

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.126 of 1980

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1. Kapildeo Singh
 2. Ramadhar Singh, both sons of Sidhi Singh
 3. Kaushal Kishore Singh son of Kapildeo Singh, all residents of village-Main Police Station, Belaganj, Revenue Thana, Tekari, Distt-Gaya. Defendants
 Appellant/s

Versus

1. Jamuna Singh son of Late Kripal Singh,
 2. Prahalad Singh son of Jamuna Singh, residents of village-Main Police Station, Belaganj, Revenue Thana, Tekari, Distt-Gaya.....Plaintiff/Respondents.
 3. TanuSingh son of late Kripal Singh,
 4. Uma Mahesh Singh,
 5. Hardeo Singh sons of TanuSingh,
 6. Arbind Kumar Singh (major) son of Uma Mahesh Singh,
 7. Ashok Kumar(major) son of Hardeo Singh,
 8. Sanjya Kumar (major) son of Hardeo Singh, all residents of village-Main Police Station, Belaganj, Revenue Thana, Tekari, Distt-Gaya

.... Respondent/s

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Appearance :

For the Appellant/s :	Mr. Uma Kant Shukla, Adv. Mr. Shakti Suman Kumar, Ad.
For the Respondent/s :	Mr. Ram Suresh Roy, Sr. Adv. Mr. Avinash Chandra, Adv Mr. Partha Sarthy, Adv. Mr. Gaurav Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT
Date: 16-09-2015

Defendant Nos.1 (Siddhi Singh, since deceased) 3, 4

and 7 that means to say branches of Siddhi Singh/appellants have preferred this appeal against the judgment dated 24.11.1979 and preliminary decree dated 12.12.1979 passed by Additional Sub Judge-3rd , Gaya in Partition Suit No. 34/1979/40/1978, decreeing the suit with cost.

2. Plaintiff/respondents no. 1 and 2 filed Partition Suit asking for identifying their share in the Scheduled property to the extent of 1/3rd by passing a preliminary decree as well as carving out a



separate Takht to that extent along with appointment of pleader commissioner for identifying the same followed with passing of final decree, separate possession, cost of the suit, any other relief or reliefs for which plaintiff is entitled for and for that, furnished a genealogical table wherefrom it is apparent that Shankar Singh common ancestor of all the branches died leaving behind three sons, Prayag Singh, Harku Singh and Jaddu Singh. Harku Singh died issueless before CS survey in jointness with other brothers. Prayag Singh died leaving behind two sons, Dumri Singh and Rampati Singh. Dumri Singh also died leaving behind his son Ambika Singh before CS survey and accordingly, during course of Cadastral Survey, Khatiyan was prepared in the name of Jaddu Singh, Ambika Singh and Rampati Singh. Subsequent to Cadastral Survey, Rampati Singh and Ambika Singh also died leaving no lineal descendants. Therefore, Jaddu Singh became sole surviving heir of the joint family.

3. Jaddu Singh died leaving behind two sons Ramlagan Singh and Kripal Singh. Ramlagan Singh died leaving behind three sons, Alag Singh, Nand Singh and Girija Singh. Alag Singh died issueless. Nand Singh died leaving behind one son, Chandradeo Singh. Chandradeo Singh had two sons, Satyadeo and Jitendra Singh.

4. Kripal Singh died leaving behind three sons, namely, Jamuna Singh (Plaintiff No.1), Siddhi Singh (Defendent



No.1) and Tanu Singh (Defendant No.2). Jamuna Singh has one son, Prahlad Singh (Plaintiff No.2). Siddhi Singh has two sons, Kapil Deo Singh (Defendant No.3) and Ramadhar Singh (Defendant No.4). Kapildeo Singh has one son, Kaushal Kishore Singh (Defendant No.7). Tanu Singh has two sons, Uma Mahesh Singh (Defendant No.5) and Hardeo Singh (Defendant No.6). Uma Mahesh Singh has one son, Arvind Kumar Singh (Defendant No.8) while Hardeo Singh has two sons, Ashok Kumar Singh (Defendant No.9) and another son's name is not known. Ramadhar Singh has three daughters, who were minors at the time of filing of suit. Plaintiff No.2, Prahlad Singh has one minor daughter on the date of filing of the suit.

