



IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.335 of 2017

1. Narayan Pandit
2. Janardan Pandit,
Both are sons of Late Ganeshi Pandit, Resident of Village Parsha Hat, P.S. Raniganj, District- Arariya
3. Gholti Devi, Daughter of Late Ganeshi Pandit, Wife of Late Lalo Pandit, Resident of Village Patori, P.S. Singheswar, District Madhepura.

... .. Appellant/s

Versus

- 1.1. Kishan Pandit, Son of Late Chhuitharniya Devi Widow of Late Chhabbu Pandit, Resident of Village - Parsa Halt, Police Station - Raniganj, District- Araria.
- 1.2. Yogi Pandit Son of Late Chhutharniya Devi Widow of Late Chhabbu Pandit, Resident of Village - Parsa Halt, Police Station - Raniganj, District- Araria.
- 1.3. Mauji Pandit Son of Late Chhutharniya Devi Widow of Late Chhabbu Pandit, Resident of Village - Parsa Halt, Police Station - Raniganj, District- Araria.
- 1.4. Kapoori Pandit Son of Late Chhutharniya Devi Widow of Late Chhabbu Pandit, Resident of Village - Parsa Halt, Police Station - Raniganj, District- Araria.
- 1.5. Rukmani Devi W/o Name not known Daughter of Late Chhutharniya Devi, Resident of Village - Ramani, Police Station- Murliganj, District- Madhepura.
2. Matroo Rajjak, son of Late Sanichar Rajjak
3. Baldeo Rajjak, son of Late Uttim Lal Rajjak
4. Jagdeo Rajjak, son of Late Uttim Lal Rajjak,
Respondent nos. 2 to 4 are the Residents of Village Parsha Hat, P.S. Raniganj, District- Arariya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh, Sr. Advocate with
Mr. Rajeev Kumar, Advocate
Mr. Varun Krishna Singh, Advocate
Mr. Venkatesh Kaushik, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 19-01-2026 Heard Mr. Jitendra Prasad Singh, learned senior
counsel assisted by Mr. Rajeev Kumar, learned counsel for the





appellants.

2. This second appeal has been filed against the judgment of affirmance dated 27.05.2017 passed in Title Appeal No. 40 of 2012 by learned 1st Additional District Judge, Araria, whereby the judgment and decree dated 31.07.2012 passed by learned Sub-Judge-1, Araria in Title Suit No. 110 of 2009 has been upheld.

3. This Second Appeal has been filed by the defendants/appellants/appellants.

4. The plaintiff filed Title Suit No. 110 of 2009 for partition of her half share in the suit land mentioned in Schedule-A of the plaint and carving out the said share by appointing Survey Knowing Pleader Commissioner.

5. The case of the plaintiff is that the suit land belongs to common ancestor of the plaintiff and defendant 1st party, namely, Doman Pandit much prior to R.S. operation consisting him and his sons Rupan Pandit and Bhutai Pandit being the members of Joint Hindu Mitakshara Family who had been coming in joint possession over the same. Thereafter, Rupan pandit died leaving behind his son Ganeshi Pandit and Bhutai Pandit also died leaving behind his wife Most. Bhagiya Devi and one daughter Chhutharniya Devi, much prior to R.S.





operation and Ganeshi Pandit, Bhagiya Devi came in joint possession over the suit land having equal share. It is further pleaded that during R.S. Operation, the name of Ganeshi Pandit and Most. Bhagiya Devi has been recorded but due to mistake of survey amalas, the land of R.S. Khata No. 282 and 8 of Mauza Parsa Hat was wrongly recorded only in the name of Ganeshi Pandit which ought to have been recorded in the name of Ganeshi Pandit along with Most. Bhagiya Devi having equal share. Despite of wrong entry with respect to the land of R.S. Khata No. 282 and 8 only in the name of Ganeshi Pandit, the ancestor of defendant 1st party Most. Bhagiya Devi, the mother of the plaintiff had been coming in joint possession over the land of R.S. Khata No. 282 and 8 along with the land of R.S. Khata No. 280, 281 which is the suit land. It is further submitted that during R.S. operation in the remarks column of R.S. Khatiyan, the separate possession of Ganeshi Pandit and Most. Bhagiya Devi has been wrongly noted as there was no partition by metes and bounds between them. The said entry is quite wrong.

