

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.333 of 1983

(Against the judgment and decree dated 31.03.1983 passed by 4th Additional Subordinate Judge, Bettiah, West Champaran in title suit No.132 of 1976/34 of 1982).

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Rama Shankar Singh & Anr.

.... .. Plaintiffs-Appellants

Versus

Jagannath Singh & Ors

.... .. Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Abhay Bhushan Sinha, Advocate

For the Respondent No.4 : Mr. Bhanu Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 12-05-2015

1. This First Appeal has been filed by the plaintiffs-appellants against the judgment and decree dated 31.03.1983 passed by learned 4th Additional Subordinate Judge, Bettiah, West Champaran in title suit No.132 of 1976/34 of 1982 whereby the learned court below dismissed the plaintiff's suit for partition to the extent of half share.

2. The plaintiffs-appellants filed the aforesaid suit claiming partition of half share in the suit property alleging that Bhola Singh had two sons namely Damodar Singh and Dhanurdhur Singh. Damodar Singh had a son Prayag Singh who had three sons. The descendants of this Prayag Singh are the defendants 1st set. The



defendants 2nd set are the purchasers from them. Dhanurdhur Singh had a daughter, Rampyari Kuer who was original plaintiff. The further case is that there was separation in mess and residence but there was jointness with regard to the suit property. Because there was no other issue of Dhanurdhur Singh, Rampyari Devi was helping her father and mother. Dhanurdhur died in or about the year 1946 leaving behind his widow and the daughter. On the death of Dhanurdhur, his share devolved on the widow who also died in 1957 leaving behind only daughter, the plaintiff, Rampyari Kuer. The defendant Nos.1, 8 and 9 were entrusted the cultivation of the disputed properties on behalf of the plaintiff also. Subsequently, the defendants started trouble and they also sold some of the properties to various persons who have been added as defendants 2nd set. The plaintiffs demanded partition but they refused, therefore, the suit was filed.

3. The defendant Nos.1 to 3, 8, 9 and 10 appeared and filed a contesting written statement. The other defendants neither appeared nor contested the suit. Their main defence is that Dhanurdhur Singh died in the year 1943 in jointness with Prayag Singh. There was no separate cultivation between them. The widow of Dhanurdhur Singh died in the year 1937, therefore, there is no question of devolving the share of Dhanurdhur Singh on his widow



arises. However, Prayag Singh during his lifetime had partitioned all the properties in suit in the year 1960 and according to that partition, three sons came in possession of their separate allotted lands. Their names were mutated accordingly. On 03.07.1967, a paper was prepared and the parties also signed. Their mother also signed. Since then, they were enjoying the property separately. The plaintiffs have got no title and interest over the suit property. Even if they have title then also the plaintiffs were ousted and the defendants prescribed title by adverse possession.

4. On the basis of the aforesaid pleadings of the parties, the learned court below framed various issues including issue Nos.4 and 5 which relates to the death of widow of Dhanurdhur Singh. Issue No.5 relates to whether Dhanurdhur Singh and Prayag Singh were separate. Issue No.6 was with respect to ouster and adverse possession.

5. The learned court below on the basis of the materials on record came to the conclusion that Dhanurdhur Singh died in the year 1946 and his wife Godma Devi died during the lifetime of Dhanurdhur Singh. The court below also recorded the finding that the defendants are in possession, therefore, even if the plaintiffs had any title, it is barred by ouster and adverse possession and accordingly, dismissed the plaintiff's suit.



6. The learned counsel, Abhay Bhushan Sinha appearing on behalf of the appellants submitted that the learned court below has misread and misinterpreted, Exhibit 2, the birth and death Register which is public document and wrongly held that wife of Dhanurdhur Singh died during lifetime of Dhanurdhur Singh. The learned counsel further submitted that the learned court below has wrongly held that the plaintiffs have got no right, title and interest because of the fact that Godma Devi died during lifetime of Dhanurdhur Singh and even if the plaintiffs had title, it is barred by ouster and adverse possession because the plaintiffs have admitted that the defendants are in cultivating possession because the possession of one co-owner is possession of the other co-owner. Here, only pleading has been mentioned that the plaintiffs were not in possession of the property and that the defendants partitioned the property between them without giving any property to the plaintiffs and, therefore, the plaintiffs were ousted. According to the learned counsel, the plaintiffs clearly pleaded in the plaint that she was residing in Sasural and used to come and stay in the house of her father and for cultivation purpose, she entrusted the property to the defendants but the learned court below wrongly disbelieved her case holding that it is not reliable.

7. According to the learned counsel, the court below



did not rely on Exhibit 2 by wrongly interpreting that the upper entry and lower entry are different writing than the entry of Godma Devi. The fact is that the upper entry is of the year 1957 and the lower entry is also of the year 1957 then how the middle entry is of the year 1967. This was merely a presumption and assumption of the court below. In fact, Godma Devi died in the year 1957 and, therefore, she became the absolute owner of the share of her husband in view of Section 14 of the Hindu Succession Act because of the fact that her husband, Dhanurdhur Singh died in the year 1946. After death of Godma Devi in the year 1957, the plaintiffs inherited the property and are entitled for partition because there was no partition by metes and bounds. On these grounds, the learned counsel submitted that the impugned judgment and decree be set aside and the plaintiff's suit be decreed.

