

(1990) 05 PAT CK 0023

In the Patna High Court

Case No : Appeal from Original Decree No. 175 of 1984 (R)

Chito Mahto and Others

APPELLANT

Vs

Lila Mahto and Others

RESPONDENT

Date of Decision : 03-05-1990

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : AIR 1991 Patna 186

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Debi Prasad, L.K. Lal and Indrani Choudhary, for the Appellant; A.K. Sinha and Manjul Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This First Appeal arises out of a judgment and decree dated 29-11-1984 passed by Shri Ram Nath, Subordinate Judge, Palamau in Partition Suit No. 116 of 1982 whereby and whereunder the said learned court decreed the plaintiffs-respondents' suit. According to the plaintiffs-respondents, the lands appertaining to Khata No. 10 were the ancestral property of the parties which originally belonged to Nira Mahto.

2. According to the plaintiffs, Nira Mahto had only two sons namely Pati Mahto and Raman Mahto. Allegedly, after the death of Nira Mahto, Pati Mahto was the karta and as such at the time of preparation of Survey Settlement Record of rights, Lila Mahto was a minor and taking advantage of the said fact, Pati Mahto got his share recorded in the Survey Record of Rights as 3/4th in the said properties, whereas the share of Lila Mahto was recorded as 1/4th therein. The plaintiff is the son of Raman Mahto.

3. The defendants are heirs of the afore- mentioned Pati Mahto. The genealogical table will depict the relationship of the parties which is as follows :

Nira Mahto _____|

							Pati Mahto	Ramila Mahto	
Ganga		Mahto		Lila			Mahto		___
								(Plaintiff)	
Mulchand	Budhu	Chito	Mahto	(defendant	No. 1)	Chulhiya	Deft.	No. 8	
wife	Manwa	Ratwa	Tapeshari	D. 5	(Daughter	D-6)	Daughter	D-7.	
Balo Tilo Anarkali					D. 2.	D. 3.	(Daughter	D. 4.)	

4. According to the plaintiff, as the plaintiff was minor, no steps could be taken by him for correction of the Record of Rights. The plaintiff further asserted that the suit lands are joint and there had been no partition by metes and bounds. The plaintiff further asserted that some improvements have been made over the suit lands.

5. In the aforementioned case, a written statement has been filed wherein, inter alia it was contended that the entries made in the Survey Settlement Record of Rights is correct. The defendants further took the usual pleas of limitation, estoppel, waiver and acquiescence.

6. The defendants further asserted that Nira Mahto had three sons namely Dhun Mahto, Pati Mahto and Raman Mahto. It has further been alleged that Nira Mahto died prior to the Cadestral Survey Settlement Operation and upon his death, all the three sons separated and they separately acquired landed property. The defendants further asserted that the defendant Nos. 8, 4, 6 and 7 had no concern with the suit lands.

7. With regard to the lands under Khata No. 10 which is the subject matter of the aforementioned suit, it was alleged that the said properties were not the ancestral properties but the same were acquired by Pati Mahto and Raman Mahto by virtue of a settlement taken from the then Landlord and in respect of the said lands also, there had been a partition in accordance with the share of the parties. The defendants further contended that, in this view of the matter. Pati Mahto acquired 3/4th and Raman Mahto 1/4th share. It has further been asserted by the defendants that all the lands were not partitioned by metes and bounds. It was also asserted that Raman Mahto died before cadestral Survey and as such, therein the plaintiffs 1/4th interest has been recorded.

8. The said defendants further asserted that the family was never joint as they have/had separate ban land and thus, there is no unity of title and unity of possession. According to the defendants, they were ready and willing to partition the suit lands according to the share recorded in the record of rights but the plaintiff was not ready to partition the suit properties.

9. Upon the aforementioned pleadings of the parties, the learned court below framed the following issues :--

"I, Is the suit maintainable as framed?

2. Has plaintiff cause of action for the suit?
3. Is there unity of title and unity of possession over the suit land between the parties?
4. Whether the suit lands are self-acquired property of the ancestor of defendants?
5. Is the suit barred by law of limitation?
6. To what other relief or reliefs, if any, is plaintiff entitled?"

