

Basiran Bibi and Ors Vs. Kureshan Bibi and Ors

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Court : Jharkhand

Decided On : Sep-09-2016

Appellant : Basiran Bibi and Ors

Respondent : Kureshan Bibi and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI ---- Second Appeal No. 53 of 2009 -----

1. Basiran Bibi, widow of late Sahid Rai Bhat

2. Rafakat Bhat

3. Akhtar Bhat

4. Mahfuj Bhat Sl. No. 2 to 4 all sons of late Sahid Rai Bhat All are by caste-Bhat Muslim, by profession Cultivation, residents of Vill. Badia, PO Targarha, PS Palajori, Sub-Division Madhupur, District Deoghar Appellants. -Versus-

1. Kureshan Bibi, wife of Ramjan Bhat, resident of Village Pahridih, PO and PS Jama, Sub Division and Dist. Dumka

2. Hasmuddin Bhat, son of late Kamruddin Bhat

3. Noorjahan Bibi, wife of Abul Bhat Sl no. 2 and 3 both by caste-Bhat Muslim, by profession Cultivation, residents of Vill. Badia, PO Targarha, PS Paljori, Sub

Division Madhupur, Dist. Deoghar

4. Hamid Bhat

5. Tohid Bhat

6. Gayasuddin Bhat Sl. no. 4 to 6 all are sons of late Maru Bhat

7. Noorjahan Bibi, Widow of late Chiruddin Bhat

8. Akramul Bhat

9. Mukhtar Bhat

10. Sattar Bhat

11. Nawab Bhat (Minor) Sl. no. 8 to 11 all are sons of late Chiruddin Bhat

12. Tunuja Khatoon (Minor), D/o late Chiruddin Bhat

13. Sajua Khatoon (Minor), D/o late Chuiuddin Bhat Minors are represented through their mother and natural guardian Noorajahan Bibi(Respondent no. 7 herein) whose interest is not adverse to that of minors. Sl. no. 4 to 13 all by by caste-Bhat Muslim, by profession Cultivation, residents of Vill. Badia, PO Targarha, PS Palajori, Sub Division Madhupur, Dist. Deoghar

14. Kureshan Bibi, wife of Mazim Bhat, by caste-Bhat Muslim, by profession Cultivation, residents of Vill. Dhawa, PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar

15. Khairul Bibi, wife of Aludin Bhat, resident of village Badia, PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar

16. Pushed Bibi, W/o Hamid Bhat, R/o Vill. Gadi, PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar

17. Maithun Bibi, W/o Hamid Bhat, R/o Badia, PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar

18. Taslim Bhat, s/o Abeddin Bhat, R/o village Kashiatanr, PO and Ps Tundih, Dist. Dhanbad
19. Latifan Bibi, W/o Hundur Bhat, R/o Village Sangramdih, Po PS Tindih, Dist. Dhanbad
20. Kituban Bibi, d/o Taslim Bhat, R/o village Kashiatanr, PO and Ps Tundih, Dist. Dhanbad
21. Nayeem Bhat 2
22. Salauddin BhatGadi,PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar both sons of late Daud Bhat
23. Almun Bibi, D/o late Rasulan Bibi, and W/o of Mohboob Bhat
24. Arjun Bibi, W/o Firoj Bhat Sl. no. 21 to 24 R/o village Badia, PO and PS Palajori, Sub Div. Madhupur, Dist. Deoghar
25. Jitni Bibi, w/o Mahboob Bhat, R/o Village Hiranadangal PO and PS Jamtara, Dist. Jamtara
26. Charbar Bibi, W/o Estak Bhat, R/o Gadi,PO Benedih PS Palajori, Sub Div. Madhupur, Dist. Deoghar
27. Kajar Bibi, W/o Akhtar Bhat, R/o Vill. Paharidih, PO Pargadih, PS Jama, Dist. Dumka Respondents. ----- For the Appellants : M/s. Rajeeva Sharma,Sr. Advocate. For the Respondents : M/s.Rohit Roy and Pratik Sen, Advocates. ----- PRESENT HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- Amitav K. Gupta,J: This second appeal has been preferred against the judgment and decree dated 29.01.2009 and 13.02.2009 passed by Addl. District Judge, Fast Track Court, Dumka in T.A.NO.12 of 2006 affirming the judgment and decree passed in Title(Partition) Suit no.67 of 1998 by Subordinate Judge-III, Dumka resulting in dismissal of the Title Appeal.
2. The defendants/appellants in this appeal were arrayed as defendants-1st set in the Title Suit instituted by the respondents- 1st party, who were the plaintiffs.