5. It has further been pleaded that apart from ancestral Khatiyani lands, the descendants of Jaddu Singh also made subsequent acquisition from joint family funds. Kripal Singh and Ramlagan Singh partitioned amongst themselves by metes and bounds about 35 years ago and during course thereof, they got half share in the ancestral property as well as in property accumulated by way of acquisition. The lands detailed under Schedule-1st of the plaint is the property which Kripal Singh got in his share on partition without having any concerned with the branches of Ramlagan Singh. It has also been narrated that after partition, Kripal Singh and his descendants made acquisition from joint family fund in due course of time which, Schedule one of the plaint also discloses.

6. Then it has been submitted that Kripal Singh, being father, was Karta of the family till his life and after his death, Siddhi Singh, defendant no.1 substituted Kripal Singh (since deceased) as Karta of the family and on account thereof, entered into managing affairs of the joint family in the background of the fact that Jamuna Singh, plaintiff no.1, was carrying bad health.

7. It has further been averred that for getting advantage, *Jamabandi* was bifurcated and opened in the name of coparceners of joint family, although, there was no partition effected in the family nor was severance in the joint family. The joint family possessed different residential houses, *Gaushala*, *Dalaan* etc.

8. In due course of time Siddhi Singh became hostile towards plaintiffs and their family and on account thereof, there was some sort of bickering in the family and to avoid the same, there was separation in mess followed with demand of partition by metes and bounds which ultimately was turned down by the Defendant no.1 and on account thereof, furnishing other mandatory requirements, paying court-fee, detailing property under Schedule-1, 2, 2A and further demarcating shares of respective parties plaintiff/respondent no.1 & 2 prayed for partition by metes and bounds in a manner as indicate above.

9. All the defendants appeared before learned lower court and had filed common written statement wherein it has been averred



that during life time of Kripal Singh, Jamuna Singh (Plaintiff No.1) began to create nuisance, hurdle in the affairs of joint family as he became aggrieved over self acquisition made by Defendant Tanu Singh vide sale deed dated 08.02.1943 from Bachchu Singh and Basant Singh. The dispute had gone to such an extent that to maintain peace and harmony in the family, Kripal Singh made family arrangement in the year 1960-61 wherein Jamuna Singh was separated and a separate Takht was allotted to him. Under the aforesaid family arrangement, even some portion of self acquisition made by Tanu Singh was also allotted to Jamuna Singh. Schedule-1 of the written statement contains details of the land allotted to Jamuna Singh.

10. It has further been asserted that Kripal Singh remained joint with his remaining two sons, Siddhi Singh and Tanu Singh. After some time, Kripal Singh relinquished his interest in favour of his sons Siddhi and Tanu who accordingly, succeeded. Because of the fact that Siddhi Singh was elder brother, he became Karta of the family and began to look after all the affairs of the joint family.

11. It has further been submitted that during course of revisional survey, plaintiffs have categorically admitted the theme of partition though, with an ulterior motive claimed that the partition having effected in the year 1964, shortening the same. The aforesaid event has purposely been introduced by the plaintiff in the background of the fact that plaintiff no.2, Prahlad Singh is a practising



Advocate and further, known to the intricacies of law. Furthermore, the aforesaid event has purposely been introduced as, after partition, defendants have made self acquisition by way of different sale deeds as well as *Rehan* (mortgage). Some lands have also been kept under mortgage by Siddhi Singh for the welfare of joint family. Self acquisition has been detailed under Schedule-2 of the WS regarding which much stress has been laid down to be the exclusive property to the defendants with which plaintiffs got no concern at all.

12. In order to divulge the source, it has been disclosed that Tanu Singh was doing business at Dhanbad and was engaged in preparation and sale of “*Pera*” by which he got sufficient earnings. It has also been submitted that in pursuance of partition, defendants are independently paying rent and are in possession of rent receipt.

13. It has also been submitted that Siddhi Singh, being Karta of the family, had exchanged the land with one Rajdeo Singh vide registered deed dated 22.06.1971. It has also been submitted that in the facts and circumstances of the case, there is no unity of title nor possession between the plaintiff and defendant with regard to properties as detailed under plaint.

