

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.287 of 1976

Against the Judgment and Decree dated 16 February, 1976 passed by Addl. Subordinate Judge, VIth, Patna in Title Partition Suit No.129 of 1969 / 16 of 1973.

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Smt. Savita Devi & Ors.

.....Plaintiffs -appellants

Versus

Smt. Uma Devi & Ors.

.....Defendants-Respondent/s

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Appearance :

For the Appellant/s :-

Mr. Ajay Kumar, Advocate

Ms. Renu Jha, Advocate

Mr. Mukesh Prasad Singh, Advocate

For the Respondent No.1, 3 to 5:-

Mr. Kundan Bahadur Singh, Advocate

For the Respondent No 10 to 14 :-

Mr. Srinandan Pd. Singh,

Mr. Ashok Kumar, Advocate

Mr. Manish Kumar, Advocate.

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Dated : 20th day of January, 2015

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T

1. The plaintiffs have filed this First Appeal against the Judgment and Decree dated 16th February, 1976 passed by the learned Addl. Subordinate Judge, VIth Patna in Title Partition Suit No.129 of 1969 / 16 of 1973 whereby the learned Court below dismissed the

plaintiff's suit for partition.

2. The plaintiffs appellants filed the aforesaid suit for partition claiming 15 paise share of the plaintiff and 9 paise share of defendant No.15 and 16 in the suit property.

3. The plaintiffs claimed the aforesaid relief of partition alleging that Ramadhin Singh had four sons and one daughter, namely, Ramprit Singh, Chhote Narayan Singh, Ramdhani Singh, Laldas Singh and Shyama Devi. Ramadhin Singh died in the year 1956 leaving his widow Tilkuer @ Tileshwari Kuer who was defendant No.17 but died on 21.07.1973. Ramprit Singh died in the year 1952 leaving behind his widow Sonfula Devi, the defendant No.10 and his sons and daughters who are defendant Nos.11 to 14 and 17(a) and 17(b). Chote Narayan Singh is defendant No.1 and his sons are defendant No.3, 4 and 5. Ramdhani Singh is defendant No.2 and his descendants are defendant No.6 to 9. Laldas Singh died on 17.04.1964 leaving behind his widow Smt. Siya Kuer, defendant No.15 and two sons and daughter. These two sons of Laldas Singh are the plaintiffs and the only daughter of Laldas Singh is defendant No.16. Original plaintiff No.1, Janardan Prasad Singh also died in the year 1970 and his widow became plaintiff No.1.



4. According to the plaintiff, there had been no partition between the parties with respect to the joint family property. The joint family possessed of highly productive culturable lands and out of the savings from the income of the lands, the joint family acquired land in different villages. The defendant No.1 was in service as engineer. The brothers and father of defendant No.1 advised him to start contract business, therefore, defendant No.1 gave up his service and started contract business with the help of joint family fund. The contract business was at Ranchi and Durgapur. The fund of the joint family was invested in the said business. All the properties acquired out of the income from contract business are joint family property. The management of agricultural land remained with defendant No.2 whereas the defendant No.1 was in-charge of contract business. The joint family possessed of 125 biggha lands which is described in Schedule 1 whereas in Schedule 2, the house property has been described and in Schedule 3, there is description of movable property.

5. The defendant Nos.1, 3 and 4 filed contesting written statement whereas the defendants Nos.10 to 14 filed supporting written statement, supporting the case of the plaintiff. Likewise, defendant No.15 and 16 supported the plaintiff's case. The defendant No.17, Tileschwari Kuer and defendant No.17(a) and 17 (b) filed

separate written statement. After death of Tileshwari, Shyama Devi was substituted as defendant No.17 who filed written statement claiming her share to the extent of 7 naya paise.

