

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.283 of 2015

1. Sabir Ali Khan
2. Haidar Ali Khan
3. Ashraf Ali Khan
Nos. 1 to 3 sons of Late Indal Khan
4. Zinat Khatoon wife of Qamruz Zama Khan @ Kamru Zama, D/o Late Indal Khan
All resident of Village Madhubani Tola Dariyapur, P.O. Dariyapur, P.S. Sangrampur, District East Champaran.
5. Aziza Khatoon wife of Hasnain Khan @ Hussnain Khan, D/o Late Indal Khan resident of Village Pandari, P.O. Jamua, Via Dhaka, P.S. Dhaka, District- East Champaran.
6. Saifullah Khan
7. Md. Abdullah Khan
8. Zakaullah Khan
9. Nabiullah Khan
10. Hamidullah Khan
Nos. 6 to 10 sons of Late Ziaullah Khan, resident of Mohalla- Chhawani, P.O. and P.S. Bettiah, District- West Champaran.
11. Shabina Khatoon @ Sakina Khatoon @ Sabina Khatoon D/o Late Ziaullah Khan, resident of Mohalla Chawani, P.O. and P.S. Bettiah, District- West Champaran.
12. Firoza Khatoon Wife of Ainul Haque Khan, D/o Late Ziaullah Khan, resident of Village Kotwa, P.O. Manguraha, P.S. Paharpur, District East Champaran.
13. Aayesha Khatoon wife of Wadood , D/o Late Indal Khan
14. Juhi Khatoon wife of Anzar Khan @ Izahar Khan, D/o Late Indal Khan Both resident of Qasba Bettiah Mohalla- Kalibagh, P.O. Kalibagh, P.S. Town Bettiah, District West Champaran.
15. Mohiuddin Khan son of Late Sandal Khan
16. Samiuddin Khan son of Late Sandal Khan
17. Liyaquat Khan @ Liyakat Ali Khan son of Late Indal Khan
18. Shama Khatoon D/o Late Sandal Khan
19. Salma Khatoon S/o Late Sandal Khan
20. Bibi Khatoon D/o Late Sandal Khan
21. Faizuddin Khan S/o Late Sandal Khan
22. Raquibuddin Khan S/o Late Sandal Khan All resident of Village Madhubani, Tola-Dariyapur, P.O.-Dariyapur, P.S. Sangrampur, District- East Champaran.

... .. Appellant/s

Versus

- 1.1. Mohmood Sani son of Late Md. Quasim Khan x
- 1.2. Mahboob Rabbani Khan son of Late Quasim Khan (as son) x



- 1.3. Maqsood Sani son of late Md. Quasim Khan (as son), x
- 1.4. Aamir Subhani, son of Late Mahboob Subhani Khan (as grandson), x
- 1.5. Aamir Usmani S/o Late Mahmood Sani (Grandson) x
- 1.6. Sayam Mahmood Khan son of Mahmood Sani (as grandson), x
- 1.7. Sarim Mahmud Khan son of Mahmud Sani (as grandson), x

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shabbir Ahmad, Adv.
For the Respondent/s : Mr. Vinod Kr. Singh, Adv. With
Mr. Asit Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 26-05-2025

Heard Mr. Shabbir Ahmad, learned counsel for the appellants and Mr. Vinod Kr. Singh, learned counsel assisted by Mr. Asit Kumar Jha, learned counsel for the respondents.

2. This Second Appeal has been filed against the judgment of reversal dated 10.06.2015 passed in Title Appeal No. 62 of 2012 by the learned Additional District Judge-VI, Motihari, East Champaran whereby the learned Appellate Court set aside the judgment and decree dated 25.09.2012 passed in Title Suit No. 313 of 1994 by the learned Munsif Sadar, Motihari and decreed the suit.

3. In the present Second Appeal, the following substantial questions of law have been framed for determination:-

(I). Whether it was incumbent upon the Trial Court to have framed the issue in respect of date/year of the death of said



Kaniza Khatoon and non-framing of the issue materially prejudiced the case of the parties?

