
(2010) 09 PAT CK 0070
In the Patna High Court
Case No : First Appeal No. 572 of 1982

Parasnath Singh and Others

APPELLANT

Vs

Fateh Bahadur Singh and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 559

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The Defendants have filed this First Appeal against the judgment and Preliminary Decree passed by the learned First Subordinate Judge, Chapra, Sri Braj Kishore Thakur in Partition Suit No. 105 of 1979 decreeing the Plaintiff-Respondent's suit for partition to the extent of half share in Scheduled-I, II and III of the plaint.

2. The Plaintiff's filed the aforesaid partition suit claiming half share in the properties detailed in Scheduled-I, II and III of the plaint. The Plaintiff case in short is that before revisional survey, the 3 sons of Ram Dhayani Singh had separated in mess and business and cultivation but there had been no partition by metes and bounds. The said 3 brothers, i.e. sons of Ram Dhayani Singh were Ram Khelawan Singh, Ram Jabana Singh and Ram Charitar Singh. Ram Khelawan Singh died before revisional survey leaving two sons, namely, Inderdeo Singh and Modlal Singh. The joint family of Ram Dheyan Singh had 9 bigghas of land. 2-3 years after revisional survey, the 3 branches partitioned and each branch got 3 bigghas of ancestral land. The Plaintiff's are the sons of late Modlal Singh whereas the Defendants are the sons and grandsons of Inderdeo Singh. So far other two branches of sons of Ram Dheyan Singh are concerned, they are separated and therefore, they have no concerned with the suit.

3. The further case of the Plaintiff is that after partition, Inderdeo Singh and

Modlal Singh continued to be joint. Inderdeo Singh was the karta of the joint family. Modlal Singh was Manager of estate of Bal and was also doing money lending business and was earning a lot. He used to send money to his elder brother Inderdeo Singh. The ancestral land obtained in partition were also very fertile and out of the yield, there was saving of Rs. 3,000/- to Rs. 5,000/- per year after meeting all the expenses of the joint family. With the help of the aforesaid savings as well as the money given by Modlal Singh, several properties were acquired in the names of different family members by Inderdeo Singh. Inderdeo Singh died in 1943 and Modlal Singh died in the year 1949. Thereafter, Ram Ballam, the father of Defendant Nos. 5 to 7 who was the eldest son of Inderdeo Singh became the Karta of the joint family. He also died in 1971 and thereafter Tilakdhari Singh, the Defendant No. 3 became the Karta. The Plaintiff's are junior member. All the documents regarding acquisition of properties are in the custody of the Defendants. The Plaintiff's have detailed the ancestral land in Scheduled-II of the plaint whereas the acquired lands have been detailed in Scheduled-I of the plaint. In Scheduled-III of the plaint, the Plaintiff's detailed the immovable properties and the residential house and trees etc. They claimed half share in all these properties.

4. On being noticed, the Defendants appeared and filed joint contesting written statement contending inter alia that there is no unity of title and possession in major portion of the suit property. They have stated that the joint family had less than 9 bigghas of land and, therefore, on partition Modlal Singh and Inderdeo Singh got less than 3 bigghas of land. In December, 1948, the said ancestral lands were divided by metes and bounds between Modlal Singh and his sons on the one hand and the sons of Inderdeo Singh on the other hand.

5. The further case is that the Defendants have acquired the major portion of the properties described in Scheduled-I of the plaint out of their own fund. The Defendants described the details of acquired properties which were acquired prior to December, 1948 in Scheduled (Kha) of the written statement and stated that the Plaintiff have half share in Scheduled (Kha) of the written statement property. This Scheduled (Kha) of written statement is part of Scheduled-I of the plaint.