6. According to the contesting defendants, their main defence is that Siya Kuer, the defendant No.15, i.e., mother of the plaintiff used to quarrel with the other family members, therefore, in the year 1960, Laldas Singh decided to separate himself and accordingly, the property were partitioned by metes and bounds in jeth 1960. The properties allotted to Laldas Singh is descried in Schedule 'A' of the written statement and the remaining properties were allotted jointly in favour of defendant No.1 to 14 who remained in joint possession thereof. In this partition, Tileshwari Devi gave up her share in favour of sons and grand sons and in fact she was entitled for maintenance. 1/4th share was given to Laldas Singh. Pursuant to the said partition, Laldas Singh executed registered sale deed and sold the properties allotted to him to third persons. The property sold by him is described in Schedule 'B' of the written statement. He also sold two trucks which were allotted to him. He also acquired separate lands which are described in Schedule 'C' of the written statement. He also acquired properties by registered mortgage deeds which have been described in Schedule 'D' of the written statement. Therefore, Laldas Singh



completely separated and the properties are not joint family properties. So the plaintiff and defendant No.1 to 16 are not the members of joint Hindu Mitakshara family. The defendant No.1 himself started the contract business in Ranchi and Durgapur without the aid of joint family and acquired properties out of his own income at Ranchi which are his self acquired property. Subsequently, because of quarrel, there was second partition between the defendant No.1 to 14 in the year 1964. The Schedule 'E' land of the written statement was allotted in favour of defendant No.1 and 3 to 5 in this partition. Schedule 'F' properties were allotted to defendant No.2 and his sons. Since there was no formal paper showing partition of the year 1960, a memorandum of partition was prepared in four copies signed by all the parties including Siya Kuer, the mother of the plaintiff as by that time Laldas Singh had died. After partition, the parties came in separate possession of the properties allotted in their favour and they were mutated.

7. The further case is that on 15.10.1964, a petition was filed signed by the defendant before the B.D.O. claiming for separation of the laggits and accordingly, laggits were separated after enquiry. The defendant No.2 and 6 to 9 have taken loan from the bank pledging their lands. They also purchased seeds and fertilizers and pledged



their lands and they have also taken separate electric connection in the house allotted to them in the partition. All other defendants also have taken separate electric connection and have pledged their lands for taking agricultural loan. The defendant No.1 also has given the details how he started contract business and from which contract, he got income and also the details of the income. It is also specifically pleaded that the lands of plot No.1511 of village Morabadi, Ranchi is acquired by defendant No.3 to 5 from their personal fund on 19th February, 1964 and came in possession thereon. They constructed house by spending Rs.60,000/-. So far Fatuha property is concerned, it is stated that in previous partition of the year 1960, it was not allotted in the share of the plaintiff's ancestor. Subsequently, this Fatuha property was partitioned between defendant No.1 and 3 to 5 in one side and defendant No.2 and 6 to 9 on the other side.

8. A written statement has been filed by Tilkuer separately claiming 1/5th share. However, the contesting defendant alleged that she has gone in the clutches of the plaintiff and collusive written statement has been filed. All other allegations made by the plaintiff was denied. It is alleged that there is unity of title and possession between the parties.

9. On the basis of the aforesaid pleadings of the parties the following issues were framed by the Court below :-

- (A) Whether the suit as framed is maintainable?
- (B) Whether the plaintiffs have any cause of action for the suit?
- (C) Whether the suit is bad for non joinder of parties?
- (D) Whether there is unity of title and possession among the parties over the properties in suit?
- (E) Whether the contract business involved in the suit forms part of joint family property or it was the exclusive concern of defendant No.1?
- (F) Whether the plaintiffs are entitled to a decree for partition and, if so, in respect of what property?
- (G) To what relief or reliefs, if any, are the plaintiffs entitled?

10. After trial, the learned trial Court recorded the finding that the contract business is the business of defendant No.1 only and that there had already been previous partition, therefore, dismissed the plaintiff's suit.

11. The plaintiffs have filed this First Appeal against the said impugned Judgment and Decree. The defendant respondent No.10 to 14 have filed cross objection against the decree by which their claim for share in the suit property has been rejected. The cross objection was admitted on 30th March, 1982. Therefore, the cross objection was also heard along with the appeal. It may be mentioned here that the

learned counsel for the cross-objector and the learned counsels for the appellant raised the same and similar points in the arguments. The parties have also filed their written arguments.