14. It has further been submitted that the details of the properties under Schedule of the plaint are vague, wrong more particularly, in the background of the fact that plaintiff for their own conveniences have brought up story of oral partition amongst family

of Ramlagan and Kripal Singh without any proper evidence and on account thereof, the aforesaid theme is to be taken note of whereupon presence of Ramlagan Singh's family in the present proceeding has become necessary being a necessary party.

15. It has also been submitted that during course of jointness of the family, there was no sufficient savings which could have justified acquisition rather it was the income from business carried out by Tanu Singh which yielded sufficient savings and on the basis thereof, self acquisition was made. Accordingly, denying the averments made under suit has prayed for dismissal of the same.

16. After perusing the pleadings of the respective parties, the learned lower court had framed the following issues deciding issues no.3 and 4 as major issues in favour of respondents/plaintiffs resulting decree of the suit, hence this appeal :-

Issues framed by the learned lower court are as follows:-

1. Is the suit as framed maintainable ?
2. Have the plaintiffs get valid cause of action for the suit ?
3. Whether there is unity of title and possession between the parties in respect of suit properties ?
4. Are the plaintiffs entitled to get a decree for partition as claimed ?
5. To what relief or reliefs, if any are the plaintiffs entitled ?

17. Learned counsel for the defendant/appellant while assailing judgment impugned has submitted that finding recorded by the learned lower court is not at all maintainable. The first and



foremost, argument has been raised over relating to self acquisition. It has been submitted that Mulla has recognized self acquisition even by a coparcener and it remains personal property of a coparcener till he throws it in common stock. Simultaneously, it has also been submitted that whenever document stands in the name of an individual, then in that event, the adversary who intends to have share in the aforesaid property, will have to prove by sufficient evidence that acquisition was made from joint family nucleus. In the present case, the document happens to be in the name of Tanu Singh. There happens to be specific disclosure that Tanu Singh was carrying “*Pera*” business at Dhanbad and on account thereof, it was burden upon plaintiff to prove by cogent evidence that it was not from personal savings of Tanu Singh rather acquisition was from joint family fund. Virtually, plaintiff-respondent failed to substantiate the same.

18. It has also been submitted that there happens to be own admission on the part of plaintiff/respondent that in due course of time there was bifurcation of *Jamabandi*. Although, some sort of explanation had been furnished but never substantiated and on account thereof, adverse inference could be drawn against plaintiff.

19. In its continuity, it has also been submitted that Siddhi Singh, for the benefit of joint family consisting of other defendant TanuSingh, after separation had executed usufructuary mortgage in favour of different persons as well as had taken usufructuary mortgage

from different persons. Not only this, he had also entered into an exchange under registered deed which substantiated the theme of partition. Once found duly surfaced, then in that event, the finding recorded by the learned lower court is found nullified.

20. It has further been submitted that Jamuna Singh, the reason best known to him, did not chose to come in dock and instead of him Prahlad Singh, plaintiff no.2 had turned up as PW-7. From his evidence, it is evident that he himself had completely smashed his own pleading and on account thereof, the learned lower court should have dismissed the suit instead of allowing the same. Hence, it has been submitted that the judgment impugned is fit to be set aside.

21. While supporting the finding recorded by the learned lower court, it has been submitted on behalf of plaintiff/respondent that the instant appeal is not maintainable on facts as well as on law.

22. To buttress such plea, it has been submitted that presumption regarding jointness of Hindu Family is a rule and on account thereof, the person who controverts the same shares burden to prove. From the evidence available on the record, it is apparent that appellant/defendants have not been able to substantiate their plea by cogent and reliable evidence that there was partition in the family by metes and bounds. Therefore, assertion of the defendant/appellant has got no legal force.

23. Furthermore, it has also been submitted that when

family was in jointness, acknowledging status of Siddhi Singh as Karta of the family which, defendant/appellant have also endorsed along with the fact that acquisition was made during subsistence of joint family, again cast burden upon the person who pleads self acquisition. On this score, it has also been submitted that neither Tanu Singh nor his sons came forward to depose and in likewise manner, they have joined hand as appellant rather arrayed as respondent which suggest that plea of self acquisition by TanuSingh happens to be imaginary strong only to infringe interest of plaintiff/respondent. Then in that event, the plea of defendant/appellant melted down like anything, hence the learned lower court rightly acknowledged the claim of the plaintiff/respondent and decreed the suit.