3. The plaintiff instituted the suit seeking partition of the suit property and claiming 7/32 share of the suit property described in Schedule A,B and C of the plaint. It was pleaded that both the parties are Muslim and are governed by Hanafi School of Mohammedan Law. The properties described in Schedule A were recorded in the name of Lukhu Rai Bhatt and that of Schedule B were recorded in the name of Rajni Rai Bhatt and Schedule C properties were recorded jointly in the name of Lukhu and Rajni Rai Bhatt from whom both the parties, genealogical table of which has been given, claimed their share and interest over the said suit properties. That Rajni Bhatt died issueless immediately after conclusion of the last survey settlement whereupon the entire suit property was inherited by Lukhu and thereafter by his four sons,namely, Maru Rai Bhatt, Jawad Ali Rai Bhatt, Abad Ali Rai Bhatt, Sahid Rai Bhatt and the daughter, Tahiran Bibi. The plaintiff's case is that Shahid Rai Bhatt died in February, 1991 whereafter the plaintiff, Kuresan Bibi and the defendant-1st party and her sons inherited the entire interest of Shahid Rai Bhatt in the suit property and came in joint possession of 3 the same. That Shahid Rai Bhatt had four wives and his 2 nd wife, namely, Laharjan Bibi was the widow of Abad Ali Rai Bhatt, the brother of Shahid Rai Bhatt. It is stated that Kamruddin Bhatt, father of Hasmuddin Bhatt(defendant no.5, the 2nd party), son of Laharjan Bibi, was treated as a son by Shahid Rai Bhatt, after his marriage with Laharjan Bibi. Since the plaintiff was facing inconvenience and difficulty in enjoyment of her share, which was in joint possession with the defendant, hence she requested the defendant 1st party for amicable partition of her share on 30.07.1991, which was declined and as a consequence thereof, the plaintiff filed the partition suit for 7/32 of her share in all the properties described in Schedule A,B and C and for carving her share in the property by metes and bound as also the cost of the suit.

4. Defendant 1st party filed their written statement on 22.08.1994, defendant no.2 filed additional written statement on 19.07.1999 and defendant no.5, Hasmuddin Bhatt also filed his written statement.

5. The defendant 1st party, in their written statement, challenged the maintainability of the suit stating that it was barred by limitation and by the principles of waiver, estoppel and acquiescence. The defendant's case is that the plaintiff's mother, Sajiban Bibi, who has been shown as the 1st wife of Shahid Rai Bhatt, from whom

the plaintiff, Kuresan Bibi was born, is not correct rather the first marriage of Sajiban Bibi was with Jahar Ali Bhatt of village Basmatia and plaintiff is the daughter of Jahar Ali Bhatt. That Jahar Ali Bhatt divorced Sajiban Bibi whereafter she was married to Shahid Rai and plaintiff who was a leghar daughter (step daughter) was brought up in the house of Shahid Rai. It is admitted by the defendants that Shahid Rai had four wives and Sajiban Bibi was the 1st wife, Laharjan (2nd wife), Jinatan Bibi (3rd wife) and Basiran Bibi, the defendant, was the 4th wife. It is admitted that Laharjan was previously married to Abad Ali Bhatt, Shahid's brother and after the death of Abad Ali, she was married to Shahid and she died leaving behind a son, Kamruddin. That Jinatan Bibi was married to Shahid Rai in the lifetime of Sajiban Bibi but she was subsequently divorced and after the death of Sajiban Bibi, Shahid Rai married the defendant, Bashiran Bibi as his 4th wife. The defendant's case is that since the plaintiff, Kuresan Bibi was not the natural daughter of Shahid Rai rather the daughter of Jahar Ali, hence she never came in joint possession with the defendants over the suit properties and it was only the defendants' 1st, 3rd, 4th and 5th party who came in joint possession over the suit property, after the death of Shahid Rai in February, 1991. The defendants have stated that Kamruddin was born out of the wedlock of Shahid and Laharjan Bibi since her first husband Abad Ali Bhatt died issueless. It is stated that since Kamruddin pre-deceased his father Shahid, thus the son of Kamruddin namely, Hasmuddin and daughter Noorjehan have got no right, title and interest in the schedule properties and the plaintiff also does not have any right, title and interest over the suit property. She is not entitled to any relief and the suit is fit to be dismissed.

