

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.333 of 1988

Against the judgment and decree dated 28.05.1988 passed by Subordinate Judge-X, Patna in Title Suit No.236 of 1985.

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Mina Devi & Anr.

.... Defendants-Appellants

Versus

Ram Pyare Singh & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellants : Mr. Kamal Nayan Choubey, Sr. Advocate.
Mr. Subhash Chandra Dubey, Advocate with him.

For the Respondent nos.1 & 2 : Mr. Panditjee Pandey, Advocate.
Mr. Dhanendra Choubey, Advocate.
Mr. Nawneet Tiwary, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date:24-06-2015

The defendant nos.1 and 2 have filed this first appeal against the judgment and decree dated 28.05.1988 passed by the learned Subordinate Judge-X, Patna in Title Suit No.236 of 1985 whereby the court below decreed the plaintiffs-respondents' suit for declaration of title.

2. The plaintiffs-respondents filed the aforesaid suit for declaration that they have got right, title and possession over the land in suit and non-title and possession of the defendant 1st party and for confirmation of possession and in the alternative for recovery of possession of the suit property. The plaintiffs also prayed for

injunction for restraining the defendant 1st party from making any transfer of the suit land.

3. The plaintiffs claimed the aforesaid relief alleging that Ramdhani Raut had three sons, namely, Chhedi Rai, Lal Kishun Rai and Balgovind Rai, who were separate from each other since more than 50 years. Chhedi Rai had four sons, namely, Haricharan Rai, Gauricharan Rai, Sri Rai and Munsai Rai. Haricharan Rai died in the year 1952 leaving behind a son Ishwar Dayal Rai, who is defendant no.1. Gauricharan Rai died in the year 1973 leaving behind his son Ram Narayan Rai, who also died in 1979 leaving behind his son Dhiraj Kumar, who is defendant no.2. Sri Rai died issueless. After death of Chhedi Rai there was partition between his four sons 30-35 years ago. Haricharan Rai and Gauri Rai got 1/4th share each whereas Sri Rai and Munsai Rai got 1/2 share jointly and after the death of Sri Rai, his share devolved on the plaintiffs, and Haricharan Rai and Gauricharan Rai are mutated separately over their lands. After death of Haricharan Rai, defendant no.1 and Gauricharan Rai united and started living jointly. In the aforesaid partition the plaintiff no.1 and Sri Rai were jointly allotted plot no.1463 measuring 41 decimals, plot no.1465 measuring 12 decimals and plot no.1467 measuring 31 decimals total 84 decimals under Khata no.492. Besides these lands other lands were also allotted in favour of them jointly. Their names



were recorded jointly in the office of ex-landlord and thereafter the name of plaintiff no.1 was recorded and after vesting the plaintiff no.1 is paying rent against the grant of rent receipt by the State of Bihar. The plaintiff no.1 and Sri Rai jointly sold 12 decimals of plot no.1465, 31 decimals of plot no.1467 and plot no.1463 remained in exclusive possession of the plaintiff having full right, title and interest.

4. The plaintiffs' further case is that the facts that in the year 1965-66 plot nos.1463, 1465 and 1467 measuring 84 decimals were notified for acquisition by the State Government but the plaintiffs objected it and the lands were released. Secondly out of 41 decimals of plot no.1463, 2 decimals of land towards northern was acquired by the State of Bihar in Land Acquisition Case No.50 of 1975-76 and compensation of Rs.1,472/- was paid to the plaintiffs and further one Jag Narayan Singh filed demarcation case regarding other plot and in that demarcation case the plaintiffs were made party because they were in possession of plot no.1463 and lastly that one Ramashish Rai, owner of plot no.1462, sold his land showing plaintiffs in boundary of that plot being the owner of plot no.1463. All these facts clearly prove that the entire plot no.1463 measuring 41 decimals was in possession of the plaintiffs and plaintiffs were exclusive owner thereof.

