

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.344 of 1977

(Against the judgment and decree dated 28.02.1977 passed by 4th Additional Subordinate Judge, Siwan in Partition Suit No.24 of 1967/8 of 1976).

=====

Basmati Devi & Ors.

.... Defendants-Appellants

Versus

Prabhunath Choudhary & Ors.

.... Plaintiffs-Respondents

=====

Appearance :

For the Appellant/s : Mr. Shanti Kumar, Advocate
Mr. Shashi Kumar Sharma, Advocate
Mr. Dhananjay Kumar Tiwary, Advocate
For the Respondent/s : None.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 02-07-2015

1. The defendant, Bechu Chaudhary had filed this appeal(on his death legal representatives substituted) against the judgment and decree dated 28.02.1977 passed by the learned 4th Additional Subordinate Judge, Siwan in Partition Suit No.24 of 1967/8 of 1976 whereby the court below decreed the plaintiff-respondent's suit.

2. The plaintiffs-respondents filed the aforesaid suit claiming partition of his 1/3rd share in the suit property alleging that the suit property belonged to Vindhyachal Chaudhary who died leaving behind his widow, Most. Muneshri Kuer and his widowed mother, Most Sundra Kuer. On the death of Vindhyachal Chaudhary,



Most. Muneshri Kuer came in possession as limited owner. Later on, she had illicit relation with one Jagbir Ahir from whom she got defendant No.1, Janak Chudhary and defendant No.2, Bechu Chaudhary. Muneshri executed sham and collusive sale deed on 05.12.1945 with respect to suit property in favour of Bechu Chaudhary. One Kodai Ahir was the grandfather of husband of Muneshri and Jitai Ahir was the brother of Kodai Ahir. The descendants of Jitai Ahir had filed title suit No.382 of 1938 challenging some deeds of transfer made by Muneshri. The said suit was referred to arbitrators and it was decreed by arbitration award dated 22.04.1939 wherein it was accepted that descendants of Jitai Ahir are the next and nearest reversioner of Most. Muneshri. On the death of Most. Muneshri, the reversioners namely Parashuram, Jai Mangal and Baijnath came in possession. Out of them, Parashuram and Baijnath transferred their $2/3^{\text{rd}}$ share in favour of one, Ram Shankar Chaudhary by registered sale deed dated 10.10.1950 who in turn sold to defendant Nos.1 and 2 by sale deed dated 31.10.1950. However, only defendant No.1, Janak Chaudhary was shown as purchaser. Subsequently, Jai Mangal died and his widow and sons transferred their $1/3^{\text{rd}}$ share in the suit property to the plaintiff by means of registered sale deed dated 09.09.1958. The plaintiffs came in joint possession of the suit land with the defendant Nos.1 and 2

after purchase. These defendants had executed a Jarpesgi in favour of Ram Bachan Bhagat, therefore, the Jarpesgidar has been added as defendants. The plaintiff is feeling inconvenience, therefore, the suit was filed for partition claiming 1/3rd share in the suit property.

3. The defendants filed contesting written statement. The main defence is that after death of Vindhyachal, Bechu Chaudhary was born within six months, as such, he is the son of Vindhyachal. On the death of widow of Vindhyachal, Bechu Chaudhary became the sole owner. Widow of Vindhyachal i.e. mother of Bechu had sold the property by registered sale deed dated 05.12.1945 in his favour for Rs.1,000 as consideration because of the fact that the properties were recorded in her name in the survey record of rights. So far the reversioners are concerned, according to the defendants, Kodai Ahir had no brother and as such, Jitai Ahir had no relation with Vindhyachal family nor they came in possession ever on the suit land. The defendants pleaded ignorance regarding filing of earlier suit. However, execution of sale deed by Parashuram and Baijnath in favour of Rama Shankar Chaudhary and the sale deed executed by Rama Shankar Chaudhary in favour of defendant No.1 is admitted. However, it is alleged that the sale deed and Jarpesgi deed are sham deed. The sale deed in favour of plaintiff was brought into existence at the instance of Babu Nandan Chaudhary and Ramashray

Chaudhary. The plaintiff got no cause of action. On these pleas, the defendants prayed for dismissal of the plaintiff's suit.

