

IN THE HIGH COURT OF JHARKHAND, RANCHI

Second Appeal No. 593 of 2004

Indradeo Yadav & Ors. Appellant(s)
Versus
Sukhlal Mahto & Ors. Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH

For the Appellant(s) : Mr. Ayush Aditya, Advocate
Mr. Anurag Kashyap, Advocate.
For the Respondent(s) :

13/09.11.2017. Heard the learned counsel for the appellant.

Learned counsel for the appellants submitted that consideration of irrelevant facts and non-consideration of the relevant facts would give rise to substantial questions of law and further submitted that in the instant case, the learned Lower court has committed grave error of law in allowing 1/3rd share in favour of the plaintiffs-respondents. According to the finding of the trial court, the plaintiffs has failed to prove that Dipan Mahto and Desai Mahto were the brothers.

Learned counsel for the appellants has relied upon a judgment rendered in the case of Abdul Raheem Vs. Karnataka Electricity Board & Ors, reported in **2007 (14) SCC 138**.

Admit.

This appeal will be heard on the following substantial question of law :-

(i) Whether the learned lower Appellate Court has committed a grave error of law in allowing 1/3rd share in favour of plaintiffs- respondents who according to the finding of the trial court the plaintiff has failed to prove that Dipan and Dasai were brother and on the death of Dipan his share was also succeeded by Desai Mahto?

(ii) Whether in absence of any finding of the Lower Appellate Court that Dipan Mahto died in jointness with Desai Mahto the Court below has erred in enhancing the share of plaintiff Respondent from 1/4th to 1/3rd share in suit properties?

Further liberty is given to the counsel for the appellants to frame other substantial questions of law, if any, at the time of hearing of this appeal.

Call for the lower court records.

Counsel for the appellant(s) is directed to take steps for service of notice upon the respondents through ordinary process as well as Registered AD, for which, requisites etc., must be filed within four weeks.

(Anant Bijay Singh, J.)