5. The further case of the plaintiffs is that the defendant

1st party fraudulently making interpolation got included 25 decimals of land of plot no.1463 in their names in Register II and on the basis of fraud and fabrication they negotiated to sell the land. In fact defendant 1st party have also applied for permission to sell some land of plot no.1463 and permission was also obtained, which is illegal.

6. The defendants-appellants i.e. defendant 1st party filed contesting written statement. They admitted the genealogy but according to the defendants, partition took place 40 years ago and each party got 1/4th share. Schedule I of W.S. was allotted to Haricharan Rai, Schedule II of W.S. was allotted to Gauricharan Rai, Schedule III and Schedule IV were allotted to Sri Rai and Munsai Rai respectively. The partition was acted upon and major portion of the lands was transferred by different shareholders. They never united nor their properties were blended. In the said partition 25 decimals of land in plot no.1463 out of 41 decimals towards north was allotted to Haricharan Rai alone with other properties. The remaining 16 decimals land was allotted in the share of plaintiffs and accordingly the plaintiffs are coming in possession of the only 16 decimals of land in plot no.1463. Out of 25 decimals the defendant no.1 has already sold 2 kathas 12 ½ dhurs of plot no.1463 to one Madhuri Sinha on the basis of baybeyana dated 04.05.1985 after obtaining permission from competent authority. The defendant no.1 further entered into



agreement to sell the land measuring 3 kathas 13 dhurs of plot no.1463 with Kumar Premendra through deed of agreement dated 06.05.1985 and possession was handed over. The purchasers also have put a signboard as 'Premendra Apartment'. The plaintiffs fraudulently obtained the entire compensation from the government but in panchayati they gave the amount to the defendants. The mentioning of the name of plaintiffs in demarcation case or in the boundary of sale deed will neither create title nor extinguish title of the plaintiffs. On these grounds, the defendants prayed that the plaintiffs' suit be dismissed.

7. The defendant nos.3 and 4 filed separate written statement. Their case is that after making enquiry about the title of the defendants and after perusal of the documents, Madhuri, defendant no.4, contracted to purchase 2 kathas 12 ½ dhurs and baibeyana dated 04.05.1985 was executed and thereafter the vendor obtained permission and executed the sale deed dated 05.10.1985 for Rs.85,000/-and since then the purchaser defendant no.4 is coming in possession thereof. The defendant no.1 also agreed to sell 3 kathas 12 dhurs to Premendra and agreement was executed on 06.05.1985 and delivered possession in favour of Premendra, who is a member of the family of defendant no.4. The defendant no.1 has also obtained permission to execute the sale deed. Both these defendants have

enclosed the purchased land by giving boundary wall and kept 15 cows and buffalos and started milk business.

8. On the basis of the aforesaid pleadings of the parties the learned court below framed the following issues:-

- (i) Have the plaintiffs any cause of action for the present suit?
- (ii) Is the suit maintainable in its present form?
- (iii) Have the plaintiffs been allotted the suit land by way of private partition?
- (iv) Have the plaintiffs got right, title and interest over the suit land?
- (v) Are the plaintiffs entitled to decree for right, title and interest and as claimed for?
- (vi) To what relief and reliefs the plaintiffs are entitled to?

9. The trial court on the basis of materials available on record came to the conclusion that the defendants were never allotted the suit land in any previous partition. The plaintiffs have been able to establish this fact that the suit land was allotted to the plaintiffs along with other lands. They have right, title and interest over the suit land. The sale deed and deed of agreement executed by defendant 1st party in the name of defendant 2nd party are nothing but bag of winds and on the basis of the sale deed or the agreement for sale the defendant 2nd party cannot have any right, title and interest over the suit land. However, since the defendant 2nd party hurriedly took some bricks and got constructed a house, they cannot have any title on such illegal possession and they have to be evicted from there. The dispossession

of the plaintiffs was made during the pendency of the suit. Accordingly, the plaintiffs' suit was decreed.

