

IN THE HIGH COURT OF JHARKHAND, RANCHI

Second Appeal No. 142 of 2003

*[Against the Judgment dated 18.01.2003 and decree dated 30.01.2003
passed by learned 9th Additional District Judge, Hazaribagh in Title
Appeal No.14 of 1996]*

- 1. a. Ranjit Kumar
b. Kundan Kumar
c. Reena Sharma, widow of Rajesh Sharma
- 2. Ganesh Mistry, Son of Late Mahabir Mistry, resident of Malviya Marg, Hazaribagh, P.O., P.S. and District- Hazaribagh.

.... Appellants/Defendants

Versus

- 1. Mania Devi @ Meena Devi wife of Late Hari Mistry.
 - 2. Sanju Kumari, minor daughter of Late Hari Mistry.
 - 3. Suresh Mistry
 - 4. Bablu
 - 5. Anil
 - 6. (i) Most. Shanti Devi, widow of Late Prem Mistry
(ii) Suresh Mistry
(iii) Dipu Mistry
- Minor Sons of Late Hari Mistry through their
next friend and guardian Meena Devi their
mother.
- Both Sons of Late Prem Mistry.
- All resident of Kali Bari Road, P.O. Hazaribagh, P.S. Sadar, District- Hazaribagh.
- (iv) Manju Devi wife of Sri Krishna Rana & D/o. Late Prem Mistry, R/o Near Ojha Market, Piska More, P.O. Hehal, P.S. Sukhdeonagar, District- Ranchi
- (v) Gudia Devi, wife of Sri Krishna Sharma, Daughter of Late Prem Mistry resident of Gopal Nagar, Kali Mandir Para, Asansol, West Bengal.
- (vi) Munni Devi, wife of Sri Rajesh Sharma, Daughter of Late Prem Mistry resident of at & Vill- Dumri, P.O.- Dumari, P.S. Dumari, District- Giridih.

.... Respondents / Plaintiffs.

7. Singhasan Mistry, Son of Late Birju Mistry
8. Most. Anita, wife of Late Birju Mistry.
9. Bikky, Son of Late Manik Mistry aged about 10 years.
10. Golu, Son of Late Manik Mistry aged about 08 years.
11. Gudia, Daughter of late Manik Mistry aged about 06 years.

No.9 to 11 are minors and they are being represented by their natural guardian mother Most. Anita whose interest is not adverse to her minor children, all of Kokar Ranchi.

12. Binod Mistry, Son of late Birju Mistry, C/O. Bhagwan Das Hotel, P.O. Kokar, Lalpur Chowk, P.O. & P.S. Ranchi, District-Ranchi.

.... **Respondents / Defendants/Proforma Respondents**

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. Rajeev Ranjan Tiwari, Adv.

For the Respondents : Mr. Arjun Narayan Deo, Adv.

Ms. Karishma Kumari, Adv.

Mr. Chatur Prasad Singh, Adv.

JUDGMENT

C.A.V. on: 16/07/2025

Pronounced on 11/09/2025

Heard learned counsel for appellants Mr. Rajeev Ranjan Tiwari as well as learned counsel for the respondents Mr. Arjun Narayan Deo.

2. Instant second appeal has been preferred by the appellants/defendants against the concurrent findings of trial court as well as appellate court whereby and whereunder the tile partition suit no. 111/94 instituted by the respondents/plaintiffs have been decreed.

Factual Matrix

3. Factual matrix giving rise to this appeal is that the suit was instituted by the original plaintiffs namely Hari Mistry and Prem Mistry for declaration of

their 1/3rd share in the suit Schedule-A property appertaining to Plot No.800, Holding No. 128, Ward No. 8 area, 1 Kattha, 16 Dhur and 12 dhuril situated in Mohalla- Maldivmal, District- Hazaribagh. The case of the plaintiffs is that the suit property belongs to Late Dukhuwa Barhin mother of Moti Mistry who died leaving behind 04 sons namely Mahavir Mistry, Durgi Mistry, Birju Mistry and Babra Mistry. Babra Mistry died in his childhood. Mahavir Mistry died leaving behind 02 sons namely, Bharat Mistry and Ganesh Mistry. Durgi Mistry died leaving behind him two sons Hari Mistry and Prem Mistry. Birju Mistry died leaving behind three sons namely Singhasan Mistry, Manik Mistry and Binod Mistry. Since Babra Mistry died in childhood hence, branch of all three brothers got 1/3rd share in the suit property. On the other hand, the case of contesting defendants has admitted that Dukhuwa Barhin wife of Basant Mistry was the owner of the suit property, but Moti Mistry was not her son, therefore sons of Moti Mistry had never inherited in the property of Most. Dukhuwa Barhin. The specific case of the defendants is that Dukhuwa Barhin owner of the suit property had two daughters, her first daughter died issueless after marriage and the second daughter was married with one Harikishun Mistry who died leaving behind him one alive daughter Bandia Devi and his two sons Chattu Mistry and Jagannath Mistry died in childhood. Said Bandia Devi being the granddaughter of Dukhuwa Barhin, was married with Mahavir Mistry (father of the defendant nos.1 and 2) the suit property was orally gifted to Bandia Devi, therefore in the municipal holding, name of the defendant was mutated and they are paying the municipal taxes regularly since more than 12 years. The plaintiffs have no right title and interest over the suit property which is not a joint property of the parties or exclusive

property of the defendants. Therefore, no question of partition and determination of 1/3rd share of plaintiffs arises. The suit of plaintiffs is liable to be dismissed.