(II). Whether the findings recorded by the first Appellate Court decreeing the suit in favour of the plaintiff/respondents is perverse in the absence of any finding with reasons in respect of date/year of the death of said Kaniza Khatoon?

4. The defendants are appellants in the instant Second Appeal. The plaintiff/respondents filed Title Suit No. 313 of 1994 for declaration of title and confirmation of possession over the suit land and for permanent injunction.

5. The plaintiff had filed the Title Suit No. 313 of 1994 with respect to the suit land situated in Mauza-Madhubani, Tola-Dariyapur, Thana No. 176, Anchal- Areraj, Dist.-East Champaran bearing Khata No. 1072, Plot No. 9211 Area 5 katha 7 dhur for declaration of her title and confirmation of her possession over the suit land and for restraining the defendants to enter on the said land.

6. The case of the plaintiff, is that one Ismail Khan had five sons, namely, Rahmatullahh Khan, Karamtullahh Khan, Md. Taqi Khan, Khurshid Khan and Imam Khan. Rahmatullahh Khan had one son, namely, Shibgatullah Khan and three daughters, namely, Ummul Khatoon, Monazirun and Umeman Khatoon. Wife



of Karamtullah Khan was Bibi Kaniza Khatoon and he had two sons, namely, Mazharuddin Khan and Zafir Khan. The said Mazharuddin Khan died leaving behind a widow Monazirun. Taqi Khan died issueless soon after survey. The land in suit was under cultivating possession of *bataidar*, namely, Sadakat Khan and his name was entered as *sikmidar* in the *Khatiyani* published on 02.04.1917. During survey operation on 03.02.1916, Karamtullah Khan mortgaged the said land to Babar Ali Khan for a loan of Rs. 34/- and the said fact is noted in the *Khatiyani* and later on 05.12.1918 said Karamtullah returned the said amount to Babar Ali Khan and got back his land. After the survey, the said Sadakat Khan left the cultivation as *bataidar* and the said land came in cultivating possession of the *Khatiyani Raiyats*. Taqi Khan died 3-4 years after the survey and other four brothers partitioned the said land orally.

7. It is further case of the plaintiff that Rahmatullah Khan and Khurshid Khan orally sold their 1 bigha land to Bibi Kaniza Khatoon wife of Karamtullah Khan on consideration amount of Rs. 95/- and also put her in possession of the same and in proof of the same executed a deed on the stamp paper with respect to their lands which were in separate possession of the vendors and since Kaniza Khatoon was a member of the same



family, both the vendors executed a single deed by both the vendors and Kaniza Khatoon also consented to it. Both the vendors received their half-half share of the consideration amount. The said Kaniza Khatoon died in the year 1933 and her husband died one year prior to her death. After the death of Kaniza Khatoon her two sons, namely, Mazharuddin Khan and Zafir Khan came in possession over the suit land and partitioned the suit land as such 2 katha 13 ½ dhur from south fell in the share of Zafir Khan. It is further pleaded that Mazharuddin Khan executed Bai Moquasa deed in respect of 16 katha 2 dhur land including 2 katha 14 dhur of the disputed Plot No. 9211 in favour of his wife in lieu of dower debt. Thereafter, Monazirun came in possession over the land transferred in her favour. She sold 6 katha 13 dhur of land of Plot No. 9094 out of transferred land in favour of Zamirullah Khan on 08.01.1974 and put him in possession. Zamirullah Khan later on sold 3 katha out of the said purchased land to Najma Khatoon wife of Anisuzzama Khan through sale deed dated 11.10.1983 with respect to 2 katha 13 ½ dhur from southern side of disputed Plot No. 9211. A sale deed was executed by Zafir Khan on 03.03.1967 in favour of Qasim Khan and for the remaining 2 katha 13 ½ dhur a sale deed was executed by Monazirun on 17.03.1967 in faovur of said Qasim Khan, thereafter, the said Qasim Khan came in



