

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.287 of 1978

Against the judgment and decree dated 25.2.1978 passed in Title Suit No.117 of 1954 by 2nd Addl. Sub-Judge, Motihari.

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Vidya Sagar Prasad, son of late Saryug Prasad Sah, resident of village and police station Kesharia, District-East Champaran. (Sole appellant is dead. His heir Mr. Prakash Narayan Sahu son of Jagat N Lal Sahu is substituted in his place vide order dated 14.02.1983.)

..... Plaintiff-Appellant/s

Versus

1. Ramautar Sah son of Khirodhan Sah, of village Bherihari, P.O. and Police Station Adapur, District-East Champaran.
2. Raghu Nath Prasad, son of Udit Sah, resident of village Piparpati, P.O. Ramgarwa, Police Station Raxaul, District-East Champaran.
3. Naboo Lal Singh, father's name not known, of village Chauradano, Police Station- Chauradano, District East Champaran. (Respondent no.3 is dead. The appeal may proceed without substitution of his heir vide order 2.4.1984)
4. Raghoji Tiwary, father's name not known of village Sripur Police Station Chauradano, District-East Champaran.
5. Raghu Nath Pandey, father's name not known, of village Shyampur, Police Station Adapur, District-East Champaran. (Respondent no.5 is dead. The appeal may proceed without substitution of his heir vide order 2.4.1984)

Defendants-Respondents 1st Party.

(Defendants 4, 5 and 7)- Respondents 2nd Party.

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Appearance :

For the Appellant/s : None

For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 20-02-2015

This appeal under Section 96 of the Code of Civil Procedure is filed against the final decree dated 25.02.1978 passed by the Court of 2nd Additional Subordinate Judge, Motihari in Title Suit No.117 of 1954. The appellant is the plaintiff in the suit.

The appellant and the 1st respondent were partners holding 50% share each, in M/s Jai Hind Rice Mill Chauradano. Since

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differences arose between them, the appellant filed Title Suit No.117 of 1954 for partition. The matter was referred to arbitration, the award dated 13.01.1954 passed by the arbitrator was made the rule of the Court, and a preliminary decree was passed in the suit accordingly.

The respondents instituted proceedings for final decree. Certain proceedings, at the instance of third parties, have also ensued *vis-a vis* Mill property. The respondent claimed 50% of share in the sale proceeds of the Mill.

The final decree proceedings were opposed by the appellant, i.e. the plaintiff in the suit. According to him, final decree proceeding was barred by limitation and that there were outstanding dues of the mill and thereby the respondents were not entitled to any amount at all.

The trial Court repelled both the contentions and held that only outstanding dues against the Mill at the relevant time were Rs.1669.15 payable to the Income-tax Department and Rs.1000/- payable to the M/s Asadali Mian Kariman Mian. The trial Court passed the final decree, holding that these two amounts are to be deducted from the sale proceeds of the mill and the balance is to be divided among the partners according to their shares. Hence, this appeal.

The appeal is pending for the last 37 years. Though advance list was published showing the appeal for hearing, there is no

representation for the appellants. Hence, this Court perused the record, lest the matter would be pending indefinitely.

The preliminary decree passed by the trial Court was, in fact, the result of arbitration. Proceeding commenced sixty years ago and for one reason or the other, the final decree was not passed for quite some time, by the trial Court. In the application filed by the respondents, the trial Court framed three points for consideration viz:

1. *Was there any liability on M/s Jai Hind Rice Mill on the date of award? If so, what were those debts and whether it was paid by the plaintiff or was he liable to pay the same?*
2. *Whether the account books filed on behalf of the plaintiff are genuine?*
3. *Whether the defendants petition for preparation of the final decree is barred by limitation?*

All the issues were answered in favour of the respondents.

The issue pertaining to limitation was taken first. It hardly needs any mention that a suit for partition continues to be pending till a final decree is passed. Even where a partial final decree is passed, the suit continues to be pending. Therefore, the plea of limitation was totally untenable.

On other two issues, the trial Court has undertaken extensive discussion with reference to oral and documentary evidence.

In the grounds of appeal also, it has not been mentioned as to how the findings recorded by the trial Court are incorrect.

This Court does not find any merit in this appeal. The appeal is accordingly, dismissed. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

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