10. The learned court below took up issue Nos. 3 and 4 together and held that there is nothing to show that there had been any partition by and between Raman Mahto and Pati Mahto and in view of presumption in law that a Hindu family continue to be joint, come to a conclusion that 3/4th share under Khata No. 10 were not acquired by Pati Mahto but the same were acquired by their ancestor Nira Mahto and in this view of the matter, the share of the plaintiff and the defendants therein was half and half.

11. The learned trial court also decided other issues in favour of the plaintiff.

12. Mr. Debi Prasad, learned counsel for the appellants firstly submitted that the learned trial court committed a mistake in holding that the properties are ancestral properties of the parties. Learned counsel further submitted that in fact properties in suit were acquired by the appellants and the plaintiff-respondent and although there has been no partition by metes and bounds amongst the parties to the suit, they are in possession of the suit lands in accordance with their share as recorded in the records of right.

13. Learned counsel further submitted that the entries in the records of rights showing the respective shares of the parties will give rise to a statutory presumption and according to the learned counsel, the learned court below could have decreed the suit only to the extent of 1/4th share in favour of the plaintiff.

14. Mr. A. K. Sinha, learned counsel appearing on behalf of the plaintiffs-respondents, on the other hand, submitted that the presumption arising u/s 84(3) of the Chotanagpur Tenancy Act, relating to the correctness of the entry in the records of right is a rebuttable one and the plaintiff had been able to rebut the same. Learned counsel in this connection has referred to evidence of various witnesses to show that in fact the lands in suit were the ancestral properties and not the self-acquired properties of Pati Mahto and Lila Mahto.

15. Ext. I is the record of right. Ext. A is the raiyati Khatian of the suit land of village Bhalogori. The entries of said Khatian show 3/4th interest of Pati Mahto and 1/4th interest of Raman Mahto.

16. In the instant case, the main question, which arises for consideration is as to whether the plots in question are the ancestral properties of the parties and/or whether the plaintiffs have been able to rebut the presumption of correctness in

respect of the entries made in the records of right of Khata No. 10 of village Bhalogori.

As noticed hereinbefore, according to the defendants they are in possession of 3/4th share of the suit lands whereas the plaintiff is in possession of 1/4th share thereof. However, the deed of settlement whereby and whereunder Nira Mahto and Raman Mahto allegedly took settlement of the properties recorded in Khata No. 10 is not on the record. It is also admitted that at the time of preparation of the survey settlement records of rights, the plaintiff Lila Mahto was a minor.

17. The plea of the defendants-appellants to the effect that the settlement was taken by Pati Mahto and Raman Mahto having 3/4th and 1/4th share respectively is thus to be judged from the conduct of the parties as also from other evidences on the records.

18. The witnesses examined on behalf of the defendants, namely, D.W. 5, Balkishore Mahto, D.W. 1, Shanbhu Pandey, D. W. 2, Ramcharitra Mahto, D.W. 3 Mathura and D.W. 4 Phekan Sad stated that the defendants are in possession of 3/4th lands of Khata No. 10. It has further been stated by the aforementioned witnesses that the lands in question are not joint and the parties possess their respective lands separately.

19. On the other hand, P. W. 4, Lila Mahto, alleged that the lands in suit were originally acquired by Nira-Mahto who was the common ancestor of the parties and after the death of Nira Mahto, Pati Mahto was the Karta of the family and after his death Gangu Mahto became the Karta of the family. At the time of survey settlement operation both Nira and Raman had died. According to the plaintiffs there has been no partition by metes and bound and the parties have been jointly possessing the suit properties. In this connection it has further been brought out that the rent in respect of the lands was all along being paid jointly.

20. P.W. 2 is Jaishri Mistri, and P.W. 3, Sita Ram Mahto is the son of the plaintiff. They have asserted in their depositions that the suit lands are joint between the parties and it is for the sake of convenience that they have been possessing some lands separately, but no partition by metes and bounds has taken place between them. So far as the documentary evidences are concerned; Ext. I is the rent receipt which has been issued on 8-2-1978, in respect of 11.66 acres of lands of Khata No. 10 of village Bhalogori. The defendants have also produced one voters list apart from the Khatian Ext. A, but the said document does not appear to have any relevance.