12. It appears that an interlocutory application was also filed by the appellant for permission to adduce additional evidence being I.A. No.36 of 2011. This interlocutory application has already been allowed earlier. By this interlocutory application, the appellant seeks to produce the copy of the Judgment of session trial No.347 of 1974 dt.27.11.1976.

13. Since the submission of the learned counsel for the plaintiff appellant and the cross objectors are same, the respective arguments are being dealt with jointly together. According to the learned counsels, the learned Court below has not properly appreciated the evidences. By ext. 'G' part of the properties were given in the share of different co-sharers only for convenience, for the sake of cultivation. In the list of ext. 'G', the property of Ranchi and the property of Fatuha and also some properties which were added as the subject matter of the suit by amendment during pendency of trial were not mentioned at all. There is nothing on record to show that these properties, i.e., Ranchi property and Fatuha property and also the



properties which are added subsequently by amendment were ever partitioned between the parties, therefore, the Court below should have decreed the partition suit at least with respect to these properties. In ext. 'G' also, the mother Tilkuer @ Tileshwari Kuer who was defendant No.17 was not given any share, therefore, that partition is not a valid partition. In ext. 'G' also, there is no provision for maintenance of widow because she had a share equal to that of her son in the suit property. Moreover this ext. 'G' is not a registered document, as such it cannot be used as evidence of partition.

14. The learned counsel for the appellant and cross objectors further submitted that Tileshwari Kuer could not have relinquished her share without there being any registered document.

15. The learned counsel further submitted that the joint family contract business was started prior to 1952 by joint family fund. Initially, the said business was looked after by Laldas Singh and subsequently, after resigning from the service in December, 1952, Chote Narayan Singh started looking after the said joint family contract business. All the properties purchased at Ranchi are purchased out of the income from joint family business of contract, therefore, the Court below should have decreed the suit holding that



the property of Ranchi is joint family property. The learned counsel regarding Fatuha property submitted that it was not partitioned although it is joint family property. Simply the defendants stated that in lieu of Fatuha property, Laldas Singh was given some other properties but they did not give any detail of the property which were given in lieu of Fatuha property. The learned counsel further submitted that in view of the above fact, the decree should be passed partitioning the property which were not partitioned between the parties. The burden was on the defendant to prove that there had been partition. The Court below has wrongly held that Laldas has separated from other three branches in the year 1960. So far independent alienation made by the plaintiffs is concerned, it is submitted that a joint family member can alienate / transfer property separately within his share but on that ground, no finding can be recorded or nothing can be presumed that there had been partition between the parties. This story put forth by the defendant that partition in the year 1960 was confirmed in the partition of the year 1964 are absolutely wrong. The application filed before B.D.O. Fatuha for separate entry in revenue record are not according to ext. 'G'.

16. So far self acquisition of Ranchi property claimed by



defendant is concerned, the learned counsels submitted that the defendant No.1 joined in service in May, 1948 in CPWD and was getting salary @ Rs.325/- per month. In January, 1949, he joined the Bihar Government service where he was getting Rs.270/- only per month. Therefore, his total salary came to Rs.12,320/- only till December, 1951. In such circumstances, it cannot be said that he saved all the amount of salary without any expenditure and deposited Rs.10,000/- as security for starting contract business. The two trucks were purchased in the name of defendant No.1 by ext. 6/A and 6/B out of joint family fund which is being admitted by him in his evidence, therefore, there is presumption that the business was of the joint family and not his personal business. On these grounds, the learned counsel submitted that the Court below should have held that the Ranchi property are the joint family property but the learned Court below failed to appreciate these matters and, therefore, the First Appeal be allowed and the impugned Judgment and Decree be set aside.

17. So far the additional evidence is concerned, the learned counsels for the appellant submitted that the original plaintiff No.1 Janardan Singh was murdered by Ramdhani Singh because of the property dispute between them. Chote Naryan Singh was also



accused under section 302/34 I.P.C. for the offence of murder of Janardan. The learned counsel submitted that the intentions of the defendants, Chote Narayan Singh and Ramdhani Singh is to extinct the line of the plaintiffs and they want to enjoy the property alone. When Janardan Singh claimed partition, the murder was committed. Ultimately, they have been convicted by the Judgment, therefore, the appellants have brought the judgment as additional evidence for consideration before this Court.