24. After hearing the parties, going through the records, for better appreciation of facts as well as law involved in this appeal following points are formulated:-

1. Is the suit as framed maintainable?
2. Have the plaintiffs get valid cause of action for the suit?
3. Whether there is unity of title and possession between the parties in respect of suit properties?
4. Are the plaintiffs entitled to get a decree for partition as claimed?
5. To what relief or reliefs, if any are the plaintiffs entitled?

25. Both the parties have adduced oral as well as documentary evidence. On behalf of plaintiff/respondent altogether seven PWs have been examined out of whom PW-1, Ram Janam Singh, PW-2, Naresh Singh, PW-3, Hari Shankar Tiwari, PW-4,



Ashok Kumar Sinha, PW-5, Bajrangi Sinha, PW-6, Jagdish Singh and PW-7, Prahlad Singh. Defendant/appellants have examined altogether 26 DWs out of whom DW-1, Lala Maheshwari, DW-2, Lala Ram Chandra Prasad, DW-3, Bindeshwari Pd. DW-4, Shivdani Lal, DW-5, Lalan Pd, DW-6, Tapeswar Singh, DW-7, Sadhu Sharan Singh, DW-8, Saroj Kumar Verma, DW-9, Madhusudan Pd. DW-10, Shivnandan Tiwari, DW-11, Subedar Singh, DW-12, Gauri Shankar Singh, DW-13, Baidnath Mishra, DW-14, Ram Naresh Singh, DW-15, Krishna Mohan Prasad, DW-16, Basudeo Prasad, DW-17, Shambhu Nath Pd, DW-18, Badri Yadav, DW-19, Maksudan Singh, DW-20, Lodhi Singh, DW-21, Ganesh Prasad, DW-22, Achyuta Nand, DW-23, Shivdayal Singh, DW-24, Kapildeo Singh, DW-25, Rajnand Lala and DW-26, Md. Masood Alam Malik.

26. Side by side the respective parties have also exhibited documentary evidence. On behalf of plaintiff/defendant, Ext-1, 1/A, Rehan deed dated 24.09. 69 as well as 15.05.1967 respectively, Ext-2 C.C. of deposition of Hardeo, Ext-3, original Khatiyani of village Main, Ext-3A, C.C. of Khatiyani, Ext-3/D, C.C.of old khatiyani, Ext-3/C, Original Khatiyani, Ext-4 , 4/C, R.S. Map.

27. On behalf of defendant/appellant, Ext-A, original sale deed 27.06.1973 executed by Chandradeo Tiwari in favour of Siddhi Singh, A/1, original sale deed dated 27.06.1973 executed by Chandradeo Tiwari in favour of Tanu Singh, A/2, original sale deed



dated 08.02.1943 executed by Bachchu Singh in favour of Tanu Singh, Ext-B, rent receipt, Ext-C, original mortgage dated 28.06.1972 executed by Sadhu Sharan Singh in favour of Siddhi Singh, Ext-D series, form filled up under the banner of 103A of BT Act, Ext-E, E/1, deed of exchange dated 22.06.1971 in between Rajdeo Singh and Siddhi Singh, Siddhi Singh and Rajdeo Singh, Ext-F, handwriting and signature of Sheopujan Sahay over document dated 29.06.1973 (Siddhi Singh v. Ram Janam Yadav), Ext-F/1, script and signature of Ramanand Singh over document dated 29.06.1973, Ext-G, Ration Card, Ext-F/2, signature of members over Ration Card, distribution book, Ext-H series, Chaukidari Rashid, Ext-I, report submitted by Advocate Commissioner.

28. Point No.3 and 4 are taken together as these points are the backbone of instant appeal. The nature of suit relates with claim of partition of the property possessed by the joint Hindu family comprising ancestral as well as property subsequently acquired which has been controverted by the defendant/appellant on the ground of previous partition as well as self acquisition, on account thereof, the fundamental rule of joint Hindu family, acquisition, burden, onus is to be first dealt with. Mulla in principles of Hindu Law has dealt with the issue independently and the relevant articles are quoted below. Before that, the salient feature of the matter under controversy is to be taken note of.