possession of the entire disputed Plot No. 9211. On 25.09.1980 the said Qasim Khan transferred 5 katha 7 dhur of Plot No. 9211 in favour of his wife Anwari Begum through *Bai Moquasa* in lieu of dower debt and since then the plaintiff is coming in peaceful possession over the same and has full right, title and interest in the suit property. Jamabandi No. 1903 was also created in the name of plaintiff with respect to the suit land. It is further case of the plaintiff that defendant nos. 3 and 4 initiated a proceeding under Section 144 Cr.P.C. vide Case No. 396/M/1994 wherein Qasim Khan was made first party and Faizuddin Khan was the second party. The S.D.M., Areraj passed an order against the said Qasim Khan. However, the plaintiff was not a party in the said proceedings and in the said proceeding the defendant nos. 3 and 4 filed a sale deed in favour of defendant nos. 1 and 2 which is illegal. However, the plaintiff remained in possession over the suit land despite the order of S.D.M., Areraj. It is further contended that the Ceiling Case No. 31 of 1973-74 was also initiated against Qasim Khan with respect to the said land and the gazette publication was made in favour of Qasim Khan on 14.07.1982 much after execution of *Bai Moquasa* deed in favour of the plaintiff. A Certificate Case No. 4/15 O.D.62-63 was also initiated against the father of the said Qasim Khan for the default in



payment of loan amount taken by him by Oriental Bank and after the death of his father Qasim Khan was made party in the said case and the suit land was also under subject in the said certificate case. It is further contended that after the order passed in proceeding under Section 144 Cr.P.C., the defendant started attempts to take possession over the suit land and on 27.11.1994, the defendants threatened the plaintiff to dispossess forcefully and hence, the plaintiff filed an instant suit for declaration of her title and possession over the suit land.

8. On summons, the defendants appeared and filed their written statement and denied the assertion of the plaintiff pleaded in the plaint and contested the suit denying the claim of the plaintiff. It is contended that the plaintiff has not given the full genealogy and it is false to say that Taqi Khan died issueless and without any heirs. In fact, Taqi Khan died leaving behind his four brothers whereas Karamtullah Khan died in the year 1925 and his wife Bibi Kaniza Khatoon died in the year 1926. Imam Khan died in the year 1948 leaving behind his heirs as three sons, namely, Mahiuddin Khan, Amin Khan and Kadir Khan and one daughter Akbari Begum. Khurshid Alam Khan died in the year 1993 and his wife died in the year 1985-86. The defendants have admitted that the Khatiyani of Khata No. 1072 was prepared in the name of



Rahmatullah Khan, Karamtullah Khan, Imam Khan and Taqi Khan respectively and area of disputed Plot No. 9211 is 5 katha 7 dhur and also after the death of Taqi Khan his property was partitioned amongst his four brothers. The defendants have denied that Rahmatullah Khan and Khurshid Khan had orally sold 1 bigha land in favour of Bibi Kaniza Khatoon for a consideration amount of Rs. 95/- on 01.07.1930 and put her in possession of the same. Bibi Kaniza Khatoon was never in possession of the said land and it is wrong to say that half of the consideration amount was taken by both of them. It is further pleaded that Rahmatullah Khan and Karamtullah Khan had separate possession over their respective land and there was no occasion for them to execute the said forged deed dated 01.07.1930. It is further contended that the plaintiff has knowingly not mentioned the same even in her plaint. The defendants have asserted that the said deed dated 01.07.1930 is forged and fabricated document. The said Kaniza Khatoon died in the year 1926. The land bearing Plot No. 9187 area 4 katha 6 dhur was in the share of Karamtullah Khan and out of the said land 3 Katha 3 dhur land from southern side was transferred by Mazharuddin Khan in favour of his wife Monazirun in the year 1952 and rest 1 katha 3 dhur from northern side was of Zafir Khan and Zafir Khan had sold to Shafi Ahmad Khan on 31.05.1958. The



