maintained by him. She did not die in year 1957. Jileba Kuwar has got a daughter namely Pateshara Kuwar and she was married to Bankey Panday of Village- Ratanpura. Jileba Kuwar did not have property either in father's house nor in the house of her father in law. She was taken to registry Office to execute deed of Mukhtarnama in favour of plaintiff but by playing fraud upon her the plaintiff has got executed a deed of gift by her. The deed of gift has not been duly executed by Jileba Kuwar & the plaintiff never came in possession of the gifted property. The entire property of Nanda Mishra and his sons was succeeded by Nathuni Mishra by way of survivorship. -

5. The entire property remained in possession of Nathuni Mishra who dealt with the same and after his death the defendant no. 5 had executed sale deed. Hence it is prayed that the suit be dismissed on contest with cost.
6. On the basis of pleadings of both the parties the following issue has been framed on recast :-

I S S U E S

7. (i). Whether the plaintiff has got valid cause of action or right to sue?
(ii). Whether the suit as framed is maintainable?
(iii). Whether the suit as framed is barred by the law of limitation estoppel waiver and adverse possession?
(iv). Whether the suit is barred u/s 34 of specific relief Act?
(v). Whether the plaintiff has got unity of title & unity of possession in suit property?
(vi). Whether Nanda Mishra died before 1937 in state of separation from Raj Kumar Mishra?
(vii). Whether Ram Sundra Kuwar died in 1955 or 57?
(viii). Whether the deed of gift is bad u/s 28 of Indian Registration Act?
(ix). Whether Jileba Kuwar was daughter of Ram Sundra Kuwar or she was daughter of Ram Dhawan?
(x). Whether the deed of gift legal valid & operative?
8. In order to prove its case the plaintiff has adduced the following witness:-
P.W.- 1 Brajendera Nandan Pandey (Plaintiff)
P.W.- 2 Paramatma Mishra
P.W.- 3 Dinesh Mishra
P.W.- 4 Lal Babu Pandey
P.W.- 5 Dhruv Dev Singh
P.W.- 6 Sawaliya Singh
P.W.- 7 Madadev Pandey
9. The Documents have been exhibited on behalf of the plaintiff are follows as:-

Sr. No.	Ext.	Type of Document
1.	Ext. 1	Deed of gift deed, Most. Zeeleba Kuwar Vs. Brajnandan Pandey
2.	Ext.2	Sale Deed
3.	Ext. 2/A	Sale Deed
4.	Ext. 3	Jarpeshgi Deed
5.	Ext. 3/A	C.C. of death Certificates
6.	Ext. 4	R.S. Khatiyani

10. On behalf of the defendants 14 witnesses have been examined as follows;-

D.W.-1 Saraswati Prasad

D.W.-2 Birendera Kumar Singh

D.W.-3 Bijlee Shah

D.W.-4 Nagina Shah

D.W.-5 Kapildeo

D.W.6 Osihar Singh

D.W.-7 Surendra Singh

D.W.-8 Kamal Kishor

D.W.-9 Malik Mishra

D.W.-10 Vishwanth Mishra

D.W.-11 Rajendera Prasad

D.W.-12 Jugul Kishor Dubey

D.W.-13 Parwati Kuwar

D.W.-14 Ashok Kumar Dubey

11. The documents evidence have been exhibited on behalf of the Defendants as follows:-

Sr. No.	Ext.	Type of Document
1.	Ext. A to A/17	Rent Receipts
2.	Ext. B to B/3	Sale Deed dated 24.03.1977
3.	Ext. C	Deed of Will
4.	Ext. D	Jarpeshgi deed
5.	Ext. E	C.C. of mutation