4. On the basis of the pleadings, the learned court below framed the following issues:

- I. Is the suit, as framed, maintainable?
- II. Is there any cause of action for the suit?
- III. Is defendant No.2, Bechu Chaudhary son of Vindhyachal Ahir or a son of Jagbir Ahir through illicit relation with Mst. Muneshri?
- IV. Was Jitai Ahir brother of Kodai Ahir?
- V. Whether the descendants of Jitai Ahir came in possession of the suit land on the death of Vindhyachal's widow, Mst. Muneshri?
- VI. Whether the plaintiffs have got any share in the suit land? If so, to what extent?
- VII. To what reliefs, if any, are the plaintiffs entitled?

5. After trial, the learned trial court recorded the finding that Kodai and Jitai were brothers of each other and Jitai's descendants were the heirs of Vindhyachal who was the last full owner of the suit land before the death of his widow. The sale deed executed by Most. Muneshri in favour of her son, Bechu Chaudhary was a sham and collusive transaction and she had no necessity at all for executing the sale deed. The descendants of Jitai came in possession after death of Most Muneshri. The defendant, Bechu Chaudhary is son of Jagbir Chaudhary and not of Vindhyachal

Chaudhary. Accordingly, decreed the plaintiff's suit.

6. The learned counsel, Mr. Shanti Kumar for the appellants submitted that the learned court below wrongly recorded the finding that Kodai had a brother, Jitai, therefore, ultimate finding of the court that the descendants of Jitai are the nearest reversioners is wrong. According to the learned counsel, the court below has misread the evidences. Further, the finding in earlier suit has wrongly been relied upon in the present suit. The learned counsel further submitted that the court below has wrongly recorded the finding that Bechu Chaudhary, defendant No.2 is the son of Jagbir Chaudhary particularly when there are evidences produced by the appellants that he was born six months after death of Vindhyachal Choudhary. Moreover, a registered sale deed was produced by the defendant No.2, Bechu Chaudhary in support of his case that the suit property was transferred by Most. Muneshri, the mother of defendant No.2. Transfer was made by her with a view to avoid future litigation because the properties were recorded in her name. Further, the said Most. Muneshri, the widow of Vindhyachal had the right to sell the property for legal necessity and, therefore, she sold the property as such, the transfer cannot be questioned now by the plaintiff. In such circumstances, the defendant No.2 became the owner of the suit property on the basis of the registered sale deed executed by his

mother, Muneshri. Rs.1,000 was paid by Bechu Chaudhary in consideration which was required by Muneshri for offering Pinddan of her late husband, Vindhyachal at Gaya and, therefore, the property was sold by her for legal necessity.

7. The learned counsel further submitted that the court below has wrongly recorded the finding that the descendants of Jitai Ahir came in possession of the suit land on the death of Most. Muneshri. According to the learned counsel, the descendants of Jitai never came in possession nor had the title over the property, therefore, they could not transfer valid title. The sale deed executed by them in favour of Rama Shankar Chaudhary by registered sale deed dated 10.10.1950 is void and sham transaction and further, the subsequent transfer made by said Rama Shankar Chaudhary in favour of defendant No.1 is also void and showy document. On these grounds, the learned counsel submitted that the impugned judgment and decree are liable to be set aside and the First Appeal be allowed.

8. Nobody appeared on behalf of the respondents.

9. In view of the above facts and submission of the learned counsel for the appellants, the point arises for consideration is as to “whether the plaintiffs-respondents are entitled to a decree for partition of his 1/3rd share” and “whether the impugned judgment and decree are sustainable in the eye of law?”