Plot No. 9094 area 1 bigha 15 katha 19 dhur and adjacent to south east of the said Plot No. 9211 area 2 katha 8 dhur total 1 bigha 18 Katha 7 dhur was the total property in common with four brothers of Taqi Khan and the same was partitioned between them. Each of them have been allotted with different boundaries. It is contended that the successor of Imam Khan sold their share of land to Bibi Soghra Khatoon on 12.08.1952 and put her in possession, thereafter, Mazharuddin Khan transferred 6 katha 13 dhur land of the share of Imam Khan of Plot No. 9094 to his wife Bibi Monazirun but she never came in possession over the same and later on the successor of Rahamtulla Khan, Karamtullah Khan, Bibi Soghra Khatoon and Khurshid Khan orally exchanged their respective plots. After the said oral exchange, the share of Imam Khan went into the possession of the successor of Karamtullah Khan, the share of Khurshid Khan went in the possession of Shibgatullah Khan son of Rahmatullah Khan. The share of Rahmatullah Khan to Khurshid Alam Khan and share of Karamtullah to Bibi Soghra Khatton and thereafter, they continued in possession with the said oral exchange. Therefore, the Plot No. 9094 Area 10 katha 7 dhur mentioned in the plaintiff's deed dated 01.07.1930 was neither the share of Rahmatullah Khan and Khurshid Khan nor they orally sold the said land to Kaniza



Khatoon and as such she never got possession of the same. It is further pleaded by the defendants that Bibi Ummul Khatoon and Nasima Khatoon came and continued in possession over the entire disputed Plot No. 9211 on the basis of sale deed dated 22.06.1963 and on the basis of share in the property of Rahmatullah Khan as his daughters. So far Jamabandi No. 1903 is concerned, it has been created from Jamabandi No. 512 which was in the name of Shibgatullah Khan and the plaintiff never got any property from the said Shibgatullah Khan. The sale deed in the name of defendant nos. 1 and 2 is genuine and correct and plaintiff or her husband or Kaniza Khatoon and her sons never came in possession over the suit land and therefore, the plaintiff's claim is false and baseless.

9. The learned Trial Court after considering the pleadings, evidence adduced by the parties and materials on record dismissed the suit on contest.

10. Being aggrieved by the judgment and decree dated 25.09.2012 passed in Title Suit No. 313 of 1994 by the learned Munsif-Sadar, East Champaran, Motihari. The plaintiff/appellant preferred Title Appeal No. 62 of 2012. The learned Appellate Court after considering the pleadings of the parties and grounds of appeal has framed the points for determination. After hearing the



parties and considering the materials on record, the Additional District Judge-VI, Motihari, East Champaran reversed the judgment and decree of the Trial Court and allowed the appeal and decreed the suit of the plaintiff/respondents and against the aforesaid judgment and decree dated 10.06.2015 passed in Title Appeal No. 62 of 2012 by the Additional District Judge-VI, Motihari, the present Second Appeal has been filed by the defendants/appellants.

11. Learned counsel for the appellants submits that learned lower Appellate Court has not properly considered the evidences of the parties and therefore, the findings are vitiated. It is further submitted that the lower Appellate Court wrongly disbelieved the witnesses on the point of time and date of death of Kaniza Khatoon. There is specific case of the defendants that said Kaniza Khatton had died in the year 1926 after one year of death of Karamtullah Khan (husband of Kaniza Khatoon). The story of oral sale with regard to 1 bigha land in favour of Bibi Kaniza Khatoon for a consideration of Rs. 95/- reduced in writing on stamp paper on 01.07.1930 is forged and fabricated. In fact the Plot No. 9187 Area 4 katha 6 dhur was in the share of Karamtullah Khan wife of Kaniza Khatoon and out of the said land 3 katha 3 dhur land from southern side was transferred by Mazharuddin