18. On the other hand, the learned counsel, Mr. Kundan Bahadur Singh, appearing for the contesting respondents submitted that ext. 'G' is a memorandum of partition, therefore, it needs no registration. The mother of the plaintiffs, Siya Kuer is a signatory to the said deed. This ext. 'G' is signed by all the parties, therefore, it was not challenged by any of the party. There was partition between the parties and the plaintiffs knew this fact but suppressing this fact, the present partition suit has been filed praying for simple partition. If there was previous partition, then there is no question of further partition arises. According to the learned counsel, the plaintiff nowhere pleaded about the joint family fund or nucleus for starting contract business. All the properties of Ranchi are standing in the name of defendant Nos.1 or his sons. Therefore, the presumption is



that it is their self acquired property. The onus is on the plaintiffs to prove the fact that the business was joint family contract business but in the present case, there is no such pleading, nor there is any pleading regarding nucleus. In such circumstances, the Court cannot presume the joint fund or nucleus. Moreover, ext. 'G', is a document showing partition of the year 1960 and in 1964 which is not under challenge, so this partition suit is liable to be dismissed. All the adult members of four branches have signed the memorandum of partition ext. 'G' and they never raised any objection. It is not the case of the plaintiffs or cross objector that there was partition with respect to some property through ext. 'G' and some properties, i.e., property of Fatuha and Ranchi was left joint. In the present case, there is no such pleading, therefore, merely on the submission that these properties were never partitioned, no decree for partition can be granted particularly, when there had already been complete partition between all the branches. Earlier, in the year 1960, Laldas separated and subsequently in the year 1964, the remaining branch partitioned. A Memorandum was prepared which has been produced as ext. 'G'.

19. The learned counsel further submitted that Laldas Singh himself executed and registered a sale deed dt. 22.7.1961 for self and on behalf of his minor son. In this registered sale deed, he admitted



the fact that the property which he sold was ancestral property purchased in 1911. In this sale deed, Ramdhani Singh became the attesting witness and Chote Naryaan Singh is also witness. In the sale deed, he admitted that it is his khas property which he sold which clearly indicate that he got in partition.

20. The learned counsel further submitted that in ext. 'G', the defendant No.1, Chote Narayan Singh's branch got 15 acre and odd land only. Ramdhani branch was allotted 22 acre and odd land. The Ramprit branch was allotted 20.70 acres and plaintiff branch was allotted 16.99 acres of land. It is not the case of the plaintiff that in the said partition, disproportionate lands/ shares were allotted in favour of the plaintiff, therefore, on this ground that less area of land was allotted, the family arrangement cannot be upset. It is common experience that when partition is affected, some more lands are given in the share of one party, and some less lands are given in the share of other party considering the nature and value of the land. In such circumstances, the ext. 'G' cannot be ignored.

21. The learned counsel further submitted that Fatuha land was useless, therefore, it was not allotted in favour of the plaintiff but it is not the case of the plaintiff that this property is left joint in the earlier



partition. On these grounds, the learned counsel submitted that the partition cannot be reopened when there had already been complete partition. The learned Court below has, therefore, rightly dismissed the plaintiff's suit. As such, the First Appeal and the cross objection be dismissed with cost.

22. In view of the rival contentions of the parties, the points arises for consideration in this First Appeal is as to whether there is unity of title and possession between the parties with respect to the suit property and whether the cross objectors are entitled for a share in the suit property or whether there had already been complete partition between the parties.

23. The plaintiff has filed this simple suit for partition claiming that the properties are joint and there had been no partition between the parties. On the contrary, the contesting defendant set up a case that there had already been partition in the year 1960 wherein Laldas Singh separated from the other branches and subsequently, there was partition between the other branches in the year 1964. In support of their respective cases, the parties have adduced evidences. In order to prove partition of the year 1960, the defendants have adduced oral as well as documentary evidences. D.W.7 to D.W.11 and D.W.14, all

have stated that there had been twice partition in the family of the parties. The defendant No.1 has been examined as D.W.23. He has fully supported the case made out by him in the written statement.