21. As noticed hereinbefore, it is admitted that at the time of preparation of survey settlement record of rights, both Nira Mahto and Raman Mahto had died and at that time the plaintiff was a minor. There cannot, therefore, be any doubt that at that point of time, Pati-Mahto was the Karta and Manager of the family. He must also be presumed to be dealing with the affairs of the family.

22. In the instant case, the defendants have specifically set up a case of

settlement. In this situation, it was obligatory on the part of the defendants to produce the document of settlement. It does not stand to reason as to why, if the defendants' story is correct, they could not produce the deed of settlement and/or any other document to show that the properties in question were not the ancestral properties but a settlement in respect thereof was taken by Pati Mahto and Raman Mahato.

23. As noticed hereinbefore, no rent receipt other than Ext. I has been brought on record. Ext. I which is of the year 1978 shows that the properties are joint and thus if the rent receipt is to be believed, there is no escape for this court but to come to a conclusion that the lands in suit have not been partitioned. No document has been filed by the defendants to show that even after the vesting of the estate; in the bujharat or in any registers maintained by the State, the share of the defendants were shown as 3/4th.

24. P.W. 1, Jivnarain Mahto, was aged about 85 years on the date of his deposition. He is, although a hearsay witness, but has been residing in the same village for about 40 years. He also had not seen Raman Mahto.

25. P. W. 2, Jaishri Mistri, is the resident of a neighbouring village and he knew both the parties. He stated that at the time of survey, Nira Mahto and Raman Mahto both were dead and the plaintiff was a minor. He further stated that the properties are joint but they are in separate possession for the sake of convenience. He further stated that after the death of Pati Mahto, his son Gangu Mahto became the Karta of the family. This witness further stated that both the parties had been possessing their lands and had separate business for a long time. He further admitted that the parties reside separately.

26. P.W. 3, Sita Ram Mahto is the son of the plaintiff. He stated in his evidence that his father is illiterate. He further stated that the lands are ancestral and the plaintiff has half share in the property. He further admitted that the plaintiff came to learn about the entry made in the survey settlement records of rights about 15-16 years back. This witness further could not say as to which plots are in cultivating possession of the plaintiffs and which plots are in cultivating possession of the defendants. He further stated that the suit lands are in 25-26 pieces and out of that defendants cultivate 12-13 pieces whereas the rest are in cultivating possession of the plaintiffs. It has further been stated that except the rent receipt which the plaintiffs filed, in Court, he does not possess any other rent receipt, but the other rent receipts are in possession of the defendants.

27. P.W. 4 is the plaintiff himself. He also denied that the lands in suit were self-acquired lands of Pati Mahto. He further admitted that the defendants have sold some lands to Chandradeep, Bhagwati and Binod. He further could not say as to how the lands are cultivated by the parties. He further stated that on the suit lands Chandradeep Bhuiyan's house is also situated.

28. On the other hand, D.W. 1, Shambhu Panday, is aged about 77 years. Admittedly, he was originally a resident of a different village. He neither could

say about the share of the parties, nor could say about the details of the lands. He further admitted that the rents have been paid jointly. He is thus not a very competent witness, nor can any reliance be placed upon his evidence.

29. D.W. 2, Ram Charit Mahto at the time of deposition was only about 40 years. He stated that the defendants have 3/4th share whereas the plaintiff has only 1/4th share. He stated that they cultivate their lands separately. He further could not say as to in how many pieces the lands in the suit are situated. He further stated that in his presence no partition took place. He further could not say as to how such lands is in cultivating possession of Lila Mahto. He also could not say about the other details of the lands. Thus his evidence also does not support the defendants.