29. From the pleadings of the respective parties, it is apparent that genealogical table is out of controversy and in likewise manner the status of family. That means to say, the dispute is now confined relating to lineal descendant of Kripal Singh (since deceased) who died leaving behind three sons, Jamuna Singh, Siddhi Singh and Tanu Singh. Family of Jamuna Singh is the plaintiff/respondent while family of Siddhi Singh and Tanu Singh were defendant before the learned lower court out of whom, the branches of Siddhi Singh appealed arraying the branches of Tanu Singh as Respondent 2nd set including plaintiffs as respondent 1st set. According to pleadings of the plaintiff/respondent, Kripal Singh died in jointness, Siddhi Singh was the manager of the joint family, subsequent acquisition were made from joint family fund and on the basis thereof, claimed 1/3rd share in the property so detailed under different schedule while controverting the same, it happens to be a pleading of defendant/appellant that Jamuna Singh began to raise hue and cry over self acquisition by Tanu Singh in the year 1943 and on account thereof, his presence was found obnoxious to the joint family, consequent thereupon, Kripal Singh got him separated and further to avoid the bickering in the family, gave some portion of land which was self acquisition of Tanu Singh. The subsequent acquisition happens to be the exclusive property of Tanu Singh who was a “*Pera*” vendor at Dhanbad and earned a lot therefrom.



30. Article 212 of Principle of Hindu Law by Mulla identifies joint Hindu Family and suggests constitution of joint Hindu Family consisting of all persons lineally descendants from common ancestor and includes their wife and unmarried daughters. It has further been held that joint and undivided family is the normal condition of Hindu Family. It further speaks that the existence of joint estate is not an essential requisite to constitute a joint family and further mere severance in food and worship does not operate as separation. Then there happens to be persons of coparcenery and has been identified as who acquires by birth and interest in the joint or coparcenery property. With regard to formation of coparcener, Article 214 suggests a common male ancestor with his lineal descendant in the male line within four degrees counting from an inclusion of such ancestor. However, is not a strict rule in terms of Article 215.

31. As per Article 220, there happens to be two kinds of properties (1), joint family property, (2) separate property, however it has been made clear that property acquired by the members of joint family with the aid of ancestral property is joint family property while the acquisition without aid of joint family property happens to be separate or self acquired. Article 222 deals with separate or self acquired property and after going through the same, it is apparent that a Hindu, even after joint may possess separate property which belongs to him exclusively having no title interest of the other coparcener



while other property happens to be ancestral property, joint family property identified under Article 223. Article 227 speaks about the eventualities wherein self acquired properties can be treated as joint family property at the instance of person who had acquired the same. Article 233 deals with presumption regarding status of coparcener's as well as coparcenary property and further when a dispute has arisen over partition of the properties including ancestral property as well as self acquired property having version, counter version, the same has elaborately been dealt with identifying the following characters.

1. There happens to be presumption of jointness until contrary is proved.
2. There is no presumption that a family, on account of jointness, would possess only joint property. Furthermore, when one asserts that the property standing in the name of an individual coparcener is a joint family property, then in that event, the onus lies upon him to prove that aforesaid purchase was from joint family nucleus. In case the onus is found duly discharged, then it shifts upon the coparceners who controvert the same.
3. A member of a joint family having been engaged independently may acquire properties as his self acquired property unless and until there happens to be positive evidence over fragrance of joint family estate.
4. In case, plea of partition is raised having been effected at an earlier occasion, then in that

event, the separate unit may acquire self acquisition but for that the person who claims previous partition has to prove the same.

32. Chapter-16 deals with partition and reunion according to Mitakshar Law and the same will be dealt with subsequently.

33. What the partition denotes its magnetism and the eventualities thereof, has been considered by the Apex Court in ***Shub Karan Bubna @ Shub Karan v. Sita Saran Bubna & Ors*** reported in ***(2009)9 SCC 689***, which are as follows:-

5. 'Partition' is a re-distribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severally.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. 'Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of shares/ s refers to a division where only one or only a few among several co-owners/ coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.

7. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and bounds. This involves three issues:

(i) whether the person seeking division has a share or interest in the suit property/properties;

(ii) whether he is entitled to the relief of division and separate possession; and

(iii) how and in what manner, the property/properties should be divided by metes and bounds?

In a suit for partition or separation of a share, the Court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as 'decree' under Order 20 Rule 18(1) and termed as 'preliminary decree' under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject matter of the final decree under Rule 18(2).

34. In the background of the aforesaid legal eventualities, the Court has onerous obligation to see at the first stage whether there was disruption of joint family of which Kripal Singh was the common ancestor. As stated above, plaintiff/respondent have pleaded that the family consisting of Kripal Singh, common ancestor remained joint while according to version of defendant/appellants, their happens to be disruption in the joint family whereunder Kripal Singh, Siddhi Singh and Tanu Singh remained joint while Jamuna Singh had his separate independent identity. It has also been pleaded that acquisition was made by Tanu Singh from his savings and on account thereof, it happens to be his exclusive property.

35. Because of the fact that presumption of jointness of Hindu Family is to be construed and further the person who

controverts, has an obligation to satisfy to that extent, that means to say, the presumption is found rebuttable and that being so, first of all evidence on this score has to be seen.

36. In ***Kesharbai @ Pushpabai Eknathrao Nalawade (D)*** by ***L.Rs & Anr. v. Tarabai Prabhakarrao Nalawade & Ors*** as reported in ***AIR 2014 SC 1830***, it has been held:-

.....It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this court in a number of cases. We may notice here the judgment of this Court in *Bhagwati Prasad Sah & Ors. v. Dulhin Rameshwari Kuer & Anr* [1951] SCR 603 wherein it was inter alia observed as under:-

“8. Before we discuss the evidence on the record, we desire to point out that on the admitted facts of this case neither party has any presumption on his side either as regard jointness or separation of the family. The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other co-parceners or that they remained united. The

burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief.”

37. Before delving over the respective evidence oral as well as documentary, it is evident that none of the elders that means to say, Jamuna Singh, Siddhi Singh and Tanu Singh came in witness box. The situation is found more complexed so much so that branches of Tanu Singh did not opt to depose as well as contest the appeal and it happens to be Kapildeo, son of Siddhi Singh one of the defendant/appellant who commanded the chariot as DW-24 and at the end of plaintiff/defendant Prahlad Singh possessed the seat of the driver as PW-7.

38. Because of the fact that it happens to be a family affair, therefore, evidence of PW-7 as well as DW-24 has to be looked into. As presumption leans in favour of plaintiff/respondent regarding status of the family to be joint and onus lies upon defendant/appellant, therefore, the evidence of DW-24 has to be seen to find out whether it had succeeded in rebutting the presumption. In his examination-in-chief, he had sated that he happens to be defendant no.3. Then had given an explanation regarding non examination of Siddhi Singh as well as Tanu Singh. In para-2 of his examination-in-chief, he had stated that Jamuna Singh became separate from his brothers in the year 1960-61. Got his separate share in the land as well as house demarcated and came over the same exclusively which he had detailed under schedule of WS. After separation of Jamuna Singh, Kripal

Singh, Tanu Singh and Siddhi Singh remained joint constituting the joint family. Kripal Singh died in jointness. In para-3, he had further stated that Tanu Singh was doing "*Pera*" business at Dhanbad and from his savings he had purchased land in the year 1943. The aforesaid land happens to be his exclusive property and for that, Jamuna Singh was regularly quarrelling. He became separate on that score, alone. He had further stated that his grandfather Kripal Singh had also given some portion of self acquired property of Tanu Singh. In para-5, he had stated that during revisional survey, Jamuna Singh and Prahlad Singh have admitted partition in the family and have also filed petition to that effect. He had further stated that Siddhi Singh had exchanged some land after partition. He had also stated that mutation has been effected according to partition. During cross-examination, at para-11, he had stated that he had detailed the description of land under WS as per Khatian. In para-12, he had stated that it was oral partition. Jamuna Singh got 8 Bighas 7 Katthas and 5 Dhurs. Some plots were exclusively allotted to him while some plots to the extent of some area but he is unable to disclose the same. In para-13, he had stated that he is unable to say whether during course of revisional survey, individual recording has been effected or not. In likewise manner, he is unable to say regarding revisional survey map. He has not seen upto now. In para-16, he had further stated that he is unable to say whether Jamabandi has been bifurcated in accordance with

partition. In para-17, he had stated that Siddhi Singh did not act as Karta rather after death of Kripal Singh, he became Karta. In para-20, he had stated that he is unable to say the quantum of rent.