6. The further case of the plaintiff is that Ganeshi Pandit during his lifetime sold some land out of the suit land to defendant 2nd party and defendant 2nd party have been coming in





possession to the extent of share of Late Ganeshi Pandit out of the suit land. There is unity of title and unity of possession between the parties over the suit land. The plaintiff demanded partition of her share in the suit land. The defendant 1st party did not pay any heed, then the suit was filed.

7. On summon, defendant nos. 1 to 5 appeared and filed their written statement. Apart from the ornamental objection, it is vehemently submitted that Doman Pandit had a brother Nandi Pandit, who was 8 Annas co-sharer of the suit property. Doman Pandit died leaving behind Rupan Pandit and Bhutai Pandit. Rupan Pandit died leaving behind Ganeshi Pandit who died leaving Narayan, Janardan and Ghottai, who are defendant nos. 1, 2 & 3 to the suit. The defendant nos. 4 & 5 are the purchaser out of the suit land from late Ganeshi Pandit. It is further pleaded that Nandi Pandit was the full brother of Doman Pandit but he had no issue. Hence, he adopted Ganeshi Pandit as his *Kritrim Putra* as was customary then. Thus, Ganeshi Pandit became owner of Nandi Pandit's half share and 1/4th share inherited from Rupan Pandit, his father being the son of Doman Pandit. It is further pleaded that Nandi Pandit, Doman Pandit, Rupan Pandit and Bhutai Pandit died sometime during 1929-1930 leaving behind Ganeshi Pandit and Bhutai Pandit's widow





Bhagiya Devi and a daughter as the plaintiff Chhutharnia Devi. It is further pleaded that Most. Bhagiya Devi also died sometime in 1977-78 and “*Shradh*” ceremony was also performed by Ganeshi Pandit because Ganeshi Pandit was the only male member, who performed the above rituals. Ganeshi Pandit in his lifetime had sold land vide sale deed dated 24.12.1992 and 19.06.1995 to defendant nos. 5 & 6 who are in possession over the suit land.

8. After considering the pleadings and materials on record, the learned trial court decreed the suit and held that there is unity of title and unity of possession. It has been further held that the suit land is joint property of the plaintiff and defendant and plaintiff have 8 Anna share in the suit land and the defendants have completely failed to prove the fact of adoption of Ganeshi Pandit as a *Kritrim Putra* of Nandi Pandit and Ganeshi Pandit was not the *Kritrim Putra* of Nandi Pandit.

9. Being aggrieved by the aforesaid judgment of trial court, the defendants/appellants filed Title Appeal No. 40 of 2012 which was dismissed by the learned appellate court affirming the findings of the learned trial court.

10. Learned First Appellate Court held that there is nothing on record regarding adoption of Ganeshi Pandit by





Nandi Pandit as his *Kritrim Putra* (son) and the documents filed on behalf of the defendants show that R.S. Khatiyani is recorded in the name of Ganeshi Pandit, son of Rupan Pandit. The claim of the defendants is that Nandi Pandit adopted Ganeshi @ Ganeshi Pandit as his *Kritrim Putra* (son) in the year 1929-30 and R.S. Khatiyani was prepared in the year 1958 but father's name of Ganeshi Pandit was recorded as Rupan Pandit in R.S. Khatiyani, which creates great doubt on the pleading of the defendants. The defendants/appellants have not adduced any evidence either documentary or oral in support of their case that Ganeshi Pandit was the *Kritrim Putra* (son) of Nandi Pandit having their personal knowledge. The onus is on the person who has pleaded this special fact but the defendants have not adduced such type of evidence though documents show that he was the son of Rupan Pandit as recorded in R.S. Khatiyani and consequently held that father of the defendant was not *Kritrim Putra* (son) of Nandi Pandit, rather, he was son of Rupan Pandit. It is further held that the land, in question, belongs to the ancestor of the parties which is not denied and there is nothing on record regarding any private partition taken place between the parties, it shows that the land, in question, is in joint possession and not partitioned by metes and bounds and further





held that the purchasers have right to get the purchased land from the share of their vendors. Accordingly, the appeal filed by the defendants/appellants was dismissed.

11. Having regard to the 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.

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

13. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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