6. Defendant no.2, the son of defendant no.1, filed an additional written statement stating that from the wedlock of Laharjan (2nd wife) and Shahid Rai Bhatt not only a son but a daughter, namely, Intun Bibi was also born and both of them pre-deceased their father Shahid Rai Bhatt. Thereafter they did not inherit any property and denied the pleading of the plaintiff that Kamruddin was born from the wedlock of Abad Ali and Laharjan. Defendant no.2 stated that Kureshan Bibi, the plaintiff, was the leghar (step-daughter) of Shahid Rai. As such she never came in joint possession with the defendant of the suit property. Therefore, there is no unity of title and possession of the plaintiff and she is not entitled to the relief for

declaration of right, title and interest over the suit property.

7. Defendant no.5, Hasmuddin filed his written statement admitting the facts and the genealogical table mentioned by the plaintiff. He has stated that Abad Ali died about 40 years ago and his son Kamruddin died about 15 years after the death of Abad Ali and Shahid Rai died 18 years thereafter. Therefore, on the death of Abad Ali, Kamruddin inherited the interest of his father and after his death, defendant no.5, the son of Kamruddin succeeded to the interest of Kamruddin. That his grandmother namely, Laharjan Bibi was married to Shahid Rai, after the death of her 1st husband, i.e., Abad Ali. It is stated that on the death of Jawad Ali, Maithun Bibi got married to Hamid Bhatt, son of Maru and thereafter Maru and Shahid used to cultivate the suit lands equally on half share basis, as per their convenience. He has denied the genealogy, filed by the defendant 1st party and stated that Kamruddin was the son of Abad Ali and not Shahid Rai and Kamruddin succeeded to the share of Abad Ali. After the death of Kamruddin, this defendant has got right, title and interest over 5 the suit land and is entitled to get a separate share over the suit land.

8. On the pleading of the parties, the trial court framed 12 issues. The parties led their evidence and on analysing and weighing the evidence, the trial court, after elaborately discussing the evidence, held that the plaintiff was the natural born daughter of Shahid Rai Bhatt, born out of the wedlock of Shahid Rai Bhatt and Sajivan Bibi and not a 'legher' daughter (step daughter) of Shahid Rai, as contended by the defendant 1st party. It also held that Kamruddin was the son of Abad Ali, the brother of Shahid Bhatt and not the son of Shahid Rai Bhatt and accordingly held that Hasmuddin was entitled to succeed to the interest and title of Kamruddin and the plaintiff, Kureshan Bibi had a unity of title over the possession of suit property with the defendants and decreed the suit for partitioning of the suit properties.

9. Being aggrieved, the defendants preferred Title Appeal no.12 of 2006 and the lower appellate court, after appreciating the arguments advanced by the parties, formulated the following points for determination:- I. Whether Kureshan Bibi was the step daughter or own daughter of Shahid Rai Bhatt and whether she was

entitled for share in the suit property or not. II. Whether the parties were tenant in common and had common interest in the suit property in the light of their joint possession over the suit property. III. Was Kamruddin Ali, the son of Abad Ali Bhatt or Shahid Rai Bhatt.

10. The learned lower appellate court discussed the three issues together and upheld the findings of the trial court that the plaintiff was the natural daughter of Shahid Rai Bhatt begotten from the marriage of Shahid Rai Bhatt with Sajivan Bibi. It also upheld the finding that Kamruddin was the son of Abad Ali and Laharjan, the mother of Kamruddin had married Shahid after the death of Abad Ali. After discussing the evidence, the lower appellate court held that both the parties were tenants in common of the suit property having 6 common interest over the suit property and affirmed the judgment and decree of partition and allocation of the shares in the name of the respondent/plaintiff and appellants/defendants.