6. The further case of the Defendant is that Modlal Singh was only a Sipahi and his income was only Rs. 10,000/- per annum. The ancestral property were not fertile and there was no savings out of yield of ancestral land. Inderdeo Singh earned a lot of money by business of Jute in Assam and Bengal and out of those income, the properties have been acquired in the name of different family members. In December, 1948, partition took place in which ancestral lands were divided by metes and bounds. In that partition, the lands which were allotted to the Defendants have been mentioned in detail in Scheduled (Ga) of the written statement. Although, the properties were acquired out of the income of Inderdeo Singh, the Defendants admitted half share in the properties which were acquired prior to the alleged partition of December, 1948. After December, 1948, it is

stated that both the branches acquired properties in their names out of their separate earnings which are their separate properties. The Plaintiff have not included many other joint properties for partition. Some of the properties were acquired jointly too by the contribution made by both the parties and they have got share according to the proportion of their contribution.

7. On the basis of the above pleadings of the parties, the learned Court below framed 9 issues:

- i. Have the Plaintiff's cause of action for the suit?
- ii. Is the suit bad due to partial partition?
- iii. Is the contention of the Defendants regarding partition in December, 1948 correct?
- iv. Had the joint family of parties sufficient nucleus to obtain the suit properties acquired after December, 1948?
- v. Have the Defendants proved that the disputed properties acquired after December, 1948 were purchased by their separate fund?
- vi. Have the Plaintiff's unity of title and possession in the suit properties detailed in Scheduled-I to III of the plaint?
- vii. Whether the Defendants have perfected their title over the suit properties by adverse possession and ouster?
- viii. Whether the suit is bad due to inclusion of the lands of the strangers in the plaint?
- ix. Are the Plaintiff's entitled to the reliefs claimed, or any other relief?

8. After trial, the learned Court below came to the conclusion that there had been no partition by metes and bounds between the parties. The learned Court below also found that the acquired properties mentioned in Scheduled-I of the plaint are acquired out of the joint family income and on these findings, the Plaintiff suit was decreed.

9. Mr. Raghuwansh Singh, the learned Senior Counsel appearing on behalf of the Appellant submitted that the learned Court below has wrongly decreed the Plaintiff-Respondent suit particularly when there were overwhelming evidence adduced on behalf of the Appellants in support of their claim that there had already been partition between the parties in December, 1948. He further submitted that Modlal Singh had no income and the ancestral properties were not fertile and out of the income from the said properties, the properties mentioned in Scheduled-I of the plaint could not have been acquired but the learned court below has wrongly given a finding to the contrary. According to the learned Counsel, Inderdeo Singh was doing business and sons were in service and they have acquired the property out of their own fund in the name of different family members and therefore the Plaintiff's have got no share in the

properties which were acquired after partition in December, 1948. On these grounds, the learned Counsel submitted that the impugned judgment and Decree are liable to be set aside.

10. Mr. V. Nath, appearing on behalf of the Respondent submitted that there is no illegality in the impugned judgment and Decree. The Appellants admitted the fact that the properties which were acquired prior to December, 1948 are the joint family properties and, therefore, they admitted half share of the Plaintiff in the said property and the said property is about 19 bigghas of land and, therefore, the joint family had 21 bigghas of land prior to December, 1948. The learned Counsel further submitted that there is a specific case of the Plaintiff that out of the yield of the joint family properties there was saving of about Rs. 3,000/- to Rs. 5,000/-per annum. The properties were acquired by Inderdeo Singh who was Karta of the joint family. Modlal Singh was doing money lending business which has been admitted by the Appellants in the written statement and, therefore, it was the burden on the part of the Defendants to have proved satisfactorily that the properties acquired after December, 1948 were without the aid of income from joint family properties. The learned Counsel further submitted that the normal state of every Hindu Family is joint in food, worship and estate. This presumption continue until the contrary is proved by the persons who alleges so. According to the Plaintiff's, the family is joint and, there has been no partition. The Defendant-Appellants alleged that there has been partition and so the burden is on the Defendants-Appellants to have proved the fact of partition by leading cogent and reliable evidence but the Defendants have failed to do so. Therefore, the learned Court below has rightly decreed the Plaintiff-Respondent suit. On these grounds, the learned Counsel submitted that the First Appeal has got no merit and it is liable to be dismissed with cost.

11. In view of the above contentions of the parties, the points arises for consideration in this Appeal are as follows:

(i) Whether the suit properties are the joint family properties of the parties and the parties have got unity of title and possession over the same or whether there had been partition between the parties as alleged by the Defendant.