Khan in faovur of his wife Monazirun in the year 1952 and rest 1 katha 3 dhur from northern side was of Zafir Khan and Zafir Khan had sold the same to Shafi Ahmed Khan on 31.05.1958. The Plot No. 9094 Area 1 bigha 15 katha 19 dhur and adjacent south-east of the same Plot No. 9211 Area 2 Katha 8 dhur i.e. 1 bigha 18 katha 7 dhur was total property in common to the four brothers of Taqi Khan and the same was partitioned between them in the manner given in the written statement of the contesting defendants. The successor Imam Khan sold his share of land to Soghra Khatoon on 12.08.1952 and put her in possession. Thereafter, Mazharuddin Khan transferred 6 katha 13 dhur land of the share of Imam Khan of Plot No. 9094 to his wife Bibi Monazirun but she never came in possession over the said land. Later on, the successor of Rahmatullah Khan, Karamtullah Khan, Bibi Soghra and Khurshid Khan orally exchanged their respective plots. After the said oral exchange the share of Imam Khan went into the possession of successor of Karamtullah Khan. The share of Khurshid Khan went into possession of Shibgatullah Khan son of Rahmatullah Khan. The share of Rahmatullah Khan to Khurshid Ahmed Khan and share of Karamtullah to Bibi Soghra. Thereafter, they continued in possession in accordance with the said oral exchange. It is apparent from the case of the defendants that Plot No. 9047 Area



10 katha 7 dhur mentioned in plaintiff's unregistered deed dated 1.07.1930 was not the share of Rahmatullah Khan and Khurshid Khan nor they orally transferred the said land to Kaniza Khatoon. Learned counsel for the appellants submits that there was partition prior to oral sale dated 01.07.1930 and Rahmatullah Khan and Khurshid Khan had separate land in their share.

12. It is further submitted that learned lower Appellate Court has completely failed to appreciate and elaborate a reasonable finding of the Trial Court without considering the evidences of the defendants. The plaintiff have not proved the date of death of Kaniza Kahtoon. The plaintiff doesn't have any title over the suit land. Moreover, one of the vendor of Kaniza Khatoon, namely, Khurshid Alam Khan had transferred the land in the year 1963 in the favour of Ummul Khatoon and Nasima Khatoon and eastern part of the disputed plot was allotted to Rahmatullah Khan after the death of Rahmatullah Khan both the parties, namely, Ummul Khatoon and Nasima Khatoon came in possession over the said land. It is also submitted that the learned lower Appellate Court without any reasonable ground believed Exhibit-3 filed by the plaintiff and wrongly discarded the defendants' document. The entire claim of the plaintiff is based on oral sale dated 01.07.1930 and both the lower courts did not frame



the issue with regard to date of death of Kaniza Khatoon, since Kaniza Khatoon died much before execution of unregistered sale deed dated 01.07.1930. Kaniza Khatoon died in the year 1926, this fact has been supported by the witnesses of the defendants, which has not been considered by the learned lower Appellate Court. Kaniza Khatoon had no right, title and interest over 1 bigha land of Plot No. 9211, therefore, her predecessor in interest had no right and title over the same.

13. On the other hand, learned counsel for the plaintiff/respondents submits that there is admitted case of the parties that the Khatian Exhibit-12 of Khata No. 1072 was prepared in the name of Rahamtulla Khan, Karamtullah Khan, Imam Khan, Khurshid Khan and Taqi Khan all sons of Ismail Khan and area of disputed Plot No. 9211 is 5 katha 7 dhur and also that after the death of one of the brother, namely, Taqi Khan, who died issueless, the ancestral property of Ismail Khan was partitioned between his brothers before the death of Ismail Khan. However, the appellants are at a dispute with respect to the manner of partition. It is submitted that husband of Kaniza Khatoon was full brother of Rahamtulla Khan, Imam Khan, Khurshid Khan and Taqi Khan. The said Rahamtulla Khan and Khurshid Ahmed Khan orally sold the suit land along with other land having total area 1