24. On the contrary, the supporting defendants have also examined 16 witnesses and these witnesses have stated that there had been no partition, likewise the witnesses examined by the plaintiffs P.W.2 to P.W.6, P.W.8 and defendant No.12 and 17 examined as P.W.17 and P.W.20, all have stated that the parties are still joint. It may be mentioned here that D.W.25, D.W.36 to D.W. 40 have stated that the Fatuha house was constructed jointly. So far this evidence of these witnesses is concerned, it may be stated that it is not pleaded by the plaintiffs. Moreover, this is not the question as to whether who constructed the Fatuha house. The question is whether there had been partition between the parties as alleged by defendants or not. As stated above, the witnesses examined by the plaintiffs and the defendants have respectively supported the respective cases of the parties. In such circumstances, the documentary evidences have got much importance in the present case.

25. The defendants in support of partition have produced exhibit 'G'. This is a memorandum of partition signed by the mother



of the plaintiff namely, Sia Kuer who is D.W.15 and also signed by Satendra Singh who is D.W.11. This document ext. 'G' only recorded the fact of previous partition and schedules have been prepared in this ext. 'G' indicating which schedule were allotted in whose share. So far this document is concerned, it speaks that there had been partition in the year 1960 in which partition, Laldas Singh separated. In this ext. 'G', the partition of the year 1964 has also been recorded. From perusal of the same, it appears that in the partition of the year 1960, the plaintiffs branch was allotted 16.99 acres of land. Ramdhani Singh branch 22 acres of land whereas Ramprit Singh's branch got 20 and odd acres of land. So far defendant No.1 branch i.e., Chote Narayan Singh branch, is concerned, only 15 acres of land was allotted.

26. The learned counsels for the appellant stated that there is on equal share given in this ext. 'G'. This is the point also raised by the cross objector. So far these submissions are concerned, it may be mentioned that the plaintiffs never challenged this ext. 'G' on these grounds. It is not the case of the plaintiffs or the cross objector that since there was unequal partition, the partition be reopened. Here, as stated above, the plaintiff filed the suit on allegation that there has been no partition. Therefore, this ext. 'G' has not been challenged.

Therefore, the genuineness or otherwise of the said document cannot be doubted.

27. The defendants have produced ext. 'D' series, the registered sale deeds in support of the fact that Laldas Singh accepted the partition and sold the some properties allotted to him. According to the contesting defendant, partition took place in the year 1960 and prior to that, all the brothers were joint. Ext. 'D'(6) is the certified copy of the sale deed dated 28.05.1959. This sale deed have been produced to show that all the branches jointly executed this sale deed. Admittedly, their father had died in the year 1956. After 1960 partition, Laldas Singh executed and registered a sale deed dated 22.07.1961 and in this registered sale deed, defendant No.1, Chote Narayan Singh and defendant No.2, Ramdhani Singh, are the attesting witnesses. The other three branches separately executed and registered the sale deeds dated 22.07.1961 wherein Laldas Singh is the attesting witness. The sale deeds have been produced by the defendant which have been marked ext.D., D/1 and D/2 and D/5. In the sale deed, ext. 'D' Laldas Singh for self and on behalf of his minor sons and Birendra and Janardan executed the sale deed wherein clearly he mentioned that after partition, the property fell in their share and the property belonged to them. Similar statements have been



made in the other registered sale deeds, ext.D/1 and D/2, executed by Laldas Singh. In the sale deed executed by defendant No.1 and other branches, ext. D/5, similar statements have been made to the effect that there had been partition and the property which they are selling is their property. Now, therefore, the fact of partition prior to 1961, i.e., 1960 as alleged by the defendant No.1 has been admitted by the father of the plaintiff by executing registered sale deeds. This is clear admission made by the father.

