

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No. 563 of 1990

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Shri Ram Chandra Rai, S/o Sri Jugeshwar Rai (Deceased), R/o Vill. Abdia P.S. Rajepur (Mehsi), P.O. Kasi Pakri, District – East Champaran.

....Defendant 1st Party/Appellant

Versus

1. Chulhai Rai, S/o Maharaj Rai (decd)
2. Ram Ishwar Rai, S/o Saryug Rai (decd)
3. Raj Ballam Rai, S/o Saryug Rai (decd)

All are R/o Vill. Abdia P.S. Rajepur (Mehsi) P.O. Kashi Pakari, District – East Champaran.

....Respondent 1st Party.

4. Sri Ram Janam Rai, S/o Kapildeo Rai (decd)
Resident of Vill. Nakardema, P.S. Rajepur Mehsi, P.O. Nakardema, Dist. East Champaran.

..... Defendant No.2nd Party/Respondent 2nd Party

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Appearance :

For the Appellant/s	:	Mr. Yogendra Prasad Sinha-1 Mr. Jagdesh Prasad-2 Mr. Nirmal Kumar Sinha
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 03-08-2015

Heard, Sri Yogendra Prasad Sinha-1, learned
counsel for the appellant.

This Title Appeal is directed against the
Judgment/Decree dated 31.08.1990/15.09.1990 passed in Title
Suit No. 345 of 1985/21 of 1988, whereunder the learned Sub-
Judge-Vth, East Champaran, Motihari decreed the suit of
plaintiffs/respondents first party declaring the sale deed dated

09.09.1985 executed by the Defendant No.2/Respondent no.4 in favour of Defendant No.1/appellant illegal, void and not binding upon the plaintiffs/respondents first party.

2. In brief, the case of Respondent 1st Party/plaintiffs is that Pirtan Rai was ancestor of plaintiffs, who died before the recent survey leaving behind his two sons, Jhapas Rai and Tokhan Rai. Jhapas Rai died leaving behind two sons Maharaj Rai and Heman Rai, Tokhan Rai also died before the recent survey leaving behind his two sons namely Sheo Rai and Bhajan Rai. The Khatiyani stands recorded in the name of Jhapas Rai having one share and one share in names of Sheo Rai and Bhajan Rai in respect to the land of family including the land in dispute detailed in Schedule-1 of the plaint. After few years of recent survey, two branches of Jhapas Rai and Token Rai partitioned the family property by metes and bounds. Maharaj Rai and Heman Rai, son of Jhapas Rai were living jointly and with the property including the land as detailed in Schedule-1 of the plaint. Heman Rai and his wife both died issueless in the year 1934 in a state of jointness with Maharaj Rai and his interest in the property devolved upon his brother Maharaj Rai. Further, Maharaj Rai died 30 years ago leaving behind two sons namely, Saryug Rai and Chulhai Rai/plaintiff

no.1. Saryug Rai also died about 10 years ago leaving behind his two sons namely Ram Ishwar Rai, plaintiff no.2 and Raj Ballam Rai, plaintiff no.3. As such, plaintiffs are still joint and all the property of Jhapas Rai including the land detailed in Schedule-I of the plaint are jointly owned and possessed by the plaintiffs. The defendant no.1, who is shrewd and litigant, used to give pressure to the family of the plaintiffs either to give the suit land in exchange or by way of sale as the plaintiff's Pattidar land was purchased by the family of the defendant no.1, but the plaintiffs were not ready. Thereafter, defendant no.1 managed to bring into existence a registered sale deed dated 09.09.1985 with respect to land in dispute executed by Ram Janam Rai, defendant no.2, resident of a different village. The appellant/defendant no.1, being armed with aforesaid sale deed, started to create trouble in peaceful possession of the plaintiffs over the land in dispute. The plaintiffs came to know about the aforesaid sale deed on 10.09.1985, obtained the certified copy of the sale deed and arranged the Panchayat, in which people asked to defendant no.1/appellant to execute the deed of Ladafi in respect to the suit land, contained in the sale deed dated 09.09.1985, but he refused. Thus, in order to clarify the doubt created by the aforesaid sale deed, the plaintiff filed the



aforesaid appeal.

3. While defendant nos.1 and 2 filed their separate written statement but the contents of both the written statements are almost similar. In the written statement, the genealogy, as stated by the plaintiffs in the plaint, has not been disputed but the case of the defendants is that Heman Rai separated to his brother Maharaj Rai in the Fasali 1346 (year 1939) and he died in the year 1959 leaving behind his wife and four daughters namely, Dhaniam Devi, Pania Devi, Pasia Devi and Kushami Devi. Marriage of Dhaniam Devi was performed in village Harser, marriage of Pania Devi was performed with Feku Rai of village Dumarbanha, marriage of Pasia Devi was performed with Bilas Rai of village Raipur. The marriage of Kushami Devi was performed with Kapildeo Rai of village Nakardowa and defendant no.2 is the son of Kushami Devi. After the death of Heman Rai, his property was acquired by his four daughters and the defendant no.2, being the maternal-grand-son (Naati) of Heman Rai came in possession as he used to reside with Heman Rai since his life time. As such, defendant no.2 had right title in respect to suit land and has executed the sale deed dated 09.09.1985 in favour of defendant no.1 on receiving the consideration. The Jamabandi is still in the name

of Maharaj Rai but Heman Rai used to give half of the rent of his share to Maharaj Rai who used to get the rent receipt.