bigha land to Bibi Kaniza Khatoon for a consideration of Rs. 95/- and also executed unregistered sale deed and put Kaniza Khatoon in possession of the suit land Exhibit-3. The said Kaniza Khatoon died in the year 1933, thereafter, her two sons, namely, Mazharuddin Khan and Zafir Khan came in possession over the suit land as well as other land left by her. Both the brothers have a share of half and half in the suit land. Mazharuddin Khan transferred 16 katha 2 dhur land including 2 katha 14 dhur of disputed Plot No. 9211 in favour of his wife Monazirun by way of Bai Moquasa deed dated 14.11.1952 (Exhibit-4), who, in turn, sold the said land to Qasim Khan *vide* deed dated 17.03.1967 (Exhibit-7). Zafir Khan sold his share of 2 katha 13 ½ dhur of Plot No. 9211 in faovur of Qasim Khan (Exhibit-7A). In this way Qasim Khan came in possession over the entire land 5 katha 7 dhur which is the suit land. The said Qasim Khan executed registered Bai Moquasa deed in favour of his wife Bibi Anwari Begum (plaintiff). The plaintiff, thereafter, came in peaceful possession over the same. It is apparent from the record that the property in suit was in possession of Karamtullah Khan and it was mortgaged to one Babar Ali Khan on 03.02.1942 on consideration amount of Rs. 34/- only and it was redeemed by the mortgagor on 05.12.1918. It is further submitted that genuineness of both the deeds Exhibit 2 &



3 is that the unregistered sale deed dated 01.07.1930 is duly signed by Khurshid Khan and Rahmatullah Khan. The deed writer of both the deeds i.e. unregistered sale deed dated 01.07.1930 and mortgage deed dated 03.02.1916 is one and same person namely, Saiyad Pir Bakash. PW-15 is handwriting expert. Both the deeds are in the writing of deed writer Saiyad Pir Bakash. The genuineness of Exhibit-6 was never challenged in court below while it is admitted fact that deed writer of Exhibit 2 & 3 is the same person, namely, Saiyad Pir Bakash.

14. On the point of date of death of Kaniza Khatoon, several witnesses have been examined by the plaintiff as well as the defendants. PW-1, namely, Zamirullah Khan, who is grandson of Karamtullah Khan and Bibi Kaniza Khatoon in his examination-in-chief has specifically stated in paragraph no. 3 of the deposition that her grandmother died in the year 1933 and prior to one year of his death his grandfather died and on this issue i.e. date/year of death of Kaniza Khatoon, he was not cross-examined by the defendants/appellants. PW-8, namely, Shaukat Ali Khan, aged approx 90 years, nephew of Kaniza Khatoon at the time of examination has specifically stated that he has seen Rahmatullah Khan, Khurshid Khan and Kaniza Khatoon. There is specific averment that Kaniza Khatoon died in the year 1933 in presence of



him and her husband died one year earlier before her death. This witnesses was also not cross-examined by the defendants/appellants. So far witnesses of defendants on the point of date of death of Kaniza Khatton is concerned, they have not stated about the date of death of Kaniza Khatoon. DW-2, namely, Qamru Zama Khan aged about 70 years at the time of his deposition in his examination-in-chief, has not given any evidence with regard to the date/year of death of Kaniza Khatoon. Likewise, DW-15 Faizuddin aged about 55 years is son of Sandal Khan. DW-16 Nasima Khatoon aged about 80 years is the wife of Sandal Khan, who are party in the present case. They also in their examination-in-chief have not adduced any evidence on the point of date/year of death of Kaniza Khatoon. It is further submitted that on the point of date/year of death of Kaniza Khatoon, though, no issue was framed by the lower courts, yet it is clear on the basis of evidence produced by the parties that parties were well familiar with the existence of the said issues. It is submitted that under the facts and circumstances, neither prejudice was caused nor the proceedings were vitiated. In this regard, reliance has been placed in the case of *Nedunuri Kameswaramma vs. Sampati Subba Rao* reported in *AIR 1963 SC 884*, wherein, the Hon'ble Apex Court has held as under:-



“No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We, therefore, proceed to consider the central point in the case, to which we have amply referred already.”

