

High Court Form No J(3)

Heading of Judgment in Appeal

In the Court of the Civil Judge :: :::::::::::Karimganj

District : Karimganj

Present : Shri. S. Sharma,  
Civil Judge,  
Karimganj.

**TITLE APPEAL No 8/2016**

**Friday, the 2<sup>nd</sup> September, 2016**

(From the judgment and decree dated 23/2/2016 passed by learned Munsiff No 1, Karimganj in Title Suit No 165/2012)

- |    |                     |   |
|----|---------------------|---|
| 1. | Tulsi Rani Sinha    |   |
| 2. | Karishma Sinha      |   |
| 3. | Tapashi Rani Sinha  | ----- Appellants/plaintiffs                     |
|    |                     | - Versus -                                      |
| 1. | Jhulan Sinha        | ----- Principal respondent/principal defendant  |
| 2. | Krishna Kanta Sinha |   |
| 3. | Aruna Sinha         |   |
| 4. | Manthana Sinha      |   |
| 5. | Dupha Sinha         |   |
| 6. | Sur Sinha           | ----- Proforma respondents/proforma defendants. |

This appeal coming on this day and having been heard on 11/8/2016

In presence of =

- |    |                     |   |                                |
|----|---------------------|---|--------------------------------|
| 1. | For the appellants  | : | Shri M K Purkayastha, advocate |
| 1. | For the respondents | : | Shri D D Sarma, advocate       |

And having stood for consideration to this day, the Court delivered the following ==

### **J U D G M E N T**

1 Being highly aggrieved and dissatisfied with the impugned judgment and decree dated 23/2/2016 passed by learned Munsiff No 1, Karimganj in Title Suit No 165/2012 dismissing the suit, the appellants/plaintiffs have preferred this appeal inter alia on the grounds that –

That the discussion and decision in issue No 2 are not based on evidence on record and as per provisions of law because of the fact, learned trial Court in spite of getting the dispute relating to inheritance of share of deceased Amate Sinha(died issueless), daughter of late Behari Sinha amongst the legal heirs of late Behari Sinha, the trial Court mis-interpreted the provisions of Section 15(1)(d) of Hindu Succession Act; that the learned trial court ought to have found that Binita Sinha, plaintiff No 2 after her inheritance in respect of share of deceased Amate Sinha, died during the pendency of suit and as such the inherited share of late Binita Sinha devolves upon remaining plaintiffs/appellants of the above appeal case; that the learned trial court ought to have found that suit is for declaration as well as for partition and the trial Court has misapplied his judicial mind in dismissing the suit by ignoring the point of equity, where in the plaint, it is specifically in prayer portion, it was mentioned that 'for such other or further relief as the learned Court deem fit and proper' and as such finding of trial Court is the violation of natural justice and same is liable to be set aside.

2. Plaintiff's case, in brief, is that the landed property described in the schedule of the plaint appertaining to periodic patta No 108, survey dag No 79, 82,103, 106, 126, 593, 425/748 under Mouza Bilbari, Porgonah Pratapgarh belonged to Behari Sinha. That he died intestate leaving behind his wife Kuchumlei Sinha, and sons Jhulan Sinha, principal defendant No 1 Kartik Sinha, predecessor of plaintiffs and daughters, Aloka Sinha, predecessor of proforma defendant No 2 to 6 and Amate Sinha. That later on Kuchumlei Sinha expired. That Kartik Sinha expired leaving behind the plaintiffs. That as per Hindu Succession Act, the plaintiffs are entitled to one third share of the schedule

mentioned property. The plaintiffs have been possessing the homestead land covering dag No 82 under patta No 108. That plaintiffs repeatedly approached the defendant No 1 for admitting their one third share and for partition. But he did not listen to them. Hence, the suit.

3. Accordingly the plaint was admitted and summons were issued to the defendants. The principal defendant No 1 having received the summons appeared in the suit and filed W/S. The suit is proceeding ex parte against the proforma defendant No 2 to 6. The principal defendant No 1 in his W/S inter alia submitted that there is no cause of action for the suit and that the suit is not maintainable and so on.

The contention of the principal defendant No 1 as stated in W/S that late Behari Sinha died leaving behind his wife Kuchumlei Sinha and 2 sons Jhulan Sinha and Kartik Sinha and 2 daughters Amate Sinha @ Lipklei Sinha and Aloka Sinha. That after the death of Kuchumlei Sinha her share devolved upon her sons and daughters and each son and daughter obtained one fourth share in the suit property. That Kartik Sinha the husband of plaintiff no 1 and father of other plaintiffs died leaving behind the plaintiffs. That Aloka Sinha died leaving behind proforma defendant No 2 to 6. That Amate Sinha was issueless. Her husband died a few years ago. That about a year ago Amate Sinha died issueless leaving behind defendant no 1 as her sole legal heir. Accordingly the principal defendant No 1 is the owner of  $\frac{2}{4}$ <sup>th</sup> share of the suit land and plaintiffs are owner of  $\frac{1}{4}$ <sup>th</sup> share and proforma defendants are owner of remaining  $\frac{1}{4}$ <sup>th</sup> share. That their paternal homestead covered by dag No 82 comprises an area of 9 katha 2 chatak and under mutual arrangement 4 katha land was given to Kartik Sinha wherein he constructed house. The principal defendant No 1 prayed for dismissal of suit with costs. It is to be mentioned that during pendency of suit plaintiff No 2 expired and her name has been struck off.