10. The learned senior counsel Mr. K.N. Choubey for the appellants submitted that there had been partition of the joint family property is admitted by the parties. The only dispute is that according to the plaintiffs the entire plot no.1463 was allotted in the share of Munsai Rai, whereas according to the defendants-appellants, the plaintiffs were allotted only 16 decimals of land in the southern side. The defendants-appellants were allotted 25 decimals of land of plot no.1463 in the northern side. Admittedly there is no documentary evidence in support of the case pleaded by the plaintiffs or the case pleaded by the defendants but the circumstances clearly indicate that the appellants were in possession of 25 decimals of land and they have also sold to the purchasers, who are in possession of the property. The plaintiffs never objected the construction of the purchasers. Moreover the sale deeds were executed by the defendants-appellants after obtaining permission from the competent authority but the plaintiffs never challenged the sale deed executed by the appellants. The learned senior counsel further submitted that the plaintiffs were in possession of 16 decimals of land only therefore, they have already sold the entire share measuring 16 decimals to third person. They never tried to sell more than 16 decimals of their share

which clearly indicates that they know the fact that only 16 decimals was allotted in their share in the partition in plot no.1463 but after selling their share, the present suit has been filed for the aforesaid relief.

11. The learned senior counsel further submitted that the court below on the basis of circumstantial evidences, which are inadmissible in evidence, has recorded the finding that the entire plot was allotted in the share of Munsi Rai. The demarcation case was initiated by a third person wherein he did not make the defendants-appellants party. Because in the case a third person, who is owner of plot no.1462, has added the plaintiff as party in the demarcation case, by no stretch of imagination it can be said that the plaintiff is the owner of plot no.1463, therefore, he was made party. There can be no such presumption under any provision of any law. Likewise the learned court below has given much emphasis on the mentioning of name of the plaintiff in the boundary of the sale deed sold by another person to other person which is also inadmissible nor it is decisive of the fact that the plaintiff is the only owner of the property or that in partition the entire plot no.1463 was allotted in favour of plaintiff. Likewise only because the plaintiff had filed objection to the land acquisition proceeding or that the possession was given to the plaintiff only there can be any presumption that the plot was allotted entirely in

favour of plaintiff.

12. The specific case of the defendants-appellants is that the plaintiffs fraudulently got the compensation for the land measuring 2 decimals acquired by the State of Bihar and, therefore, a panchayati was held wherein the plaintiffs gave compensation amount to the defendants. On these circumstances only the court below has wrongly recorded the finding that the plaintiffs have been able to prove their title with respect to the plot no.1463. The court below has not at all considered the fact that the defendants-appellants have already sold the entire 25 decimals of plot no.1463 except 2 decimals of land, which is in possession of the appellants. The learned senior counsel further submitted that the rest of the properties have already been sold and in fact the purchasers came in possession of the purchased land of plot no.1463 and have constructed 24 flats thereon and have also sold to different persons, who are in possession of the property. In support of his contention, the learned senior counsel for the appellants filed a supplementary affidavit raising these grounds. The learned senior counsel further submitted that the plaintiffs have already sold the entire 16 decimals of land. Had the plaintiffs been allotted more than 16 decimals, they could have sold the more property than 16 decimals but they did not which indicate that they were allotted only 16 decimals of land.

13. The learned senior counsel for the appellants further submitted that the court below investigated the case pleaded by the defendants and recorded the finding that the defendants had not objected to the acquisition of plot no.1463 and that the defendants had not been able to prove their case of allotment of 25 decimals. The court below did not consider the settled principles of law that the suit was filed by the plaintiffs, therefore, the burden was on the plaintiffs to show that in fact the entire plot measuring 41 decimal was allotted in favour of the plaintiffs but the plaintiffs failed to produce categorical and acceptable evidence in support of their case rather have produced the circumstances as discussed above such as demarcation case, the mentioning of name of plaintiffs in the boundary of sale deed between 3rd party and non-filing of objection by the defendants. These circumstances are not sufficient to hold that the entire land measuring 41 decimal was allotted in favour of plaintiffs particularly when the name of defendants-appellants is in Register II regarding 25 decimals of land and in fact they have sold 19 decimals and four decimals of land was acquired for construction of road and nala remaining 2 decimals are in possession of the defendants-appellants. The learned senior counsel further submitted that the court below has wrongly recorded the finding that the plaintiffs have been dispossessed during the pendency of the suit. According to the learned