28. It is settled principle of law that admission is the best evidence in support of the fact. Here, there is no explanation, as to why and how this statement of partition was mentioned by Laldas Singh. If there had been no partition, then there was no question of making such statement by Laldas Singh in different registered sale deeds. Moreover, he executed and registered sale deeds selling properties wherein the other branches are the attesting witnesses. Further in the sale deeds, it is mentioned that the properties are being sold for the purpose of treatment of Laldas Singh who was a diabetic patient. These registered sale deeds are admitted document and at that time, there was no dispute between the parties.

29. Ext. 'W' has been produced by the defendant to show that



the lands allotted in the share of Laldas Singh was pledged by Janardan Singh for obtaining loan for the purpose of irrigation. If there was no partition, then why separate loans were obtained for separate arrangement for irrigation.

30. Ext. 'C' have been produced by the defendant which is mortgage deed dated 6.4.1963 by which Laldas Singh acquired land in mortgage. Likewise ext. 'C/1' and 'C/2' are also the mortgage deed by which Laldas Singh acquired the land.

31. The defendant have produced ext. 'S' which is certified copy of the petition which was filed by the parties before B.D.O. Fatuha for separate *lagit* on the ground that there had been partition between the parties. This certified copy was obtained in the year 1966. Admittedly, at that time there was no dispute between the parties. It may be mentioned here that the plaintiff as well as the cross objector disputed the signature of Siya Kuer and Satendra Singh on ext. 'G'. The learned counsels for the plaintiff appellant and the cross objector before me also submitted that the ext. 'G' is forged document. Signature of Siya Kuer has been forged. Since this question was raised by the plaintiff, it appears that expert was examined and thereafter, the trial Court on the basis of expert report, i.e., P.W.26



and D.W.50 recorded a finding that Siya Kuer and Satendra Prasad Singh have signed the memorandum of partition, ext. 'G', therefore, it is genuine document. I do not find discrepancy and illegality in the finding of the trial Court on this question. Moreover, the plaintiffs never prayed for setting aside the document on this ground and further the partition of the year 1960 is admitted by Laldas Singh in ext. 'D' series. This fact is further confirmed by ext. 'S', i.e., the application filed by the parties for separate *lagit*.

32. Regarding the second partition of the year 1964, the defendants have produced ext. 'M' series which are the letters written by Jitendra Prasad Singh and Satendra Prasad Singh, sons of Ramprit Singh. The signatures on these letters was also disputed and expert was examined. The trial Court found that the said Jitendra and Satendra has signed the said letters which was addressed to defendant No.1 wherein they have admitted that dispute arose regarding distribution of paddy. Admittedly, this letter was prior to the date of ext. 'G'. Therefore, it indicates that there was separation between the parties prior to ext. 'G'; and there was dispute regarding distribution and subsequently, ext. 'G' was executed.

33. So far ext. 'S' is concerned, also the plaintiffs and



defendants-cross objector submitted that it is collusive document. However, the defendants have produced the notice ext. 'P/3', 'P/4' and P/5 which were issued to the defendant's son from the office of BDO, Fatuha. It may be mentioned that these notices were issued from the office in the year 1966 when there was no dispute between the parties. The suit has been filed in the year 1969 and according to the plaintiffs, there had been no partition.

34. It appears that whatever document have been produced by the defendant No.1, the plaintiffs denied the same on the ground that either it is forged or collusive. As stated above, no such case have been made out in the plaint. It is not the case also that they had no knowledge about ext.'G' or the proceeding before BDO or the notice issued by the office of BDO.

35. The defendants have also produced ext.'D/3' and 'D/4', the two registered sale deeds, executed by Siya Kuer whereby she sold portion of the property allotted in favour of Laldas Singh. The legal necessity have been described by her in the sale deeds, i.e., for maintenance and education purpose. If there was no partition and if the case of the plaintiff that the joint family has got sufficient nucleous, then why mother of the plaintiff sold the property for

education purpose or maintenance purpose, there is no explanation at all. Further in the sale deed also, there is admission of partition.