(ii) Whether part of Scheduled-I property which were acquired after December, 1948 are the self-acquired property of the Defendant as alleged by the Defendants or those properties are also the joint family properties.

12. Point No. (i) I shall deal with first point here. According to the Plaintiff's case the parties are joint but according to the Defendants, there had been partition of the ancestral property in December, 1948. The Defendants further admitted that the Plaintiff's have got half share in the properties acquired prior to December, 1948 which have been mentioned in Scheduled- I to the plaint. The further case is that the properties acquired after December, 1948 are self-acquired property of the Defendants and the Plaintiff's have got no share in it. The further case of the Defendant is that the ancestral property which was less than 3 bigghas was

partitioned in December, 1948 by metes and bounds and the Defendants were allotted the share which is mentioned in detail in Scheduled (Ga) to the written statement. It is well known principal of law that every Hindu Family is presumed to be joint and the presumption is until the contrary is proved. Therefore, the legal presumption is in favour of the Plaintiff. The Defendant alleges divisions of the family. Now, let us consider whether the Defendants have been able to rebut the legal presumption and have been able to prove that there had been partition between the family in December, 1948.

13. D.W. 1 is the Defendant No. 2 aged about 65 years. He has stated that the 3 bigghas of ancestral land was partitioned between the parties half and half. In the written statement, it is mentioned that the properties allotted to the Defendants in that partition has been mentioned in Scheduled (Ga) of the written statement. It appears that in Scheduled (Ga) of the written statement, the total area of land is 2 bigghas, 2 kathas, 19 dhurs. If the version of D.W. 1 is relied upon, then how out of 3 bigghas ancestral land the Defendants were allotted 2 bigghas, 2 kathas, 19 dhurs. This witness has deposed on behalf of all the Defendants in the suit. No other Defendant have been examined as witness in this case. D.W. 2 is a co-villagers. He has stated that there had been partition between the parties 30-32 years ago. D.W. 4, D.W. 5 are of another village. Although, they have stated that there had been partition between the parties, but in their cross-examination", they had admitted that the partition did not take place in their presence. D.W. 6 is another co-villager. He has stated that when partition took place between the parties, there was only 3 bigghas of land. The evidence of these witnesses are not reliable simply because all of them have stated that there had been partition regarding the ancestral land measuring 3 bigghas. The Defendant-Appellants have admitted in the written statement that the Plaintiff's have got half share in the properties acquired prior to December, 1948 which have been mentioned in Scheduled (Kha) of the written statement. It may be mentioned here that this Scheduled (Kha) properties are 19 bigghas of land. Had there been partition of the ancestral property in February, 1948 and admittedly, the Plaintiff's have share in these 19 bigghas of land then why these 19 bigghas land were not partitioned, there is no explanation on the part of the Defendants and these witnesses. D.W. 9 and D.W. 10 has only stated that they are seeing the partition separate.

14. The Defendants have also adduced documentary evidence. Exhibit "A" is Mokarnama said to have been executed by Mulka Kuer in favour of Ambika Singh. It appears that there is no mention of any partition in Exhibit "A". It only resides that Mulka Kuer the mother of the Plaintiff had got some properties from her husband which spreads in several villages and she is unable to maintain the property, so, she authorizes Ambika Singh to manage the property and also to look after the cases. In my opinion, therefore, on the basis of Exhibit "A", it cannot be said that there had been partition between the parties. Exhibit "C series are Chowkidar takes receipts granted separately in the names of Defendant Nos. -I, II, III and V. Exhibit "D" is certified copy of sale deed dated

12.7.1977 executed by Plaintiff No. 2 in favour of Jonhia Devi regarding Plot No. 1199. It may be mentioned here that this land is a joint family property acquired in the name of Modlal Singh through sale deed dated 8.11.1944. Exhibit "E" is exchange deed dated 8.2.1947 between Modlal Singh and Ram Pukar Singh. Exhibit "F" is the sale certificate given in Execution Case No. 287 of 1960 against Plaintiff Nos. 1 and 2 only. The Defendants have filed these documents to prove that there had been partition. So far Exhibit "E" is concerned, admittedly it is exchange deed dated 8.2.1947, it is the case of the Defendant that partition took place in December, 1948. Therefore, admittedly in 1947, the parties were joint. So far the Exhibits "D" and "F" are concerned, in my opinion, those documents are also not sufficient to prove that there had been partition by metes and bounds as alleged by the Defendants.