11. This Second Appeal has been preferred against concurrent findings of the court below and the learned counsel for the appellants has assailed the judgment and decree, contending that the courts below have erred in law inter alia on the grounds:- Firstly, that the courts situated within the district of Dumka had no jurisdiction to entertain the suit with respect to the properties which fell within the district of Deoghar and the lower appellate court has committed a grave error in law by rejecting the objection of defendant/appellant challenging the jurisdiction of the learned trial court for deciding the suit with respect to the properties situated within the jurisdiction of the district of Deoghar. It is contended that the consent or acquiescence of the parties cannot confer jurisdiction upon a court which had no territorial jurisdiction to entertain a suit with respect to the properties which were not situated within the jurisdiction of the said court. It is also argued that the courts below have committed an error on a substantial question of law by recording the findings that it was for the defendant/appellant to prove their defence by ignoring the settled proposition that the plaintiff has to prove his case and it cannot take the advantage of the weakness of defendant's case. It is urged that the courts below have erred in law by holding that Kureshan Bibi(plaintiff) was the daughter of Shahid Rai Bhatt without considering that there was no pleading by Kureshan Bibi that she was the daughter of Shahid Rai Bhatt. It is also argued that there is

perversity of finding as the trial court has not appreciated the evidence of Noor Jehan Bibi(D.W.1), the daughter of Kamruddin, who is the own sister of defendant no.5 and who has admitted that she and defendant no.5 are 7 the daughter and son of Shahid Bhatt and not Abad Ali Bhatt. That the courts below have also committed an error in giving a finding that since Jahar Ali Bhatt has not been examined, hence the courts below had no option but to accept the pleading that Kureshan Bibi was the daughter of Shahid Rai Bhatt and Sajivan Bibi, without appreciating the fact that there was no evidence to show that Jahar Ali Bhatt was still alive.

12. The main thrust of the argument of the learned counsel is founded on the contention that the courts below have held that the burden lay on the defendants to prove or to establish that the plaintiff was not the natural daughter of Shahid Rai Bhatt, born out of the wedlock of Shahid Rai Bhatt with his first wife Sajivan Bibi, whereas the burden lay on the plaintiff to establish her case. In support of the contention, learned counsel has relied on the decisions rendered in the case of Mosammat Jasoda kuer & Anr. vs. Dulhin Phul Kue, reported in AIR1958 Patna 600; Ramadhin Singh vs. Siaram Singh & Anr., reported in AIR1957 Patna 64 and in the case of Abdul Sami and Anr. vs. Mohammad Noo, reported in AIR1966 Allahabad 39.

13. Per contra, learned counsel for the respondent has supported the findings of both the courts below and submitted that in view of the findings of both the trial and first appellate court, the interference with such findings is not required as the findings are based on pure question of facts. It is submitted that no error whatsoever has been committed and the judgment and decree are based on just and proper appreciation of the facts and evidence of the parties.

14. For appreciating the arguments advanced by the learned counsel for the appellant it is pertinent to reiterate the settled proposition that the burden of proof rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. In this context it is pertinent to note the observation of the Supreme Court in the case of Anil Rishi vs. Gurbaksh Singh, reported in (2006) 5 SCC558 wherein in para 19, the Supreme Court observed as follows:- 8

19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101(Evidence Act) is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

15. In the case of K.S.Ranji and Co. vs. Jatashankar Dossa, reported in AIR 1961 SC1474 while elaborating and discussing on the concept of the phrase burden of proof as a matter of law and pleading, the Supreme Court has observed in para 11: 11.....under the Evidence Act there is an essential distinction between the phrase burden of proof as a matter of law and pleading and as a matter of adducing evidence. Under Section 101 of the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. The burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other.....

16. In the aforesaid case it was held that the burden of proof is upon the plaintiff who asserts her right and it may be, in the circumstances of each case, that the onus of proof may shift to the defendant.

17. In a catena of decisions, the legal proposition has been crystallised that the burden of proof lies upon the person who has to prove a fact but the onus of proof shifts. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumption of law or fact.