39. On this score, defendant/appellant has exhibited Ext-D series which happens to be different petitions allegedly filed by Jamuna Singh and Prahlad Singh before survey authority for independent recording of the Khatiyani in the background of partition having effected in the family. It bears signature of one Prahlad Sharma on behalf of Jamuna Singh. When the form has been gone through, it is apparent that it happens to be in pen of different persons having different handwriting and further the signature that of Prahlad Sharma did not tally with the signature of Prahlad Singh from the Vakaltnama as well as from his signature having over the deposition as he had examined himself as PW-7. Save and except, the aforesaid background, nothing more is found, contrary to it, from Ext-1 deed of mortgage executed by Siddhi Singh in favour of Maksudan Singh dated 24.09.1969, it is apparent that the document recites partition amongst cousin brother and not with full brother. Furthermore, from Ext-2, deposition of Hardeo Singh who happens to be son of Tanu Singh as well as one of the parties of the suit while deposing in Suit under Section 106 of the BT Act, had stated that his father Tanu Singh and uncle Jamuna Singh and Siddhi Singh are joint.

40. PW-7, Prahlad Singh had asserted in para-1 of his



examination-in-chief that the family is joint and further stressed under para-6. During cross-examination at para-11, it is apparent that he had admitted that both the parties are quarrelling since 1974. During course of survey, the dispute was going on. He had further stated that he had filed a case under Section 103 of the BT Act which was dismissed. In that case, he was examined and the deposition is along with him. In para-12, he had stated that his grandfather was alive during course of revisional survey. Khanapurti was effected in his name. He had not seen any document executed by Siddhi Singh for deletion of name of his grandfather before the Survey authority.

41. Apart from this, learned counsel for defendant/appellant also drew attention towards different exhibits relating to Chaukidari as well as rent receipt. Those documents would not be considered as evidence of partition. The learned counsel for the defendant/appellant further drew attention towards the mortgage deed wherefrom it is evident that there is no story of partition having effected in the family. That apart, it is crystal clear from the pleading of defendant/appellant as well as evidence of DW 24 that he had not stated that Jamuna Singh was separated from their family by Kripal Singh and for that 1/4th share to the extent of his share was carved out and handed over to the exclusive share of Jamuna Singh over which he had exclusive, independent possession. Apart from this, it is evident from the evidence of PW-7, Prahlad Singh, he has not been suggested by the

Defendant/appellant on the score of partition as well as self acquisition by TanuSingh. Not only this, the appellant/defendant could not be able to explain regarding recording of Khatiyani Ext-3, 3A, jointly in name of all the parties.

42. In *Sawarni v. Inder Kaur [(1996) 6 SCC 223]*, it has been held as follows:-

“7..... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”

43. As such, analyzing the evidence the evidence as referred above, it is evident that defendant/appellant have not been able to place the evidence up to the mark in rebuttal of the presumption and on account thereof, the family is found and held to be joint.

44. The second chapter remains to be answered relates with the properties dealt under Schedule-2 of the plaint. Admittedly, the aforesaid property happens to be on account of subsequent acquisition in name of defendant Tanu Singh. Plaintiff/respondent claimed to be purchased from joint family nucleus while defendant out of whom one set became appellant confined to the branches of Siddhi Singh to be self acquisition of Tanu Singh from his savings out of business being

carried out.

45. In *Mst. Rukhmabai v. Lala Laxminarayan* reported in *AIR 1960 SC 335*, it has been held as follows:-

“5. There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein; his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-à-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether moveable or immoveable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the members of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.”

46. In *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade* (2007) 1 SCC 521, after examining the earlier judicial pronouncement laid down by the Hon'ble Supreme Court itself culminated under para 17 which is as follows:-

17. Therefore, on survey of the aforesaid

decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence.