8. On the other hand, the learned counsel appearing on behalf of the respondents submitted that there is no defect in the judgment and decree. The learned court below has rightly held that wife of Dhanurdhur Singh died during his lifetime. Exhibit 2 cannot be relied upon because there is interpolation, therefore, the court below has rightly did not place reliance on it. The learned counsel further submitted that admittedly, the defendants are in possession of the property and, therefore, even if the plaintiffs had any title in the property, the same is barred by adverse possession and ouster because

since 1960, the plaintiffs never claimed for partition. The court below, therefore, has rightly dismissed the plaintiff's suit. On these grounds, the learned counsel submitted that the First Appeal is liable to be dismissed with cost.

9. In view of the above rival contentions of the parties, the points arises for consideration is as to "whether plaintiffs are entitled to half share in the suit property" or "whether wife of Dhanurdhur Singh died prior to 1946 or 1943, therefore, the plaintiffs are not entitled to any share" and "whether the impugned judgment and decree is sustainable in the eye of law?"

10. The specific case of the plaintiffs at paragraph 3 of the plaint is that there was separation between Dhanurdhur Singh and Prayag Singh and they started separate residence and mess and also they were cultivating to some extent separately. At paragraph 6, it is specifically pleaded that the parties were cultivating the lands according to their convenience and some properties were cultivated jointly and still that position is continuing. On the contrary, the pleading of the contesting defendants according to written statement, paragraph 7, is that there was no partition between two branches i.e. Prayag Singh and Dhanurdhur Singh. They continued joint. In reply to paragraph 6, the defendants in paragraph 10 also stated the same thing that there was no partition and Dhanurdhur Singh died in

jointness in the year 1943. In view of this pleading of the contesting defendants, admittedly, Dhanurdhur Singh died much after coming into force of Hindu Women's Rights to Property Act, 1937. Now, if the pleading of the defendants is accepted that there had been no partition between Prayag Singh and Dhanurdhur Singh and both were in joint possession then it is in support of the plaintiff's case that there was no partition by metes and bounds and the parties were cultivating the lands according to their convenience. Now, therefore, it becomes admitted fact that there was no partition.

11. According to the plaintiffs, Dhanurdhur Singh died in the year 1946 whereas according to the defendants, Dhanurdhur Singh died in the year 1943. This question regarding the year of death of Dhanurdhur Singh is concerned, it is immaterial whether he died in the year 1946 or 1943. The widow, if she was alive then she will have the same right as that of her husband as provided in Section 3 of the Hindu Women's Rights to Property Act.

12. The Hon'ble Supreme Court in the case of **Smt. Asha Bai Kate v. Bithal Bhika Nade, A.I.R. 1990 Supreme Court 670 = 1990(1) PLJR (SC) 6 and 58** has held at paragraph 6 as follows :

“Now remains the next question as to the relief which the plaintiff is entitled to get in this suit. As has been observed earlier, the properties belonged to the joint family of which Bhiku was



a coparcener. On his death in 1942 his wife Parvati got under S. 3(2) of the Hindu Women's Rights to Property Act, 1937, the same interest as Bhiku had in the joint family properties. If a partition had taken place Bhiku would have got half share in the properties, which on his death devolved on Parvati. Parvati is still alive and is defending the claim of her granddaughter. She cannot, therefore, be deprived of her half share in the properties. The interest which initially devolved on Parvati, however, was the limited in nature known as Hindu Woman's estate. On the passing of the Hindu Succession Act, 1956, she became full owner thereof.

13. This question which is being involved in this present case appears to be same. In the case before the Supreme Court, the husband of the widow died in the year 1942 whereas in the present case, the husband died in 1943 or 1946. The widow, Parvati became the absolute owner because of Hindu Succession Act, 1956. In the present case, the question is if Godma Devi died in the year 1957, she will be the full owner of half share. The dispute raised by the defendants is that Godma Devi died during the lifetime of Dhanurdhur Singh. This question is to be decided in this case. If it is held that she died prior to Dhanurdhur Singh then there is no question of granting partition to the original plaintiff arises because in the year 1946 or 1943 when Dhanurdhur Singh died, the daughter was not the heir. If it is held that Godma Devi died in the year 1957 then certainly the plaintiff's suit is liable to be decreed.

14. Now let us consider this question as to whether

Godma Devi, wife of Dhanurdhur Singh died prior to 1946 or she died in the year 1957 i.e. after coming into force of Hindu Succession Act, 1956.

