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1. Muneshwar
2. Ratan Ma
3. Anup Ma
 - (a) Bhikh
 - (b) Subha
 - (c) Gorel
 - (d) Amer
4. Jagrup M
 - (a) Chan
 - (b) Harin
 - (c) Mahe

- Plaintiffs/Appellants

1. Shital Mandal
2. Sagar Mandal
3. Prithvi Mandal, All sons of late Rameshwar Mandal
4. Smt. Rudo Devi, D/o- Late Rameshwar Mandal and W/o- Shri Sarikh Mandal,
All residents of village- Garhmohini, P.S. Gogri, District- Munger. Respondent
No.4 at present resident of village- Gohchhari, P.S. Gogri, District- Munger
..... Defendants/Respondents

For the Appellant/s : Mr. P.S. Sinha, Adv.
Mr. Poddar Suresh Gandhi, Adv.
Mr. A. K. Roy
Mr. Naresh Kumar Sinha
For the Respondent/s : Mr. Viveka Nand Singh, Adv.

ORAL JUDGMENT

The unsuccessful plaintiffs in Title Suit No.79 of 1976/44 of 1977, on the file of Subordinate Judge, Khagaria, District- Munger, are the appellants. The suit was filed for declaration of title in respect of property described in Schedule-2. The case presented by the appellants is as

under:

One Sheodayal Mandal was the common ancestor of the appellants and the respondents. He had two wives and through the 1st wife he got three sons by name Kashi Mandal, Jadu Mandal and Bhadai Mandal and through the 2nd wife, he had only one son i.e. Mahadeo Mandal. Jadu Mandal and Bhadai Mandal died much prior to the partition in the family. Jadu Mandal had a son by name Budhu @ Lakhpati Mandal and plaintiffs 1 and 2 are the children of the latter. Similarly, Bhadai Mandal had a son by name Dhelo Mandal and plaintiffs 3 and 4 are sons of Dhelo Mandal. Kashi Mandal lived till the survey was conducted in the village, but he died issueless. The defendants are from the branch of Mahadeo Mandal.

The appellants, i.e. the plaintiffs, pleaded that since Kashi Mandal died issueless, the property left by Sheodayal Mandal was required to be divided into three equal shares, whereas the defendants are objecting to it and claiming half share in the properties.

In the written statement, the defendants pleaded that by the time the family partition took place, the two sons of Sheodayal Mandal, i.e. Kashi Mandal through the 1st wife and Mahadeo Mandal through the 2nd wife, were alive and

he divided the property into two equal shares. Khata No.313 is said to have been recorded in accordance with the partition. They have pleaded that the plaintiffs do not have any valid or legal claims against them. The trial court dismissed title suit through its judgment under appeal.

Sri P.S. Sinha, learned counsel for the appellants submits that once the relationship between the parties is not disputed, the division ought to have taken place in accordance with the law of succession, and there was no basis for the defendants to claim half share in the ancestral property, to the detriment of the appellants. He submits that the trial court did not take relevant aspects into account and has dismissed the suit.

Sri Vivekanand Singh, learned counsel for the respondents, on the other hand, submits that the rights of the respective branches of the family were crystalised long back and there is no basis for the suit or appeal.

On the basis of the pleadings before it, the trial court framed following issues:

- (1) Whether the suit as framed is maintainable ?
- (2) Whether the plaintiffs have got cause of action and right to sue ?
- (3) Whether the plaintiffs have title to the suit land ?

(4) Whether the plaintiffs are entitled to the declaration as sought for ?

(5) To what relief or reliefs are the plaintiffs entitled to ?

Oral and documentary evidence was adduced by both the parties. Ultimately, the suit was dismissed.

This Court is of the view that the following points arise for consideration:

- 1) Whether the suit as presented before the trial court was maintainable.
- 2) Whether the appellants can ignore the partition, that has taken place in the family.

The relationship between the parties is not in dispute. In all, Sheodayal Mandal had four sons, three through the 1st wife and one through the 2nd wife. Two sons through the 1st wife died long before the partition had taken place. The property is said to have been divided into equal shares between Kashi Mandal and Mahadeo Mandal. The same is clear from Exhibit-C which is the Khata reflecting the properties that are allotted to the two branches.

It is not uncommon that a partition in the family has been inequitable or was contrary to the Personal Law of the parties to the suit. In such cases, as a first step, a declaration is to be sought to the effect that the partition

that has taken place earlier, is contrary to law and is not binding on the parties, and in particular, to the plaintiffs therein. It is only then, that an occasion arises to effect partition afresh, or to re-adjust the shares.

In the instant case, the appellants did admit that partition was effected between the two branches during the life time of Sheodayal Mandal. However, declaration in relation to that was sought. Therefore, the frame of the suit was improper and the suit was not maintainable, in the sense, that there was a serious legal defect. Hence, point No.1 is answered against the appellants.

Once the appellants did not dispute the family partition, there is no way they could have claimed any title in a way different from what has flown to them in the partition. Firstly, they cannot seek re-opening of the partition and secondly, if, according to them, the properties had accrued to them in a different manner, they were required to adduce evidence to that effect. The record, however, discloses that the property left by Sheodayal Mandal was divided into two equal shares between the two branches, i.e. the children through his two wives. The appellants certainly have a grievance that though their great grandfather had three sons, they are holding the same share

as that of the defendants on par with the only son of their great grand stepmother.

The record, however, discloses that most of the properties were the self acquisitions of Sheodayal Mandal and had got every right to allocate them in the division. The appellants were not even clear as to the date of partition or the mode of it. They based their claim, mainly upon rent receipts. It does not need much emphasis that the title to a property does not depend upon the collection of rent. Therefore, the second point is also answered against the appellants.

This Court does not find any basis to interfere with the judgment and decree passed by the trial court. The appeal is, accordingly, dismissed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

K.C.jha/-
N.A.F.R.

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