- 12.** After discussing the aforesaid issues the Id. Trial Court has decreed the suit in favour of plaintiff and against the defendant. Being aggrieved by the judgment and decree of the Trial Court the instant Title Appeal No. 39/1999 has been filed. The main focus of argument of the appellant is that the Trial Court has wrongly decided the case by mentioning the wrong fact that Jeeleba Kuwar is admitted daughter of Nanda Mishra whereas the appellants have specifically pleaded that Jeeleba Kuwar was the daughter of Rambachan Mishra not of Nanda Mishra. The another argument of the appellant is that the Trial Court has wrongly held that the genealogy was admitted despite being a major point of contention.
- 13.** From the perusal of the entire record i.e. the pleadings of both the parties the evidences of both parties, the whole case revolves around only one point “Whether the Jeeleba Kuwar was the daughter of Nanda Mishra or whether being daughter of Nanda Mishra she had right title or interest over the suit property to dispose of the property of Nanda Mishra by way of gift.” So, for deciding the appeal the only point of determination is “whether the Jeeleba Kuwar is the daughter of Nanda Mishra and whether she had right title or interest to dispose of the property of Nanda Mishra via deed of gift through which the plaintiff is claiming their title”.
- 14.** In this regard perused the judgment of Trial Court and found that the Trial Court vide its judgment dated 9th April, 1999 passed in Title Suit No. 145/82. While deciding the issue no. 5, 7, 9 and 10 started his findings by saying that “this is the admitted fact that property belongs to Nihora Mishra. Nihora Mishra has got two sons (1) Nanda Mishra (2) Rajkumar Mishra. It is also admitted the fact that Nanda Mishra has got one wife namely Ramsudhari Devi and one daughter Jeeleba Kuwar and three sons. Jeeleba Kuwar has executed on deed of gift to the plaintiff. In the last line of paragraph, it is further written “in this case genealogy is admitted”. But from perusal of the written statement vide para 9, it is specifically pleaded by the defendant that the genealogy as claimed by the plaintiff is wrong. It is specifically pleaded in the said paragraph that Jeeleba Kuwar was not the daughter of Nandkeshwar Mishra @ Nanda Mishra and Ramsundra Kuwar rather she

was the daughter of Rambachan Mishra @Uusuri Bhagwan. It is further specifically pleaded that in the said para that out of wedlock of Nanda Mishra and Ramsundra no any daughter namely Jeelaba Kuwar was ever born. So, the judgment of the Trial Court is based on wrong admitted fact and liable to be set aside. While dealing with the pleading of both the parties the Trial Court has mentioned the fact in the last line of page 3 of the judgment that the Jeeleba Kuwar was not the daughter of Nanda Mishra and Ramsundara Kuwar rather Jeeleba Kuwar was the daughter of Rambachan Mishra of his village Usuri Bhagwan. But while giving the findings, he has wrongly stated that the genealogical table as given in the plaint is admitted and it is also wrongly mentioned by him that it is also admitted fact that Jeeleba Kuwar is the daughter of Nanda Mishra and Ramsudari Devi. Although issue no. 9 has been framed by the Trial Court that “whether Jeeleba Kuwar was the daughter of Ramsundra Kuwar or she was the daughter of Ramdhavan. But the said issue was not discussed in the judgment nor any findings has been given in the judgment so the judgment of Id. Trial Court is suffers from illegality on this score alone that the whole judgment is based on the assumption of fact that Jeeleba Kuwar is the admitted daughter of Nanda Mishra and Ramsundara Devi whereas it has been specifically denied. The plaintiff did not prove this fact that Jeeleba Kuwar was the daughter of Nanda Mishra. It is the duty of the plaintiff to prove this fact by positive evidence. He cannot take benefit from the fault of pleadings and evidence of defendeants in proving his case. So, on the basis of the oral or documentary evidences the plaintiff has failed in proving its case that Jeeleba Kuwar was the daughter of Nanda Mishra.

15. With respect to Jeelaba Kuwar the plaintiff has pleaded that she was the daughter of Nanda Mishra and Ramsundra Devi whereas the defendants has pleaded that she is the daughter of Rambachan Mishra of different village. No one has produced any documentary evidence or any person of their contemporary period which would show that Jeeleba Kuwar is the daughter of Nanda Mishra. Both parties have led evidence on this topic. But no one has proved their fact about parentage of Jeeleba Kuwar. It is settled law that when both parties have led their evidence and no one can prove the disputed

fact then that fact deems to be treated as the fact no proved. It is specifically pleaded by the plaintiff that Jeeleba Kuwar was the daughter of Nanda Mishra but failed in proving this fact. So, the case of the plaintiff is hereby failed which is foundation of the case. As it is held that Jeeleba Kuwar is not the daughter of Nanda Mishra. Hence, she had no right to execute the deed of gift in favour of anyone including the plaintiff with respect to the property of Nanda Mishra as well as Ramsundara Kuwar. Therefore, the plaintiff had got no right to seek partition on the basis of the deed of gift executed by Jeeleba Kuwar.

16. On the basis of the pleadings, evidences, arguments and discussions, I find and hold that the judgment and decree of the Trial Court judgment dated 09.04.1999 decree dated 23.04.1999 is liable to be set aside and accordingly it is hereby ordered that the judgment dated 09.04.1999 and decree dated 23.04.1999 and is bad in law on facts. Therefore, it is hereby

ORDERED

to be set aside and the Appeal as filed by the Appellant is hereby **allowed**.

Dictated and corrected

Dictated and corrected

Sd/-

Sd/-

(Santosh Kumar)
District Judge-II, Siwan
10.03.2026

(Santosh Kumar)
District Judge-II, Siwan
10.03.2026