47. As stated above, a coparcener has right of self acquisition. In case, the party intends to suggest that the acquisition happens to be from joint family nucleus, then in that event, he will have to substantiate the claim which has to be properly meted out by the adversary. In the plaint, there happens to be complete absence regarding doing separate business by Tanu Singh rather under para-5 of the plaint, it has been incorporated that acquisition was from joint family earning which has been vehemently opposed by the defendant under para-9, 10 and 16 of the WS whereunder it has also been incorporated that Tanu Singh was doing "**Pera**" business at Dhanbad which yielded good income and from savings thereof, there happens to be self acquisition.

48. During course of trial, as is evident, PW-7, plaintiff no.2 had denied the status of Tanu Singh to have carried out "**Pera**" business and further purchased from the savings thereof. It has also been disclosed that Kripal Singh was Karta of the family. After becoming infirm Siddhi Singh became Karta of the family. The status

of Siddhi Singh as Karta of the family is found supported with para-6 of the WS. In WS, it has not been specified that acquisition happens to be exclusive property of Tanu Singh. In para-3 of the deposition PW-7 had also suggested acquisition by Siddhi Singh as Karta of the family. However, he had not specifically deposed that the acquisition having in name of Tanu Singh was from joint family nucleus.

49. The matter would have been fair if DW-24, defendant no.3 remained silent on that very score but he made certain deviation during course of evidence. In para-3 of his examination-in-chief, he had stated that Tanu Singh was earning a lot from “*Pera*” business at Dhanbad and from his savings he purchased land in his name in the year 1943 which happens to be his self acquisition. Subsequent thereof, he had not disclosed anything with regard to acquisition having made after 1943 in the name of Tanu Singh. The situation became worsen on account of non examination of any of the branches of Tanu Singh as well as during course of appeal, the branches of Tanu Singh did not join as appellant rather shown as respondent who too failed to put their appearance. In the background of own assertion of DW-24, he was not at all competent to depose regarding self acquisition of Tanu Singh. Because of the fact that he had not stated that he was also defending the interest of Tanu Singh and further, failed to place relevant documents as an exhibit of the record. Furthermore, in para-17, he had deposed contrary to his pleadings

wherein he had stated that Siddhi Singh never stood as Karta. After death of Kripal Singh, he had become Karta of the family. In para-19, he had stated that he is unaware with the actual area of ancestral land, however, 4 and a ½ Bighas of disputed land is a purchased land which has been purchased by Tanu Singh.

50. Because of the fact that neither Tanu Singh nor his branches joined hands as appellant and further even they have been impleaded as respondent 2nd set, did not come forward to support the plea of the appellant, on account thereof, instant appeal is found incompetent on that very score with regard to their interest. Moreover, after a conclusive finding that the family of defendant appellant along with plaintiff respondent, defendant respondent happen to be joint, and as there happens to be absence of positive & conclusive evidence regarding earning of Tanu Singh, which Tanu Singh was alone to confirm, the theme of self acquisition is not found conclusively proved.

51. That being so, the evidence as it remains on the record justifies the contention made on behalf of plaintiff/respondent 1st party. Furthermore, as is evident from the respective pleadings as well as evidence adduced on their behalf, more particularly, defendant/appellant, it is apparent that there happens to be no pleadings of ouster as well as hostile title, adverse possession.

52. In *N. Padmamma v. S. Ramakrishna Reddy* as

reported *in (2015)1 SCC 417*, it has been held as follows.

10. It is fairly well-settled principle of law that the possession of a co-heir is in law treated as possession of all the co-heirs. If one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. A co-heir in possession cannot render its possession adverse to other co-heirs not in possession, merely by any secret hostile animus on his own part, in derogation of the title of his other co-heirs. Ouster of the other co-heirs must be evidenced by hostile title coupled by exclusive possession and enjoyment of one of them to the knowledge of the other. (See *Corea v. Appuhamy* (1912 AC 230 (PC.))

53. Consequent thereupon, the instant appeal is found devoid of merit and is accordingly, dismissed. However, in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J)

Patna High Court
September 16th 2015
Perwez/AFR

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