4. Upon pleadings of the parties, following issues were framed by learned Court below.

- (1) Whether the suit is maintainable?
- (2) Whether the plaintiff has  $\frac{1}{3}$ <sup>rd</sup> share in the suit land?

(3) Whether the plaintiffs are entitled to any relief(s) in this suit? If so, what relief(s) they are entitled to?

(4) Whether the suit has cause of action?

5. The plaintiff examined 3 witnesses and exhibited certain documents. On the other hand, defendant side examined 2 witnesses and exhibited a number of documents.

6. Learned Munsiff passed the impugned judgment after hearing oral argument of both sides and considering the evidence adduced by them.

7. Being aggrieved by impugned judgment, appellant filed this appeal.

8. I have heard Shri M K Purkayastha, learned counsel for the appellants and Shri D D Sarma, advocate for the respondents and carefully perused the pleadings of the parties, evidence on record and impugned judgment to arrive at a decision.

**Point for determination=**

9. From the materials available on record the real question in controversy between the parties appears to be :-

(i) Whether the plaintiff and proforma defendants are entitled to get share of Amate Sinha?

So, the above point is taken up for discussion at the outset to decide this appeal.

**DECISION AND REASONS THEREOF**

10. In the instant case, it is an admitted position of fact that suit land originally belonged to late Behari Sinha who died intestate leaving behind his wife Kuchunlei Sinha and 2 sons namely, Jhulon Sinha (Principal defendant No 1) and Kartik Sinha (predecessor of the plaintiff) and 2 daughters namely, Aloka Sinha (predecessor of proforma defendant No 2 to 6) and Amate Sinha.

It is also an admitted position of fact that after few years of the death of Behari Sinha, Kuchumlei Sinha, wife of Behari Sinha also died leaving behind her 2 sons and 2 daughters who thereafter become the absolute owner of suit property of Behari Sinha to the extent of 1/4<sup>th</sup> share each and since then they have been enjoying and maintaining their right, title, interest over their

respective shares. That, subsequently, the predecessor of plaintiffs namely, Kartick Sinha and predecessor of proforma defendant namely, Aloka Sinha also died and thereafter, Amate Sinha, who was issueless, also died after few years of the death of her husband and after death of Amate Sinha the dispute between the plaintiff and proforma defendant No 1 arises relating to her share in the property of Behari Sinha.

Now, in the instant case, as the dispute relates to the succession, so, at the outset, let us draw our attention to the relevant provision of law relating Hindu succession Act 1956 as applicable to the parties of instant suit.

**Section 15 of Hindu Succession Act 1956** states that "the property of female Hindu died intestate devolve firstly, upon sons and daughters and the husband, 2ndly, upon the heirs of the husband, 3rdly, upon the mother and father, **4<sup>th</sup>ly, upon the heir of the father** and lastly, upon the heir of the mother.....".

Now, in the present case, it is an admitted position of fact that Amate Sinha's mother, father and husband died prior to her death and she died issueless. So, in my considered opinion, the share of Amate Sinha as per **Section 15(d) of Hindu Succession Act** devolves upon heirs of Amate Sinha's father, late Behari Sinha.

Now, admittedly, out of 5 legal heirs of Amate Sinha's father i.e., Behari Sinha, the original owner of the suit land, his wife namely, Kuchumlei Sinha, his son Kartick Sinha and daughter Aloka Sinha died prior to the death of Amate Sinha and the only surviving heir of Amate Sinha's father i.e., Behari Sinha was principal defendant No 1 Jhulon Sinha at the time of death of Amate Sinha. So, as per aforesaid provision of law, the share of Ameta Sinha will devolve upon Jhulon Sinha in my considered opinion because plaintiff and proforma defendant are the Class I legal heir of Kartik Sinha and Aloka Sinha and not of Amate Sinha's father Behari Sinha and it is a settled proposition of law that as long as Class I heirs are alive, Class II heirs cannot claim any share over the property.

So, under above facts and circumstances, I am of the considered opinion that the share of plaintiff and proforma defendant over the property of Behari Sinha are to the extent of 1/4<sup>th</sup> share and the share of principal defendant No 1 in the property of Behari Sinha is to the extent of 2/4<sup>th</sup> share.

So, in the light of aforesaid discussion, I am of the considered opinion that plaintiffs and proforma defendants are not entitled to claim share of Amate Sinha over the property of late Behari Sinha.

Accordingly the point is decided negative and against the plaintiff/appellant.

11. Hence, in the backdrop of above discussion, I am of the considered opinion that learned Munsiff has rightly dismissed the suit. Accordingly, the judgment and decree passed by the learned Munsiff is hereby upheld with slight modification as to the entitlement of share over the property of late Behari Sinha on the death of Amate Sinha by the plaintiff, principal defendant No 1 and proforma defendants.

12. C.S. to prepare following decree :-

(1) that the plaintiff and proforma defendants are entitled to get share to the extent of 1/4<sup>th</sup> in the property of Behari Sinha and principal defendant No 1 is entitled to get share to the extent of 2/4<sup>th</sup> in the property of Behari Sinha.

With the above modification and direction, appeal is partly allowed. No cost awarded.

13. Send down the LCR with a copy of this judgment to learned Court below.

14. Judgment is pronounced in the open Court under my seal and signature on this 2<sup>nd</sup> September, 2016 at Karimganj.

Transcribed at my dictation,  
corrected by me and every page  
bears my signature.

(S.Sharma)  
Civil Judge  
Karimganj

(S.Sharma)  
Civil Judge  
Karimganj

Dictation taken &  
transcribed by me