senior counsel, the plaintiffs cannot be allowed to take advantage of the weakness of the case of defendants. The plaintiffs have to stand on their own legs. On these grounds, the learned senior counsel submitted that the impugned judgment be set aside and the plaintiffs' suit be dismissed.

14. On the other hand, learned counsel Mr. Panditjee Pandey for the plaintiffs-respondents submitted that the court below has rightly decreed the plaintiff's suit. Since the plaintiffs have been able to prove their title over the suit property, they are not required to challenge the sale deed executed by the defendants-appellants in favour of the defendant 2nd party because defendant 1st party had no title to sell the property in favour of defendant 2nd party as such the sale deed itself is a void document. The learned court below has rightly held that 2 decimals of land was acquired by the State of Bihar for which compensation was paid to the plaintiffs and that the name of plaintiffs was mentioned as boundary raiyat in the sale deed of a third person, which clearly indicates that even the other persons i.e. third persons were knowing the plaintiffs to be the owner of plot no.1463 otherwise they could have mentioned the name of defendant 1st party also. Likewise in the demarcation case also the third person made the plaintiffs as party in the demarcation case. Had the defendant 1st party were in possession of any portion of plot no.1463, the third person



would have made the defendant 1st party as party in the demarcation case but the defendant 1st party were never made party nor they ever applied for being added as party in the demarcation case. The State Government issued notice under Section 4 of the L.A. Act for acquisition of the entire plot no.1463 including the other land but the plaintiffs only filed the objection. If the defendants were in possession of the plot then they could have also filed objection but they did not file objection which clearly indicates that they were not in possession of the property nor the land was allotted in their share. The learned court below, therefore, on the basis of the documentary evidences as well as oral evidences has recorded the finding that the plaintiffs have been able to prove their title and that during the pendency of the suit the plaintiffs have been dispossessed. On these grounds, the learned counsel submitted that the first appeal be dismissed with costs.

15. In view of the rival contentions of the parties the points arise for consideration in this first appeal are as to whether in the partition plot no.1463 measuring 41 decimals was allotted exclusively in the share of plaintiffs as claimed by the plaintiffs or it was divided into two parts i.e. 16 decimals allotted to the plaintiffs and 25 decimals allotted in favour of defendant 1st party as claimed by the defendants and whether the impugned judgment and decree are sustainable in the eye of law?

16. As discussed above, the parties have admitted the genealogy and previous partition. The only dispute between them is with respect to only one plot i.e. plot no.1463 measuring 41 decimals. According to the plaintiffs, it was allotted entirely to the plaintiffs whereas according to the defendants it was divided into two parts. 16 decimals of land was allotted in the share of plaintiffs whereas 25 decimals of land was allotted in the share of defendants. In support of their respective cases the parties have adduced evidences.

17. P.W.2 has stated that the suit land is in possession of the plaintiffs. He claimed to be the adjacent raiyat. However, in the cross-examination he has stated that there is one tin shed and boundary wall which was made by the defendants. P.Ws.3 and 4 both have stated that the tin shed and the boundary was made by the plaintiffs. P.W.5 is advocate commissioner, who has proved his report (Ext.5), the Field Book (Ext.4 and Ext.4/A) and the order sheet (Ext.3). In his evidence he has admitted that in the suit land there is Jhopari and some cows are on the suit land. It may be mentioned here that this is the case of the defendants that after purchase they came in possession of the same and are doing milk business therein after enclosing the suit land by boundary wall. He has also admitted in his evidence as well as in the report that a board was there named “Premendra Apartment”. This is also the case of defendant no.3.