18. Having broadly discussed the settled legal position on this aspect and on perusal of the decision relied on by the learned counsel in the case of Mosammat Jasoda kuer(Supra) it would be relevant to refer to the observation made by the Hon'ble Patna High Court in para 3:- 3.....on the contention raised by the appellant that the plaintiff had to prove by cogent evidence that she is the daughter of Har Prasad and in doing that she cannot take any advantage of the fact that the defendants have failed to prove that the plaintiff is the daughter of Rajnet Choubey. It was held and observed by the High Court that as a proposition of law, there can be no two opinions of the submission, but at the same time it cannot be denied that the trial court had only two versions before it about the parentage of Phula Kuer: the one was, as contended by the plaintiff, that she was the daughter of Har Prasad, and the other, as contended by the defendants, that she was the daughter of one Rajnet Choubey. Naturally, therefore, if the evidence given on behalf of the defendants on the point that the plaintiff was the daughter of Rajnet Choubey was condemned as unworthy of reliance, that was bound to have certain repercussion in the process of appreciating the evidence given by the plaintiff, though initial onus was always on the plaintiff to establish the same. 10 19. Thus, the underlying principle of the decision is that once the plaintiff has discharged the onus and the counter case set up by the defendants is found to be not true then the plaintiff's case stood fortified. This decision is of no help to the arguments advanced by the counsel for the appellant. On the contrary, it fortifies the findings of the courts below. In the decision in the case of Ramadhin Singh vs. Siaram Singh & Anr., reported in AIR1957 Patna 64(Supra), the principle that the plaintiff cannot obviously take advantage himself of the weakness of the defence and the plaintiff's case must stand or fall upon the evidence adduced by him while enunciating the settled legal proposition, the High Court held that the question of onus is of no practical value at all where both the parties have adduced evidence. In the said case, the execution of hand note and its content was denied by the defendant and the plaintiff's suit was decreed but in appeal, the judgment and decree of the Munsif was set aside and reversed by the Sub- Judge. Thereafter, the appeal was preferred before the Patna High Court which held that while considering the evidence of both parties, it is not incumbent upon the appellate court to consider each and every circumstance separately which has been

considered by the learned Munsif and it was held that if the appellate court has applied its mind to the evidence properly and has given cogent reasons sustainable on the basis of the evidence, the judgment of the appellate court cannot be assailed.

20. On going through the decision in the case of Abdul Sami and Anr. vs. Mohammad Noor, reported in AIR1966 Allahabad 39(Supra) relied upon by the learned counsel for the appellant, it is apparent that the said suit was instituted by the landlord for realisation of the rent and ejection of the tenant under the U.P. Control of Rent and Eviction Act. In this case the High Court observed in para 9:-

9.the learned appellate judge was of the view that the onus was on the plaintiff to prove that the land was not of accommodation and thus it was upon him to prove that the land was not governed by the UP Rent Control and Eviction Act. The argument advanced was that the burden of proof is always on the plaintiff who files a suit for ejection without the permission of the District Magistrate is barred unless the plaintiff establishes that his case falls within any of the 7 exceptions mentioned in the Act. But where it is disputed that the Act is applicable, there is no onus on the plaintiff/landlord to prove that his case is within those exceptions. He is entitled to rely on his ordinary rights as a landlord to eject the tenant and it is for the latter to prove that the ordinary law does not apply and he is protected by the safeguards against arbitrary ejection providedTherefore, in a case where the facts, which will establish that the land is accommodation, are in dispute and the tenant relies on them to claim the protection of Section 3 of the Act, it is for him to prove that it is an accommodation covered by Section 2(a).

21. The legal proposition propounded in the decisions cited by the learned counsel for the appellant do not buttress the argument of the learned counsel that the onus always lies on the plaintiff. On the contrary, it propounds the settled proposition that the question of onus is of no practical value at all when both the parties have led and adduced evidence.

22. In the instant case both the trial court and the lower appellate court have considered and appreciated the evidence of both the parties and have discarded the documentary evidence, i.e., the certificate of the Mukhiya and of the

Panchayat, Exts.1,2 and 3 produced by the plaintiff/respondent, holding that the certificates were issued during the pendency of the suit. 12 It is abundantly clear that no documentary evidence was adduced by either of the parties and in the absence of documentary evidence the courts below have discussed the oral evidence of both the parties and assigned cogent reasons for arriving at the finding that the plaintiff was the natural daughter of Sahid Rai Bhatt. It is pertinent to point out that the courts below, while dealing with the evidence of the defendants' witnesses, have noticed that D.W.1, viz. Noorjehan, on whose evidence learned counsel for the appellant has laid much emphasis, has deposed that the plaintiff is elder to her and she was being maintained by Shahid. She could not say as to where and how the plaintiff was born. The courts below have taken note of the fact that D.W.1, who was arrayed as defendant no.6, did not file her written statement and she has admitted that her husband is the brother of the contesting defendant viz. Basiran Bibi and she was brought by the son of Basiran to depose in the case. The courts below have rightly held that D.W.1 has admitted that she had not seen her father, Kamruddin, hence her statement regarding her grand father is doubtful. She has come to depose against the interest of her own brother, i.e., defendant 2nd party.