15. The plaintiffs have categorically pleaded that Godma Devi died 11 years after the death of Dhanurdhur Singh and 19 years ago from the filing of the case vide paragraph 5 of the plaint. On calculation, it comes to 1957, therefore, this is the specific case of the plaintiff. In reply to this, the contesting defendants at paragraph 9 of the written statement have pleaded that Dhanurdhur Singh died in the year 1943 and six years prior to him, his wife has died. In support of their respective cases, the parties have examined witnesses. The plaintiff's witnesses have supported the case of the plaintiffs whereas the defendant's witnesses have supported the case of the defendants. However, on the basis of this oral evidence, which is oath against oath, the year of death cannot be finally decided. It may be mentioned here that public document, Exhibit 2 has been marked on behalf of the plaintiffs. This is a death and birth Register. This death and birth Register was called for by the Court from the Collectariate and on the order of the Court, P.W.5 had produced this Register. He has proved the relevant entry about the death of Godma Devi. From perusal of this Exhibit 2, it appears that the entry has been made in the Register showing Godma Devi wife of Dhanurdhur Singh died. The entry



which has been marked Exhibit 2 has been entered below the heading for the month of June, 1957. Above the Exhibit 2 and below the Exhibit 2 there are entries regarding death of other persons in the month of June, 1957. The only objection that has been raised by the defendants is that it is forged. Except this, there is nothing on record to show that how this entry has been forged or it was interpolated. This entry was made in the Register maintained in the office and, therefore, the presumption is in favour of the plaintiffs. It is for the defendants to prove that it is forged or it is interpolated. No doubt, both the parties have been examined their respective experts to prove the interpolation. The plaintiff's expert, P.W.11 after examining the entry, Exhibit 2 has opined that there is no interpolation and it is original writing. The defendant's witness, D.W. 24 has reported that the writing in Exhibit 2 differs from the writing above the disputed entry and below the disputed entry. Now, let us accept this report of D.W.24 which has been marked as Exhibit E to be true for academic purpose. Now, therefore, even if there is interpolation then also it will be with respect to the year. Now, can it be said that although, she died prior to 1946 but Exhibit 2 was entered in the year 1957 or 1967 as would be evident from the date which is said to be manipulated. Even if it is held that she died in the year 1967 which is not the case of any party then also it will not help the defendant. It is not disputed

that the entry above Exhibit 2 and below Exhibit 2 is of the year 1957.

It is not the case that the middle entry, Exhibit 2 has been inserted in between after both the entries were made. By no stretch of imagination, it can be said that Exhibit 2 is either manipulated entry or it is forged entry. This entry clearly speaks that in the year 1957, Godma Devi died. It is not the case of the defendants that this entry relates to any other lady and not the wife of Dhanurdhur Singh. The name of Dhanurdhur Singh is very much clear. If she died in the year 1937, as claimed by the defendants, then how this Exhibit 2 was entered in the Register maintained in the office in the year 1957. There is no explanation at all on behalf of the defendants.

16. From perusal of the judgment of the court below, it appears that all these matters have not been considered by the court below. The court below only stated that although, the entry above Exhibit 2 and below Exhibit 2 are of the year 1957 but there is some interpolation regarding the date or year of death of Godma Devi, therefore, the court below did not rely on Exhibit 2. In my opinion, the approach of the court below is wrong. It is a public document and admittedly, the relevant entry is below the heading June, 1957. It means that under this heading, the entries were made with regard to death of persons who died in the month of June, 1957. It is not relevant to decide the exact date of birth of widow of Dhanurdhar



Singh. From Exhibit 2, it becomes clear that she died in the year 1957. The finding recorded by the court below is improbable and is based on surmises and conjectures. The reason assigned for not relying the public document, Exhibit 2 is not acceptable. On the basis of this Exhibit 2, I, therefore, find that Godma Devi died in the year 1957, as claimed by the plaintiffs. The finding of the trial court is accordingly hereby reversed.

17. In view of my above finding, now on the death of Dhanurdhar Singh his widow inherited his interest as limited owner which became absolute in view of the provision as contained in Section 14 of the Hindu Succession Act, according to the law laid down by the Supreme Court reported in A.I.R. 1990 Supreme Court 670(supra).

18. So far the question of ouster and adverse possession is concerned, it is settled principles of law that possession of one co-owner is possession of other. It is not the case of the defendants that in spite of demand by the plaintiffs, the defendants forcibly did not allow her to come in possession and, therefore, they became the absolute owner by principles of ouster and adverse possession. On the contrary, their case is that Godma Devi died prior to the death of Dhanurdhar Singh, therefore, plaintiff has no right and title. In such view of the matter, neither there is any specific pleading

regarding ouster and adverse possession. I have already held that Godma Devi died in the year 1957. It is specifically pleaded by the plaintiffs that the defendants were cultivating the lands of the plaintiffs also but subsequently they refused to partition. There is no pleading on behalf of the defendants as to since when their possession become adverse or since when they ousted the plaintiffs. There is no evidence also. I, therefore, find that there is no question of ouster or adverse possession arises. Thus, the point formulated in this appeal is hereby answered in favour of the plaintiffs and against the defendants.

19. In the result, the First Appeal is allowed. The impugned judgment and decree are set aside and the plaintiff's suit for partition is decreed with cost of Rs.10,000/- to be paid by the defendants to the plaintiffs within two months failing which the plaintiffs-appellants are at liberty to realize the same through the process of the Court.

(Mungeshwar Sahoo, J)

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