P.W.8 is the plaintiff himself, who has supported his case as pleaded in the plaint. P.W.9 has also supported the possession of the plaintiff no.1. P.W.13 is plaintiff no.2. From the oral evidence of these witnesses, it becomes clear that although the plaintiff made a case in the plaint that in the partition entire suit property was allotted in his share, the witnesses have stated about only possession of the plaintiffs whereas the pleader commissioner's report is in support of the defendants' case.

18. As discussed above one of the witnesses of the plaintiffs has also admitted that the shed and boundary was made by the defendants. The plaintiffs nowhere stated as to when he was dispossessed by these defendants and when they put boundary wall. Only the general allegations have been made that entire property was allotted in the share of the plaintiffs and bald statements have been made that the plaintiffs are in possession of the entire land measuring 41 decimals. Plaintiff no.1 is P.W.8 but he is unable to speak about the specific plots allotted in the partition. Therefore, the only evidence regarding partition claimed by the plaintiffs are of P.W.8 and P.W.13, who were the plaintiff no.1 and plaintiff no.2. So far oral evidences are concerned, the plaintiffs failed to prove their exclusive possession over the entire property measuring 41 decimals.

19. From the impugned judgment, it appears that the

court below has observed that since the evidences produced by the defendants i.e. D.W.2 and D.W.9 are not reliable, the statement of P.W.13 is to be relied upon.

20. The plaintiffs have produced the notice issued under Section 4 of the Land Acquisition Act which is in the name of Munsai Rai. Ext.11/A is the notice issued to Munsai Rai for receiving the compensation amount awarded for acquisition of 2 decimals land. Ext.12 is the acquisition khasra, whereas Ext.12/A is the payment of money receipt. On the basis of these documents it was submitted that Munsai Rai was the owner of the property i.e. plot no.1463, therefore, notice was issued in his name and he was paid the compensation amount. The learned counsel for the respondents strongly relied upon these evidences. According to the learned counsel, this is the clear evidence on the basis of which it can be recorded that the plaintiff's ancestor was the only owner of the property. So far this submission of learned counsel for the respondents is concerned, it may be mentioned here that the case of the defendants also is that 16 decimals land was allotted in favour of the plaintiffs in this plot. The question is only because the notice was issued or that compensation was awarded in the name of Munsai Rai, can it be said that Munsai Rai was the only exclusive owner or that plot no.1463 was allotted entirely in favour of Munsai Rai. The answer will be 'No' because only 2 decimal was



acquired by the State of Bihar. Therefore, on the basis of this fact or these materials no conclusive finding can be recorded that the entire plot was allotted in the share of Munsi Rai. At best, these evidences show that 2 decimals land was acquired by State of Bihar for which compensation was paid to Munsi Rai. That will never mean that the claim of the defendants to the effect that 25 decimals land was allotted in their share is falsified. Here, it will not be out of place to state that the land was sold by the defendant 1st party after obtaining permission from the competent authority. The documents were registered and the purchasers came in possession and are residing there and carrying on business. No objection was raised at the spot. The only objection raised by the plaintiff is that the land is entirely allotted in the share of Munsi. It means that there was dispute between the parties regarding title with respect to this disputed plot.

21. One Jai Narain Singh, owner of plot no.1474-1475 filed Demarcation Case No.17 of 1980-81 wherein the plaintiffs were made party. The plaintiffs have proved Ext.11 series which are the notices issued in the demarcation case. Ext.13 is the original application. In this case Sri Rai and Ram Pyare Singh have been made opposite party showing them to be in possession of plot no.1463 which is adjacent to the plot no.1474 and 1475. These documents have been produced by the plaintiffs to show that they were in



possession and were the owner of entire plot no.1463. Therefore, they have been made party in the demarcation case and the defendants have not been made party. It may be mentioned here that the demarcation case was filed by a third person wherein the defendant 1st party were not made party, therefore, any statement or observation or order made in the said demarcation case is inadmissible against the defendant 1st party. In other words, the mentioning of ownership of plaintiffs in that demarcation case cannot be read against the defendant 1st party-appellants in this case nor this fact is decisive factor for coming to the conclusion that the plaintiffs were the owner in possession or that in partition, entire plot was allotted in the share of plaintiff's ancestor. This document produced by the plaintiffs will only indicate that in that case defendant 1st party were not made party. Except this, it is not relevant at all. Likewise the land acquisition case referred to above also will not be reliable evidence for recording a finding that the land was entirely allotted in the share of the plaintiff's ancestor.