15. Now, let us see the case of the Plaintiff's regarding jointness. The Plaintiff's have examined many witnesses. All the witnesses including the Plaintiff who was examined as P.W. 28, i.e., P. Ws. 3, 4, 9, 28 and 29 all have stated about the jointness of the parties regarding suit properties. Over and above, these oral evidences, the Plaintiff have filed Exhibit "4(B)" which is a petition filed by parties jointly before Circle Officer for fixation of rent of many plots. Exhibit "4(A)" is another petition for fixation of rent of two plots. This petition was also filed by the Plaintiff and the Defendant jointly. Exhibits "7", "8" and "9" are the sale certificate which shows that these are in favour of Plaintiff's in Execution Case No. 173 of 1959. The delivery of possession over the purchase lands was obtained on 15.11.1966 by the Defendant No. 3 himself on behalf of the Plaintiff's, who were then minors. From perusal of Exhibits "12" and "14" series, it appears that Defendant No. 3 was only noticed in land acquisition acquired for the purpose of Gandak project. Exhibit- "11" is the plaint of Title Suit No. 138 of 1960 of the Court of 1st Munsif, Chapra. From perusal of the same, it appears that Ram Ballam Singh and the other Defendants of this case and the Plaintiff's are the Plaintiff's in the said suit. There is a clear admission in the said plaint that the family is joint and Tilakdhari Singh the Defendant No. 3 is Karta. Exhibit "16" is deposition of Tilakdhari Singh. In his evidence, the Defendant No. 3, Tilakdhari Singh admitted that the family is joint and he is the Karta. Exhibit "18" is compromise petition filed in Second Appeal No. 275 of 1967 before the High Court. The Defendant No. 3 compromised the case on behalf of all the parties including the Plaintiff as the guardian of the Plaintiff's. In Exhibit "6(C)" is sale deed dated 13.9.1971, the Defendant No. 3 described himself as the Karta of joint family consisting the branch of Inderdeo Singh and Modlal Singh. Besides the above documentary evidences, there are other documents also such as Exhibit "11(A)" which is a plaint of Title Suit No. 105 of 1959 filed by Ramadhir Singh in the Court of I Vth Munsif, Chapra. The suit was filed against the Plaintiff's and Defendants of the present case describing them as joint family and Defendant No. 3 is Karta. There is no denial on the part of the Defendant. They have not produced the written statement filed in the said case to show that they have denied the allegation made by the Plaintiff of that case regarding

jointness and kartaship of Defendant No. 3.

16. There are yet another set of documentary evidences which are sale deeds. Exhibit "6" is sale deed dated 27.9.1962 executed by Ram Nandan Singh and Ors. in favour of Plaintiff No. 2, Defendant No. 7 and sons of Defendant Nos. 1, 2, 3 all minors under the guardianship of Defendant No. 3. Exhibit "6(A)" is sale deed dated 23.10.1957 executed by Ram Lakhan Bharti in favour of Plaintiff, Defendant Nos. 1 to 4 and Raj Ballam Singh jointly. Exhibit "6(B)" is sale deed dated 11.6.1960 executed by Moti Gir in favour of Plaintiff No. 1 and Defendant No. 3. All these Exhibit "6" series shows that the property were acquired in the name of the parties jointly much after 1948. From the above documentary evidences, it is clear that the Defendants have admitted that the parties are joint even in the year 1957 or 1958 or 1960. It is well known principle of law that admission is the best evidence unless it is explained satisfactorily. In this case, there is no satisfactory explanation given by the Defendants regarding the said admissions in the plaint, there is no explanation as to why and under what circumstances, the properties are acquired jointly in the name of even the Plaintiff's.