30. D.W. 3, Mathura Mahto has stated that the parties are in separate possession of the lands and the defendants cultivate 3/4th share whereas the plaintiff cultivates 1/4th share of the lands in suit. He stated that Bhagwati, Chandradeep etc. are the under raiyats of the lands in question. In the cross-examination, he could not say as to what is the extent of lands which are in cultivating possession of the respective parties. He further could not state as to who acquired the lands in question. He admitted that he stays in inlaws" place as Ghardamad and he is originally from village Manjhi Gaon.

31. D.W. 4, Phekan Sao although supported the defendants case, in chief, but it appears that there had been a proceeding under Sections 107 and 144, Cr.P.C. between the plaintiff and this witness. He could not say about the date of birth of Lila. He further could not say as to which plot is in cultivating possession of which party. He admitted that no partition took place in his presence.

32. D.W. 5, Balkishore Mahto was aged about 60 years on the date of his deposition. He is the son of the defendant No. 1. He alleged that the defendants cultivate 3/4th of the lands in suit. He further alleged that Pati Mahto acquired 3/4th share of the lands whereas Raman Mahto had 1/4th share therein. It is stated by this witness that both Pati and Raman acquired their own interest in the lands. He further denied that Pati Mahto was never the Karta of the family.

33. In his cross-examination, he stated that he did not see Nira Mahto nor did he see Raman Mahto. He also could not say as to how Pati Mahto and Raman Mahto acquired the lands in question. He further admitted that Gangu Mahto died before he attained "Hosh". He further could not say as to which lands were acquired by Nira Mahto. He further could not say in which year Pati Mahto acquired the lands in suit. He admitted that Pati Mahto was elder to Raman Mahto. He admitted that the rent is being paid jointly. He further admitted that he had been paying the rent. He could not say as to which plots are in cultivating possession of the defendants. He further could not say the plot numbers of the defendants. He further could not say the plot numbers of the lands in which the defendants allegedly dug well or planted trees. He admitted that Lila Mahto had also well and orchard.

34. The defendant No. 1 did not examine himself. In this situation, although the evidence on behalf of the plaintiff is scanty, but from the conduct of the parties it is evident that there has been no partition by metes and bounds. The defendants' witness in their statement clearly mentioned that the plaintiff has been in cultivating possession of 1/4th share of suit lands without stating as to what would be the area of the said lands. Further it does not stand to reason as to why Pati Mahto and Raman Mahto would acquire 3/4th and 1/4th interest in the lands in suit particularly in view of the fact that the plaintiff at the material time was a minor. Even if that be so, it was expected that there would be some document to prove the said settlement. Under Hindu Law, there is presumption of jointness, but in absence of any document of settlement, the Court has no other option but to draw a presumption that the properties in question were ancestral properties. It is also evidently clear from the deposition of the witnesses examined on behalf of the defendants that the plaintiff has also been in possession of the land and the rent is being paid jointly.

35. The defendants for the reasons best known to them have neither produced the deed of settlement nor produced any rent receipt whatsoever, although as noticed hereinbefore, Balkishore, D.W. 5, who is the son of the defendant No. 1 admitted that the rent is being paid by the defendant also. In this view of the matter, if the rent receipts would have been produced, it would have gone a long way in proving the cases of the parties. Thus an adverse inference has got to be drawn for non-examination of the defendant No. 1 as also for non-production of the material documents which were admittedly in their custody.

36. In a suit of this nature, the Court has to judge the case on broad probabilities.

The plaintiffs in their evidence clearly brought out that they are in possession of about half of the properties.

37. It is true, that a presumption of correctness arises in respect of the entries made in the record of rights, but the same merely shows the possession of the parties at the relevant time.

38. A record of rights is not a document of title. In this view of the matter, the defendants should have produced the basic document of title. Further no evidence has been brought on record to show as to under what circumstances, settlement was taken in the names of two brothers, even after the parties separated, themselves, which is the specific case of the defendants.

39. In this view of the matter, in my opinion, the plaintiff must be held to have rebutted the presumption of jointness by direct evidence as also by circumstantial evidences.

40. In view of my findings aforementioned, it must be held that there is no merit in this appeal, which is accordingly dismissed. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs in this

appeal.