

(1996) 04 PAT CK 0010

In the Patna High Court

Case No : Appeal From Original Decree No. 563 of 1973

Satrughan Prasad Thakur and Others

APPELLANT

Vs

Shrimati Vidya Devi and Others

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Citation : (1996) 2 PLJR 83

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Ratneshwar Prasad and Madan Pd. Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—The Plaintiff Respondents 1st party filed a suit for partition of their 1/4th share of the disputed property, details whereof have been mentioned in Schedule 1 of the plaint, which was registered as partition Suit No. 47 of 1962. The case of the Plaintiffs, in short, is that Sri Awadha Bihari Thakur and Sri Harihar Pd. Thakur were brothers of the Joint Hindu Family. The elder brother Awadha Bihari Thakur was the karta of the joint Hindu family. However, he died several years prior to the date of filing of the suit, in the state of jointness leaving behind his brother Harihar Pd. Thakur and his two sons Raghubansh Pd. Thakur and Ragho Prasad Thakur. Ragho prasad Thakur died in the year 1945 leaving behind his wife Smt. Manorma Devi, who was the original Plaintiff of the suit, who also died in the State of Jointness with Defendant Nos. 1 to 6 leaving behind two daughters Vidhaya Devi and Gita Devi, Respondents 1 and 2 respectively, who have been substituted as Plaintiffs in the suit. It is further alleged that after death of Sri Ragho Prasad Thakur the said Smt. Manorma Devi came in possession of the property of her husband and after her death Plaintiffs came in possession of the property of the joint family, details whereof have been mentioned in Schedule 1, as stated above, in which the Plaintiffs' share is 1/4th. When the Defendants 1st party refused to partition the share of the Plaintiffs on

repeated demands, hence the present suit. Defendants 1 and 2 have filed their separate written statement wherein apart from taking usual and formal pleas, it is stated that the Plaintiffs' share is only to the extent of 1/6th in the property described in Schedule 1 of the plaint. It is further alleged that the details of the lands mentioned in Schedule 1 of the plaint are not correctly mentioned in the Schedule, inasmuch as the properties belonging to the Ors. have also been wrongly included treating it to be the joint family property. It is further stated that some properties belonging to Defendant No. 7 have also been included in the Schedule of the plaint. Defendants 3 to 6 have filed separate written statement wherein it is stated that the suit was filed in collusion with Defendants 1 and 2. It is further alleged that the details of the two properties mentioned in Schedule 1 of the plaint are not correct and certain properties which exclusively belonged to Defendants 3 to 6 have also been included in the schedule of the plaint. It is further alleged that share of the said Awadha Bihari Thakur was separated in the year 1952 and subsequently there was complete partition between two branches in the year 1956 and, as such, it is alleged that there is nothing left to be partitioned in the instant suit. It is further alleged that Sri Harihar Pd. Thakur joined Govt. service in the year 1919 and remained in the service till 1949 and out of the income from his salary and other allowances, has acquired several properties, details whereof have been mentioned in Schedule 1 of the written statement. It is further alleged that the joint family consisting of two branches of Sri Awadha Bihari Thakur and Sri Harihar Pd. Thakur acquired certain properties in the name of the joint family members, namely, Defendants 7 and 8 out of the joint family properties. The detail of such land has been mentioned in Schedule 2 of the written statement to which both the branches are entitled to their respective share being co-sharers of the said joint family. Lastly it is stated that a partition suit was filed in 1950 by Awadha Bihari Thakur with respect to Tauzi No. 15216, which was registered as Title Suit No. 8 of 1950 wherein Defendant No. 3 was a Defendant in that suit. A separate patti in the said tauzi was carved out for Awadha Bihari Thakur and Harihar Thakur and they are coming in separate possession over their share in the said tauzi but curiously the Plaintiffs have wrongly included the said land appertaining to the aforesaid tauzi for partition in the instant suit. It was further alleged that the land appertaining to Tauzi No. 10982 was the self acquired property of Defendant No. 3 which was separately recorded in his name. The other land appertaining to Tauzi No. 15018 was acquired through sale deed dated 31.8.49 by Defendant No. 3. It is also stated that several other lands were acquired by the said Harihar Pd. Thakur after retirement through four separate registered sale deeds (Ext. A to A/3).

2. The trial Court on consideration of the material both oral and documentary accepted the contention of the Defendant No. 3 so far the land acquired appertaining to Tauzi No. 15018 and other lands which were acquired through several sale deeds (Ext A(sic) to A/3). However, the properties appertaining to Tauzi No. 15216 measuring 3 bigha, 19 kathas and 9 dhurs as mentioned in

Schedule 1 of the written statement, being the exclusive property belonging to the Defendant Appellants has been negative to the trial Court. The learned Counsel for (sic) Defendant-Appellants has confined his argument only with respect to the property Tauzi No. 15216 and has challenged (sic) findings of the trial court with respect Tauzi No. 15216 measuring 3 bighas 19 kathas and 9 dhurs on the ground that admittedly the lands of the aforesaid Tauzi were allotted to the Defendants in the aforesaid title suit, which is apparent from the decree passed in the aforesaid title as copy of which has been marked Ext the Court below. From mere perusal of the decree passed in the aforesaid title Su(sic) appears that the aforesaid land as mentioned in Schedule 1 of the written (sic)ment appertaining to Tauzi No. 15216 allotted to the Appellants. The judgment decree passed in the aforesaid title suit not been challenged and/or disputed by Plaintiffs rather the same has been accepted but curiously the trial Court negated the claim of the defendant the ground that it is always open for members of the joint family to ask for a partition of some properties of the family to leave the other property for partition future and, accordingly, it is further (sic) that the judgment and decree passed for aforesaid title suit shall not operate Judicator in the instant suit, though adm(sic)ly the land appertaining to aforesaid Schedule was finally divided and allo(sic) the share of the Defendant-Appellants, view, the share allotted to the parties properly constituted suit, cannot (sic) turbed subsequently at the instance other members of the family. I have (sic) above, it is admitted position that the Perticular land appertaining to Tauzi No. 15216 was exclusively allotted to the Defendants in a previous partition suit wherein the Plaintiffs and the Defendants were parties and the said judgment and decree has become final as the same has not been challenged at any point of time by any of the parties, since the dispute now confined to only property appertaining to Tauzi No. 15216 measuring 3 bighas 19 kathas and 9 dhurs, (sic) is not necessary to go to the other issues and/or contention raised by the learned Counsel for the Appellants.

3. In this appeal no one appears on behalf of the Respondents and after hearing the learned Counsel for the Appellants I am of the view that the Court below has wrongly disallowed the claim of the Appellants so the property belonging to Tauzi No. 15216 measuring 3 bighas 19 kathas and 9 dhurs is concerned, as mentioned in Schedule 1 of the written statement, and accordingly, I modify the decree to the ex(sic) that this particular property, pertaining to Tauzi No. 15216 measuring 3 bighas 19 kathas and 9 dhurs stands allotted to the Defendant-Appellants in terms of the decree (sic) in the aforesaid title partition suit.

In the result, the appeal is allowed to extent indicated above but in the facts and circumstances, there shall be no order as to costs Let the decree be prepared accordingly.