23. The trial courts have discussed the evidence of D.W.6,i.e. the contesting defendant No.1, Basiran Bibi who stated that Leharjaan was the first wife of Shahid whereas in the written statement it is admitted by her that Sajiban Bibi was the first wife of Shahid and Leharjaan was the 2 nd wife of Shahid. The trial courts have disbelieved the evidence of the defendant as she has made contradictory statement in the cross-examination wherein she has denied that Leharjaan was not the wife of Abad Ali whereas it is admitted case that Leharjaan was earlier married to Abad Ali and after the death of Abad Ali she was married to Shahid Rai as his second wife. She has stated that Kamruddin and a daughter, Unatan Bibi, were born from the wedlock of Shahid and Leharjaan and both of them predeceased Shahid. Defendant nos.5 and 6 were born before her marriage to Shahid and she does not know who was cultivating the land of Abad Ali. She has admitted that whatever she has stated is as told to her by her 13 late husband, Shahid. It is admitted by her that when she came to her sasural, Hasmuddin was three years old and she cannot say when their father Kamruddin died. The courts

below have also discussed the evidence of the witnesses of the plaintiff and considered the fact that defendant has asserted that Sajiban Bibi i.e. the mother of the plaintiff, was earlier married to Jahar Ali and the plaintiff was born out of the wedlock of Sajiban Bibi and Jahar Ali and after Jahar Ali divorced Sajiban Bibi, the plaintiff was brought by Sajiban Bibi to the house of Shahid Rai on her marriage with Shahid Rai. The courts below have taken note of the fact that the defendant has admitted that when she was 15 years old she had gone to the house of Jahar Ali, who was the son of the cousin of her mother, and Jahar Ali had children from his second marriage but no explanation or reason has been given as to why the defendant did not produce and examine the second wife of Jahar Ali or the children of Jahar Ali. The courts below have disbelieved D.W.2 as he deposed that Leharjaan was the first wife of Shahid in contradiction to the admitted case of the defendant that Sajiban was the first wife and Leharjaan was the second wife of Shahid. D.W.3 deposed that he does not know the name of the first wife of Shahid and at the same time he has stated that Shahid was the father of Kureshan and he does not know the name of the original father of Kureshan. The courts below have elaborately discussed the evidence of plaintiffs' witness and on analysis and scrutiny of the testimony of both the parties have arrived at the finding, on being satisfied, that plaintiff's and defendant's witnesses have admitted that the plaintiff was residing in the house of Shahid Rai hence inference can be drawn in the absence of any evidence to the contrary, that the plaintiff was the natural daughter of Shahid Rai, born out of the wedlock from his first wife, Sajiban Bibi. It is well settled that the scope of interference in a case of concurrent finding of facts is very limited especially when the 1st appellate court has comprehensively 14 re-evaluated and re-examined the evidence on record and by a reasoned order upheld the findings of the trial court. In the considered opinion of this Court there is no perversity in the findings of the court below and any further detailed discussion would amount to re- appreciating of evidence against the settled proposition of law while hearing a second appeal. The findings are on pure question of facts which have been succinctly discussed by the lower appellate court and they do not require any interference as it is not vitiated by any irrationality.

24. The argument advanced by the learned counsel that the Dumka courts did not have territorial jurisdiction to hear or adjudicate on the matter since the suit

properties were situated within the jurisdiction of Deoghar district is also not tenable in view of the provisions contained in sub-Section 1 of Section 21 of the Code of Civil Procedure which reads as under:- Sec. 21(1) no objection as to the plea of suing shall be allowed by any Appellate or Revisional court unless such objection was taken in the Court of 1st instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

25. The Supreme Court, in the case of Pathumma and others vs. Kuntalan Kutty, reported in (1981) 3 SCC589 has held that the appellate or revisional court can entertain an objection as to the place of suing on fulfillment of the three essential conditions enunciated in Section 21(1) C.P.C.:

1. The objection was taken in the court of first instance.
2. It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
3. There has been a consequent failure of justice.

26. It is evident that in the instant case, the first two conditions were not satisfied and the objection was taken 15 for the first time before the appellate court. It is evident that the appellant is unable to elicit any material on record to show that there was a failure of justice. Apparently such an objection has been made as a pretence and the learned counsel has not been able to substantiate that there was failure of justice in the instant case.

27. Therefore, in view of the settled proposition of law and the discussions made above, there is no cogent reason warranting interference with the concurrent findings of the courts below and no substantial question of law is involved in the present appeal.

28. The appeal is hereby dismissed. (Amitav K. Gupta, J) Jhrkhand High Court, Ranchi Dated: the 9th Sept., 2016, Biswas.