36. So far the documentary evidences produced by the plaintiff are concerned, those are not directly related with the question of jointness. Moreover, when the defendants raised the plea that there had already been partition, the burden is on the defendant to prove previous partition. Therefore, they had adduced the evidences in support of the fact of previous partition. I have discussed the oral as well as documentary evidences in support of the previous partition of the year 1960 and 1964. So far previous partition of the year 1960 is concerned, it is admitted by father of the plaintiffs as well as mother of the plaintiffs by executing registered sale deeds and also by executing and signing the memorandum of partition ext. 'G'.

37. So far the submission of the learned counsels for the appellant and cross objector that in the memorandum of partition, Fatuha property and Ranchi property have not been mentioned at all, therefore, at least those property be partitioned in the present partition suit is concerned, it may be mentioned here that it is not the case of the plaintiff or the cross objector that there had been partition with respect to some properties and the property of Fatuha and Ranchi

were left joint for partition in future.

38. The learned counsel for the appellant and cross objector both submitted that the contract business was started with the help of the joint family fund and the properties acquired out of income from contract business are joint family property. The properties have been acquired by defendant No.1 out of contract business. So far this question is concerned, it may be mentioned that the properties at Ranchi are standing in the name of three sons of Chote Narayan Singh which they have purchased by ext. 'D/8' dt. 18th February, 1964 and 'D/7' dated 10.09.1964 in the name of defendant No.1. These properties have been acquired after partition of the year 1960. Therefore, on the date of acquisition of these properties, Laldas Singh had already separated from the other branches. Therefore, the question as to whether it is joint family property of plaintiff and defendant does not arise because admittedly, there was no unity of title between the plaintiffs and the defendants. So far the cross objection is concerned, it may be mentioned that the cross objection have been filed by the defendants who have supported the plaintiff's case. Since, plaintiff's father have already been separated in the year 1960, now, the cross objection of the respondent is against respondent which is not maintainable in view of the decision of the Supreme



Court in the case of *Panna Lal Vs. State of Bombay AIR 1963 SC 1516* and in the case of *Rohit Singh Vs. State of Bihar 2007 (1) PLJR 232 SC*. Moreover admittedly, the defendant No.1 was doing contract business after resigning from his service. It is settled principle of law that any business run by a member of joint family will not be presumed to be the joint family contract business. It is for the plaintiff to prove that the business was started by the fund supplied by the joint family. The burden is on the plaintiff to prove this fact.

39. In the present case, it is argued by the plaintiff and the cross objector that the salary of the defendant No.1 was not such that he would have started the contract business by depositing earnest money of Rs.10,000/-. This submission is only presumptive submission. It is not the pleading of the plaintiff that on particular date particular amount was given by the *karta* of the family for the purpose of starting a joint family business. If father gave some money to son for the business of the son, there cannot be any presumption that the business is family business. It can very well be said that the father helped the son for establishing his separate business. Here plaintiffs failed to prove that contract business was joint family business.



40. The learned counsel for the appellant as well as the cross objector submitted that there is no evidence in support of the fact that in lieu of Fatuha property, any other property was given in the share of the plaintiffs. So far this submission is concerned, it is not the requirement of law that to prove previous partition, the defendant must allege and prove that in the partition for particular item of property, a particular property was given in the share of other party. In other words, the defendant is not required to prove item wise partition. It is sufficient to show that there had been partition between the parties. The defendant is not required to show which property was allotted in lieu of which property.

41. So far the additional evidence sought to be adduced by producing the Judgment of criminal Court is concerned, it is not relevant at all in the present First Appeal. The Judgment shows that Janardan Singh was murdered and the accused persons who are defendants were convicted. This is the only fact which can be seen in this First Appeal but on this fact, no finding of partition can be recorded either in favour of the plaintiff or in favour of the respondent. Therefore, so far the Judgment of criminal Court is concerned, it is not relevant at all in this First Appeal.

42. In view of my above discussion, I find that the defendants have been able to prove that there had already been partition between the parties twice. Firstly, in the year 1960 in which Laldas Singh separated and secondly in the year 1964, when there was partition between the remaining branch. Therefore, the findings of the learned trial Court on these issues are hereby confirmed. Thus, the point formulated is answered against the appellant and cross objector and in favour of the contesting defendant respondent.

43. In the result, this First Appeal and cross objection both are dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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