22. It appears that the plaintiffs have produced the sale deeds (Ext.15 series) to show that in this sale deeds in the boundary the name of the plaintiff's ancestor has been mentioned. Here also all the sale deeds have been executed by third person with regard to other properties which are said to be the adjacent plots of plot no.1463.

Therefore, any statement regarding boundary of the land sold will not decide the right and title of the parties of another land, which is not subject matter of sale deed in question.

23. From perusal of the impugned judgment, it appears that the learned court below gave much emphasis on these documents and held that these are circumstantial evidence which shows that the plaintiffs and their ancestors were in possession of the entire plot no.1463. On the contrary the defendants have failed to prove their case that 25 decimal land was allotted in favour of Shiv Sharan Rai. In my opinion, the learned court below has wrongly held so on the basis of this evidence, which are not reliable for the purpose of deciding the title and/or partition in the manner claimed by the plaintiffs. It is settled principles of law that in land acquisition proceeding the title is not decided by the Land Acquisition Officer. Only on the basis of entry or information the award is made and likewise the demarcation case is concerned also the authorities have no jurisdiction to decide the title. Because of making a particular person a party in the case will not prove either title or possession and such is the case in the case of sale deed.

24. The plaintiffs have then produced Ext.9/C which is zamabandi receipt. Ext.7/G and Ext.7/H are the rent receipts. Ext.8/A the certified copy of Register II in the name of Munsu Rai, Ext.8/C in

the name of Ishwar Dayal Singh (defendant no.1). These documents have been produced to show the defendants' land were included in the zamabandi in the name of Munsai Rai. The two tauzi were amalgamated under one zamabandi no.442. Ext.8/C and Ext.8 are the zamabandi no.137 in the name of defendant no.1 wherein the lands were amalgamated. The learned counsel for the respondents submitted that if the lands were amalgamated then plot no.1463 should have been included in the zamabandi of defendant no.1 but it is not included. So far this submission is concerned also it will not be out of place to mention that the plaintiff is said to be the owner of 16 decimals and the defendants' claim only 25 decimals according to the partition. Now if it is not included in the zamabandi, no finding can be recorded on this basis that because it was not amalgamated and it is not included in the zamabandi in the name of defendant no.1, it is not his property. It is settled principle of law that the revenue records neither create title nor extinguish title in favour of any person. Therefore, on the basis of entry in the revenue records or the rent receipts no conclusive finding can be recorded regarding title of the parties particularly when I have found above that after purchase the purchasers are in possession of the property and the plaintiffs never challenged the sale deeds in favour of purchasers. No case has been made that on which date and how the plaintiffs have been

dispossessed, in fact if they were in possession of the entire land after it was allotted in the share of their ancestor.

25. From perusal of the impugned judgment, it appears that the court below first investigated the case pleaded by the plaintiff vide paragraph 7 and examined the defendants' documents and evidences. He disbelieved the case and thereafter examined the plaintiffs' case. It is settled principle of law that the plaintiff has to fall or stand on his own legs and he cannot be allowed to take undue advantage of the weakness of the case of defendants. Admittedly both the parties are co-sharers. Both the parties admitted that there had been partition. The plaintiffs came with a case that the entire suit plot no.1463 was allotted in their favour. Therefore, it is for the plaintiffs to prove these facts pleaded by them in the plaint. If they failed to prove this fact then on the ground that the defendants also failed to prove their case, the plaintiffs' suit cannot be decreed. As discussed above, the plaintiffs have produced the circumstantial evidences i.e. the notice in land acquisition case, the objection filed by the plaintiffs, compensation received, the demarcation case and the sale deeds. I have discussed all these matters in the preceding paragraphs. All these evidences have already been found not reliable for the purpose of deciding the case pleaded by the plaintiffs.