15. It is submitted that *“non-framing of issue is not fatal to the proceedings when the party went to the trial and led all the evidences.”* Reliance has also been placed in paragraph 17 in the case of **Baini Prasad (Dead) Through Legal Representatives Vs. Durga Devi** reported in **2023 (6) SCC 708** and in another decision of the Apex Court in the case of **Beerreddy Dasaratha Rami Reddy Vs. Manjunath & anr.** reported in **AIR 2022 SC 65**, wherein, the



Apex Court in paragraph 11 has held that “*mere omissions to frame issued doesn't vitiate trial.*”

16. It is submitted that when the parties went to trial fully knowing the rival case and led all the evidences, it cannot be said that the absence of an issue will vitiate proceedings. Moreover, the defendants/appellants never challenged Exhibits 4, 7, 7A and 6, which are registered documents. Neither evidence was led by the appellants on the issue of death of Kaniza Khatoon nor any cross-examination of PWs 1 & 8 was made by the defendants/appellants as these witnesses have especially mentioned in their deposition about the year of death of Kaniza Khatoon.

17. Learned counsel for the respondents vehemently submits that Bibi Ummul Khatoon was not examined and the appellants did not produce any document which may show they were dealing the suit land in any manner which may show that they have possession over the suit land. The present appeal is devoid of merit and have no substantial question of law involved and is fit to be dismissed.

18. On analyzing the materials on record as well as impugned judgments, it is admitted fact that the defendants and husband of Kaniza Khatoon, namely, Karamtullah Khan are



descendants of Ismail Khan. Karamtullah Khan, Rahmatullah Khan, Khurshid Khan, Md. Taqi Khan and Imam Khan were full brothers. Karamtullah Khan is the husband of Kaniza Khatoon. Qasim Khan, husband of the plaintiff, was predecessor in interest of Kaniza Khatoon. Qasim Khan purchased 5 katha 7 dhur of Plot No. 9211 through registered sale deed dated 17.03.1967 (Exhibit-7) and through Exhibit-7A registered sale deed dated 03.03.1967, Zafir Khan sold the land in favour of Qasim Khan. Exhibit-4 Bai Moquasa dated 14.11.1952 is in favour of Monazirun Nisa by her husband, who in turn, executed (Exhibit-7B) sale deed in favour of Md. Qasim Khan. All the three deeds were neither challenged before any competent Civil Court nor any counter claim was filed in the present suit by the defendants. There is specific pleadings by the plaintiff with regard to year of death of Kaniza Khatoon and in support of her pleading PW-1 and PW-8 have proved the pleadings with regard to year of death of Kaniza Khatoon. Both the witnesses are close relatives of Bibi Kaniza Khatoon, who clearly and specifically stated in their evidence that Kaniza Khatoon died in the year 1933. These witnesses were not cross-examined by the appellants. Further, DW-16, namely, Nasima Khatoon, aged about 80 years and DW-15, Faizuddin Khan, aged about 55 years, who were party in the present case but they also in their examination-



in-chief have not adduced any evidence on the point of date/year of death of Kaniza Khatoon. The aforesaid evidence produced by the parties shows that the defendants have not disputed the date of death of Kaniza Khatoon. Therefore, both the courts, in the given circumstances, did not consider the date of death of Kaniza Khatoon as a central point in the present case. The Hon'ble Apex Court in the case of **Beerreddy Dasaratha Rami Reddy Vs. Manjunath** (*supra*), has held that mere omission to frame issue doesn't vitiate the trial. The Hon'ble Apex Court has held that *"omission to frame an issue as required under Order XIV Rule 1 of the Code of Civil Procedure, 1908 doesn't vitiate the trial where the parties go to trial fully knowing the rival case and led evidence in support of their respective contentions to refute contentions of the other side."*

19. The substantial questions of law framed by this Court is purely on facts and the facts could not be made a substantial question of law. The Trial Court on evidence and the pleadings of the parties has considered the case of the parties and did not find any material adverse against the plaintiff.

20. Considering all the aforesaid circumstances, I do not find any flaw, legal error, perversity or patent illegality in the



findings of Appellate Court. The substantial questions of law as framed doesn't arise in the present case.

21. In view of the above discussions and findings, the judgment and decree of the Appellate Court is affirmed.

22. Accordingly, this Second Appeal stands dismissed.

23. There shall be no order as to costs.

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

(Khatim Reza, J)

prabhat/-

AFR/NAFR	AFR
CAV DATE	18.02.2025
Uploading Date	26.05.2025
Transmission Date	N/A

