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(2002) 07 JH CK 0054

In the Jharkhand High Court

Case No : LPA No. 453 of 1998

Trinbhuwan Sao and Others — APPELLANT

Vs

Tulsi Sao and Others — RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Citation : (2003) 3 CCC 205

Hon'ble Judges : M.Y. Eqbal, J;Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Debi Prasad and B.V. Kumar, for the Appellant; P.K. Prasad and R.K. Bobby, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 7.9.1998 whereby the learned single Judge allowed the appeal being first appeal No. 73 of 1986 and reversed the judgment and decree passed by the trial Court and consequently the suit for partition filed by the plaintiffs-respondents was decreed.

2. From perusal of the genealogical table given in the impugned judgment it appears that the common ancestor of the parties was one Bhatan Teli who died leaving behind four sons, namely, Dalo Teli, Jitan Teli, Hardeyal Teli and Meghu Teli. The admitted case of the plaintiffs was that there had been partition amongst the four brothers long before whereby Dalo Teli was allotted khata No. 36, Jitan Teli was allotted khata No. 34 and the remaining two brothers. Hardyal Teli and Meghu Teli were jointly allotted khata No. 69. Meghu Teli died leaving behind four sons Janki Sao, Nemu Sao, Bulak Sao and Jagal Sao. The plaintiffs are the descendants of Nemu Sao whereas the descendants of other brothers of Meghu and Hardyal are the defendants.

3. The plaintiffs filled the suit for partition in respect of two annas shares in the landed property comprised within khata No. 69. The defendants-appellants filed

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more than one set of written statement and contested the suit by taking a plea of previous partition.

4. The trial Court decided the issue of previous partition in favour of the defendants and dismissed the suit. The plaintiffs then preferred first appeal No. 73/86(R). The learned single Judge allowed the appeal by the impugned judgment and reversed the finding recorded by the trial Court.

5. Admittedly the defendants-appellants took the plea of previous partition but there was no pleading with regard to specific month and year when the previous partition took place. The defendants also took a defence of re-union on the ground inter alia, that Jitan Teli, one of the sons of Bhatan Teli who had no issue, started living with Nemu Teli and made a will of khata No. 34 in favour of Nemu Teli. The learned single Judge found that khata No. 69 always remained joint in the names of Hardayal Teli and Meghu Teli and at all point of time till the institution of the suit the name of Hardyal Teli and Meghu Teli were jointly recorded in the revenue records and they were jointly paying rent to the Government. The learned single Judge also rejected the contention of the defendants that by reason of execution of will by Nemu Teli in respect of khata. No. 34, Nemu Teli relinquished his share in khata No. 69 in favour of his brothers. No documentary evidence has been brought to our notice which strongly supports the case of the defendants-appellants about previous partition. The learned single Judge, therefore, rightly held that jointness of Hindu family is a strong presumption which has not been rebutted by the defendants- appellants although heavy burden lay on them to prove separation. The learned single Judge, after reappreciating the evidence on record has recorded a finding of fact that there had never been partition amongst the heirs of Hardayal Teli and Meghu Teli in respect of khata No. 69.

6. We do not find any strong reason to differ with the findings recorded by the learned single Judge. The judgment impugned, therefore, needs no interference. This appeal is, accordingly, dismissed.

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