26. The defendants have produced the agreement entered



into between them and purchasers, Ext.C and C/1. The sale deed in the name of Madhuri Singh, Ext.B. D.W.2 in his evidence has stated about partition of plot no.1463 as claimed by the defendants. The court below disbelieved this witness on the ground that he does not know about the land acquisition proceeding. D.W.3 claims to be the *gotia* of both the parties. He has stated about the possession of defendant no.4 for the last three years. The court below has disbelieved his case only on the basis of point that he is only 45 years of age. Here, it will not be out of place to mention that P.W.8 is plaintiff no.1, who is aged about 72 years but he expressed his inability to the manner of partition i.e. regarding which plot was allotted in favour of which party. Therefore, only on the ground of age the evidence of a person cannot be disbelieved. D.W.6 has also stated about the possession of Ishwar Dayal Singh. This evidence has been disbelieved on the ground that he did not say the possession of Munsirai and that he has got concern with cultivation of the suit land nor he can say about any title over the suit land. This approach of the court below for appreciating the evidence is not acceptable. D.W.7, one of the purchasers, has stated that after purchase of 2 kathas 12 ½ dhurs his another family member also purchased lands measuring 3 kathas and odd, namely, Premendra Kumar and they enclosed the land by boundary wall and constructed a hut.

27. From the discussion made above, it is clear that the plaintiffs have not given any description as to which party got which plot in the previous partition. It is further admitted fact that the plaintiffs have already transferred all other properties allotted in their share in previous partition. So far plot no.1463 is concerned, it is admitted that the plaintiffs have also transferred 16 decimals of plot no.1463. No doubt, zamabandi was standing in the name of plaintiff no.1 i.e. Ext.1. Zamabandi was created in favour of defendants. The plaintiffs filed objection which was rejected vide Ext.D series. Plaintiffs in the plaint have not given the details of the land of joint family. On the contrary, the defendants have described the schedules in detail in the written statement, which were allotted to the parties in previous partition. The plaintiff only claimed that this plot was allotted entirely in his share. From perusal of the evidence of P.W.13, who is plaintiff no.2 himself, it appears that he has described the entire land held by the parties. The total area comes to 4 acres 51 decimals = 7 bighas 4 kathas 6 dhurs 8 dhurkis. According to the evidence of P.W.13, 2 acres 11 ½ decimals was allotted to Munsu and Sri Rai including 41 decimals of plot no.1463. So far this case of plaintiffs is concerned, this is only statement but the conduct shows that although the plaintiffs sold the entire property allotted in their favour in previous partition vide Ext.B series. They never attempted

even to sell more than 16 decimals of plot no.1463 whereas it is admitted fact that the defendants were dealing with the remaining 25 decimals of plot no.1463 and in fact they have already sold the property and the fact in view of the supplementary affidavit that now the apartments have already been built by the purchasers, the plaintiffs never denied this fact. No objection was ever raised for making construction. Moreover, the sale deeds were never challenged by the plaintiffs. The learned court below only on the basis of entry made somewhere else either in demarcation case or sale deeds or on the basis of compensation awarded in land acquisition case, which are not sufficient to prove the case of the plaintiffs, has decreed the plaintiffs' suit.

28. In view of the above discussion, I find that the plaintiffs have failed to prove their case pleaded. The points formulated are thus answered against the plaintiffs-respondents and in favour of defendants-appellants. The finding of the trial court on this point is, therefore, hereby reversed.

29. In the result, this first appeal is allowed. The impugned judgment and decree are set aside and the plaintiffs' suit is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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(Mungeshwar Sahoo, J)