17. In view of my above discussion of the facts and circumstances of the case, the evidences available on records, I find that the Defendants have failed to prove the partition as alleged by them in December, 1948. Therefore, the parties are joint and have unity of title and possession. I, therefore, find that the learned Court below has rightly found the same in favour of the Plaintiff. The findings of the learned Court below on this point is confirmed.

18. Point No. (ii) It is the case of the Defendant that the properties mentioned in detail in Scheduled-I of the plaint are self-acquired properties of the Defendants. The Defendants claimed that 19 bigghas of land, i.e., Scheduled (Kha) of written statement were acquired prior to December, 1948 and, therefore, they admitted that the Plaintiff's have got half share. It may be mentioned here that Scheduled-I of the plaint contains 58 bigghas of land. The Defendants admitted half share of Plaintiff's over.

19. bigghas of land. They claimed that the remaining lands measuring 39 bigghas are the self-acquired properties of Defendants which have been acquired after December, 1948 the alleged partition. We have seen above and found that they have failed to prove the partition alleged by them. Moreover the Exhibit "6" series as discussed above are the 4 sale deeds which stands in the name of Plaintiff's and also in the names of Defendants. These properties of the Exhibit "6" series have been acquired after 1948. Therefore, the documents also stands in the name of Plaintiff's. Regarding the acquisition of other properties are concerned, the Defendants have not filed a chit of papers or sale deed to show that those properties are in the name of the Defendants only. It is the specific case of the Plaintiff that the ancestral lands were fertile and it is admission of the Defendant that prior to December, 1948, 19 bigghas were acquired by the joint family. Now, therefore, the joint family properties became 21 bigghas. It is not

the case of the Defendants that out of the income of that 21 bigghas of land, the other properties could not have been acquired. The Plaintiff's have also proved that Modlal Singh was doing money lending business. Exhibit "19" is account book maintained by Modlal Singh. The Defendants have admitted in paragraph 17 of the written statement, the money lending business of Modlal Singh. Exhibit "17" series are the money order coupons in the name of Modlal Singh. Exhibit "15" is certified copy of Decree obtained by Modlal Singh against debtor in small S.C.C. Suit No. 734 of 1940. These documents proved the source of income of Modlal Singh. Moreover as stated above, Exhibit "6" series shows that the properties are standing in the name of the Plaintiff's also. Admittedly, the Plaintiff's are the juniors members of the family. It is the case of the Defendant that they have acquired the properties out of their separate income. In such circumstances it was the duty of the Defendants to prove this fact by producing the documents by which 39 bigghas of land were acquired by them. No such documents has been produced by them. There is no evidence adduced on behalf of the Defendants to show which property was acquired at what consideration in which year in whose name. On the contrary, the Plaintiff's have clearly stated that they had no other documentary evidences regarding acquisition and the Exhibit "6" series, the sale deeds shows that the properties have been acquired jointly. The joint family has got 21 bigghas of land. Modlal Singh has joint family money lending business which was carried on by the Defendants after his death. The Defendants have not been able to show that out of what income they purchased which land in which year and they have also failed to show that which property stands exclusively in their name. It appears that in relation to appointment of receiver, the Defendants have filed many applications in the Court below admitting that there are cash crop, such as Rahar. They also admitted plucking of mangoes worth Rs. 7,700/-. Therefore, they admitted income from the joint family land which falsifies their case as pleaded in the written statement that there is no income from the joint family land.

19. I, therefore, find that the Plaintiff's have been able to prove that the properties mentioned in Scheduled-I of the plaint are the joint family property and the Plaintiff's have got unity of title and possession over the same. The Defendants have failed to prove that portion of Scheduled-I property is their self-acquired property. The findings of the learned Court below on these points are, therefore, confirmed.

20. In view of my above finding, I find no force in the submissions of the learned Counsel for the Appellant. The findings of the learned Court below cannot be interfered with in this First Appeal.

21. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. The judgment and Decree of the learned Court below are hereby confirmed. In the facts and circumstances of the case, the parties shall bear their own costs.