10. It is the case of the plaintiffs that he has purchased the property from the heirs of Jai Mangal by registered sale deed dated 09.09.1958, Exhibit 2. The said Jai Mangal had 1/3rd share in the suit property being the reversioner of Vindhyachal Chaudhary. On the contrary, according to the defendant No.2, he has purchased the property from his mother, Muneshri who was widow of Vindhyachal. The descendants of Jitai are not the reversioner of Vindhyachal and they never came in possession. In view of this pleading, the plaintiff will be entitled for separation of his share if he will be able to prove that Jai Mangal was the reversioner along with other two persons namely Parashuram and Baijnath. To prove this fact about reversioner, the plaintiff has proved the plaint of title suit No.382 of 1938 which has been marked Exhibit 5, written statement filed by Muneshri is Exhibit 6 and the decree, Exhibit 7. This suit was filed by the descendants of Jitai i.e. Parashuram, Jai Mangal and Baijnath challenging some transfer made by Muneshri claiming themselves to be the nearest reversioners. The said suit was referred to arbitrator and award was filed. Exhibit 4 is the arbitration award wherein it has been found that the descendants of Jitai are the nearest reversioners of Vindhyachal. The decree was passed and in that suit, it appears that the defendant No.2 original appellant, Bechu Chaudhary was one of the witnesses on behalf of his mother. Over and above these



documentary evidences, the plaintiff has examined P.W.4, the plaintiff No.2 and P.W.9 to 11. All of them have deposed in one voice that Kodai had a brother, Jitai Ahir who had three sons. P.W.9 is son of Jai Mangal, therefore, he is a member of the family. These are the positive evidences produced by the plaintiff in support of his case of nearest reversioners. On the contrary, the defendants also examined many witnesses such as D.W.1, 2, 6, 7, 9 and 10. Out of them, D.W.1 and 2 are parties themselves. Their evidences are that Kodai and Jitai are not own brother. Therefore, the nature of the evidence produced by them is negative evidence. It may be mentioned here that the plaintiff is praying for the relief of partition on assertion of particular fact and he is entitled to the relief only on proving that fact positively. Here, as discussed above, the plaintiff has discharged the burden by producing positive evidences which are reliable and acceptable. In such circumstances, the negative evidence cannot be relied upon particularly when this question has already been decided earlier in title suit of the year 1938.

11. The other aspect of the matter is that Parashuram and Baijnath, the nearest reversioners of Vindhyachal had sold their 2/3rd share by registered sale deed dated 10.10.1950, Exhibit 2/A to one Rama Shankar Chaudhary. This present suit has been filed by the plaintiff in the year 1967 for partition. If Parashuram and Baijnath



were not the reversioners and not in possession of the property, the defendant No.2, Bechu Chaudhary would not have allowed them to sell the property. Peculiarly, the defendant No.1 purchased the said land from said Rama Shankar Chaudhary by registered sale deed dated 31.10.1950 but this sale deed was also never challenged by defendant No.2. It may be mentioned here that the defendant No.2 is claiming title entirely on the basis of sale deed executed by Most. Muneshri by registered sale deed dated 05.12.1945, Exhibit A. The question is if after execution of this registered sale deed by Muneshri dated 05.12.1945, Bechu Chaudhary became full owner of the property, there was no question of selling the properties by reversioners arises. Further, the defendant No.2 never challenged the sale deeds executed by reversioners or by the vendee of reversioners to defendant No.1. Admittedly, the defendant No.1 is the son of Most. Muneshri through Jagbir Chaudhary.

12. In view of the above discussion, it is now clear that the three descendants of Jitai Ahir namely Parashuram, Baijnath and Jai Mangal were the nearest reversioners of Vindhyachal. Heirs of Jai Mangal sold 1/3rd to the plaintiff whereas 2/3rd share was sold by two other reversioners to one Rama Shankar Chaudhary who in turn sold the same to defendant No.1. Accordingly, I find that they were the nearest reversioners of Vindhyachal Chaudhary. The finding of the

court below on this point is, therefore, confirmed.