The learned trial court has framed following Issues:-

- (i). Is the suit as framed maintainable?
 - (ii). Have the plaintiffs any valid cause of action for the suit?
 - (iii). is the court fee paid sufficient?
 - (iv). is the suit bad for non-joinder of the necessary parties?
 - (v). is the suit is barred of law of limitation and adverse possession and ouster?
 - (vi). Have the plaintiffs got unity of title and unity of possession over the suit property ?
 - (vii). Are the plaintiffs entitled for a decree of partition as prayed for?
 - (viii). What relief or reliefs the plaintiffs are entitled to?
4. The learned trial court after considering the oral as well as documentary evidence adduced by the parties and hearing arguments decreed the suit of the plaintiff on contest, but without cost.
5. The defendants preferred an appeal against the judgment of trial court vide title appeal no. 14 of 1996 wherein assailing the impugned judgment and decree passed by trial court following points were raised:-
- (i) Issue No.4 has not been discussed and the suit will fail for non-joinder of necessary parties.
 - (ii).Issue nos. 5 and 6 has been discussed separately and clubbing of the issue has caused prejudice.
 - (iii). The evidence of witnesses has not been properly considered in respect of genealogy of the family and the register of Vishwakarma Committee

showing genealogy of the parties has wrongly been marked as exhibit without any legal proof, it is also caused serious prejudice.

6. The learned appellate court after considering the aforesaid grounds has separately decided issue nos. 4, 5 and 6, re-appreciating the oral and documentary evidence led by the respective parties.
7. As regards Issue no.4:- The learned appellate court recorded findings that the objection raised by the defendants that daughter of the Mahavir Mistry namely, Mishwa Devi has not been made party in this appeal does not affect the share of the defendants who had 1/3rd share.
8. As regards Issue no. 5:- It was observed that plaintiffs have been found in possession of the suit property along with the defendants, therefore, no question of limitation or adverse possession or ouster arises.
9. As regards Issue No.6:- It is held that admittedly, Dukhwa was the mother of Moti Mistry and wife of Basant Badhai. The defendants are also sons and descendants of Moti Mistry are an admitted fact. The plea of defendants is that the Dukhwa Barhin had only two daughters one died issueless after marriage and another was married with Harikishun Mistry who have left only one daughter behind namely Bandia Devi (Granddaughter of Dukhwa Badhim) and the suit property was orally gifted to Bandia Devi wife of Mahavir Mistry has not been proved by the defendants through cogent and reliable evidence. Moreover, the oral gift of immovable property is not permissible under law.
10. The relationship of parties was found to be proved on hypothesis of probability as pleaded by the plaintiffs. Therefore, appeal filed by the defendants was dismissed by the first appellate court also.

11. The learned counsel for the appellant has led much emphasis upon the provision of Section 50 of Indian Evidence Act to prove the genealogy and relationship between the parties.

12. For ready reference, Section 50 of the Indian Evidence Act is extracted as under:-

“When the court has to form an opinion as to the relationship with one person to another, the opinion expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge, is a relevant fact.

“Provided that such opinion shall not be sufficient to prove the marriage in a proceeding under the Indian Divorce Act (iv) of 1869, or in prosecutions under Sections 494, 495, 497 and 498 of the Indian Penal Code (45 of 1860).”

13. The illustration appended to the aforesaid Section are as follows:-

(a). The question is whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is whether A was the legitimate son of B.

The fact that A was always treated as such by members of the family, is relevant.

14. The aforesaid provisions is not a branch of substantive law rather procedural law which only facilitate to Court in deciding relationship between the parties in certain cases by the evidence of persons who are usually expected to know about such relationship as expressed by conduct of the parties. Such evidence is mere opinion of a person which may or may not be admissible. In evidence, Section 50 allows Courts to consider the practical evidence of

relationships as demonstrated through behaviour and conduct, but it also sets limits on the weight given to such evidence in specific legal situations.

15. In the instant case, the oral testimony of witnesses examined by the plaintiffs as well as defendants and the documentary evidence led in support of the case, although not considered by the learned trial court as strict evidence of relationship i.e., family pedigree of the parties. It appears that both the trial court as well as learned appellate court have recorded the concurrent findings that Dukhwa Barhin was wife of Basant Mistry and mother of Moti Mistry, this fact has not been controverted by the defendants through any cogent and reliable evidence. It is an admitted position that Moti Mistry had four sons one of them died issueless and both the parties are descendants of three sons of Moti Mistry. It is also admitted fact that the suit property was belonging to Dukhwa Badhin. Therefore, the same has been inherited by all her heirs and descendants in equal share per stripes. The defendants have setup a case placing reliance upon different genealogy, whereby, the Dukhwa Badhin and her husband Basant Mistry has been treated as separate entity having no concern with Moti Mistry and his sons, but the burden of proving such facts sparingly lies upon the defendants, but they miserably failed to establish their own case rather also setup an oral gift of immovable property which has no legal sanctity at all. The exhibit G and F executed by Dukhwa Barhin and copy of Aam Ishtehar Mutation No. 75/1974-75 dated 10.01.1975 respectively does not provide any exclusive title to the defendants.
16. In view of aforesaid discussion and reasons, I do not find any reason to take a different view and differ from the concurrent findings recorded by the learned trial court and first appellate court. There is no legal force and

substance in the substantial question of law formulated in this appeal serving any useful purpose in favour of appellants. Accordingly, this appeal is **dismissed** on merits with contest. Both parties shall bear their own cost.

17. Pending I.A., if any disposed of

18. Let the copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi
Date: 11 /09/2025
Amar/- N.A.F.R.