13. The next question is if the sale deed in favour of Bechu Chaudhary by Most. Muneshri is valid then naturally Bechu Chaudhary is the owner of the property. The defendant No.2, Bechu Chaudhary claimed himself to be the son of Vindhyachal Chaudhary. If he is the son then naturally the property will devolve on him on the death of Vindhyachal Chaudhary and, therefore, there was no question of any reversioners. The earlier suit No.382 of 1938 was filed by the reversioners challenging the transfer made by Most. Muneshri, the widow. In that case, Bechu Chaudhary was witness. He never claimed to be the son and owner of the property of Vindhyachal. Admittedly, Vindhyachal died prior to 1937 because after his death, some transfers were made by his widow, therefore, the aforesaid suit was filed by the reversioners. In such circumstances, when Vindhyachal died prior to 1937, his widow had no right and title over the property of her husband. She was entitled for maintenance only.

14. The learned counsel for the defendants submitted that she was a limited owner and has the right to transfer the property for legal necessity. Accepting the submission of the learned counsel for the appellants now let us see the position here as to whether there was legal necessity. In the sale deed, it is recited that for Pinddan at Gaya, she required Rs.1,000 so, she sold the property for Rs.1,000 to



defendant No.2, Bechu Chaudhary. Bechu Chaudhary gave her Rs.1,000. Can it be relied upon or can it be believed by a prudent person that for the purpose of Pinddan at Gaya, the son will pay Rs.1,000 as consideration to his mother in lieu of purchase of the suit property. It was the pious duty of the son also. Further, her husband died prior to 1937 and the reversioners had filed suit in the year 1938. The property has been sold by her in the year 1945 for Pinddan purpose which cannot be relied upon. In other words, after it was held that the reversioners will inherit the property, she sold the same to her own son, Bechu Chaudhary and the purpose for which it was sold cannot be said to be the legal necessity in the facts of this present case.

15. The learned counsel for the appellants submitted that even if the sale is not valid then also Bechu being the son has inherited the property. So far this submission is concerned, the specific case of the plaintiff is that Bechu is the son of Jagbir through Muneshri. In support of this fact, the plaintiff has produced Exhibit 3, certified copy of Jarpesgi deed dated 10.07.1954 when there was no dispute regarding parentage. This Jarpesgi was executed by defendant Nos.1 and 2 i.e. Janak and Bechu both with respect to the land of plot Nos.917 and 846 in favour of others and in this registered sale deed, they both admitted to be the son of Jagbir Chaudhary. Now,



therefore, firstly in the title suit of the year 1938, Muneshri never claimed that she has a son through Vindhyachal namely Bechu Chaudhary nor Bechu Chaudhary who was examined as witness ever claimed to be son and owner of property of Vindhyachal Chaudhary. Secondly, he purchased the property of Vindhyachal by registered sale deed executed by Muneshri, the widow of Vindhyachal which indicates that he is not the son and thirdly, he himself admitted that he is son of Jagbir and executed the Jarpesgi, Exhibit 3. It is settled principles of law that admission is the best evidence and it needs no further corroboration. There is no explanation as to under what circumstances, this admission was made. In view of the above facts and taking into cumulative effect of this circumstances and admission, I come to the conclusion that Bechu Chaudhary, the defendant No.2 was not the son of Vindhyachal Chaudhary rather he is son of Jagbir Chaudhary through Most. Muneshri. The finding of the trial court on this question is hereby confirmed.

16. The Hon'ble Supreme Court in **A.I.R. 1991 Supreme Court 1581(Kalawatibai v. Soiryabai and others)** has held that "in the case of an alienation by Hindu widow without legal necessity, the reversioners were not bound to institute a declaratory suit during the lifetime of the widow. They could wait till her death and then sue the alienee for, possession of the alienated property

treating the alienation as a nullity."

17. Now, therefore, on the death of Muneshri, the alienation made by her is to be treated by the reversioners as nullity. If the sale deed is a nullity then the reversioners became the owner of the property. The defendant No.1 purchased $2/3^{\text{rd}}$ share from Rama Shankar whereas the plaintiff has purchased $1/3^{\text{rd}}$ share from the heirs of Jai Mangal, one of the reversioners and he is praying for carving out his share.

18. In view of my above discussion, I find that the plaintiffs have been able to prove their case and are entitled for partition. The findings of the court below on all the above points are hereby confirmed.

19. In the result, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--