4. The Trial Court on the basis of the pleadings of the parties framed altogether six issues, which are as under :-

- I. Is the suit is framed maintainable?
- II. Is the plaintiffs any valid cause of action or right to sue?
- III. Whether Heman Rout was joint with his brother Maharaj Rai as claimed by the plaintiffs or he was separated and had partitioned the property in the year 1346(F) as claimed by the defendants?
- IV. Whether Heman Rai died in the year 1934 issueless as claimed by the plaintiffs or he died in the year 1959 leaving behind four daughters as claimed by the defendants?
- V. Are the plaintiffs entitled for a decree for declaration that the said deed dated 09.09.1985 executed by defendant no.2 in favour of defendant no.1 is illegal, void, without consideration and not binding upon the plaintiffs?



VI. To what other relief or reliefs, if any, are the plaintiffs entitled to?

The Trial Court after hearing the parties and on perusal of the evidence available on the record decided all the issues in favour of the plaintiffs and decreed the suit as indicated above.

5. Learned counsel appearing on behalf of the appellant submits D.W. 13, Sheo Pujan Jha has proved the entries at Serial Nos. 464 and 465 in Chaukidari Assessment Register in respect to collection of Chaukidari for the year 1958. At Serial No. 765, the name of Maharaj Rai and at Serial No. 766, the name of Heman Rai, brother of Maharaj Rai are detailed about collection of Chaukidari, which clearly indicates that Heman Rai was alive till 1958 and was not died issueless in 1934, as claimed by the plaintiffs. But the learned Trial Court illegally held that Heman Rai died issueless in the year 1934 and decreed the suit of the plaintiffs declaring the sale deed dated 09.09.1985 executed by the defendant no.2/respondent no.4 in favour of the defendant no.1/appellant illegal, void and not binding upon the plaintiffs first party/respondents.

Now, the points for consideration is whether Heman Rai died in the year 1934 issueless in jointness with his

brother Maharaj Rai or died after separation in fasli 1346 in year 1959 leaving behind his wife and four daughters including Kushumi Devi, mother of defendant no.2/respondent no.4, who came in possession of the property of Heman Rai after his death.

6. The fact is not in dispute that Pirtan Rai had two sons namely, Jhapas Rai and Tokhan Rai. It is also not in dispute that R.S. Khatiyani was prepared in the name of Jhapas Rai as one share and in the name of Sheo Rai and Bhajan Rai, sons of Tokhan Rai as one share. It is also admitted case by the parties that after few years of Revisional survey, there was partition by metes and bounds of the joint family property between Jhapas Rai and sons of Tokhan Rai. The dispute is related property allotted to the branch of Jhapas Rai, who had two sons namely, Maharaj Rai and Heman Rai. The case of the plaintiff is that Heman Rai and his wife died issueless in jointness with Maharaj Rai in the year 1934 and property devolved to Maharaj Rai and after his death to his heirs, plaintiffs, whereas according to the defendant Heman Rai died in the year 1959 leaving behind his four daughters namely, Dhanika Devi, Pania Devi, Pasia Devi and Kushami Devi. Heman Rai before his death separated to his brother Maharaj



Rai in fasuli 1346 and after death of Heman Rai, his four daughters inherited the property and accordingly, the defendant no.2/respondent no.4 Ramjanam Rai being the son of Kushumi Devi, one of the daughters of Heman Rai came in possession and accordingly, he, having the right title over the land as detailed in Schedule-I of the plaint executed the sale deed in favour of defendant no.1/appellant.

7. P.W.11, Chulhai Rai, who is plaintiff no.1, has stated in his evidence that Jhapas Rai had two sons namely, Maharaj Rai and Heman Rai. Maharaj Rai had two sons Chulhai Rai (plaintiff no.1) and Saryug Rai, who has died. He had seen Heman Rai, who had no issue and died in the year of Earthquake. After death of Heman Rai, his property devolved to Maharaj Rai and he came in possession. Later on, plaintiffs, being the heirs of Maharaj Rai came in possession. It is false that Heman Rai had four daughters. He has further stated that suit has been filed in respect to 1 Bigha 9 Katha, which is in of four plots. The land was never in possession of Ram Janam or Kapildeo. Defendant Ram Chandra Rai, who is effective person, wants to purchase the land in dispute to the plaintiffs, but plaintiff was not ready then he got executed the sale deed through Ram Janam Rai.



8. D.W. 12, Ram Janam Rai, defendant no.1, has stated in his evidence that Heman Rai was his maternal-grandfather (Nana). At the time of death of Heman Rai, he was aged about 14 years and residing with him. His maternal-grandfather (Nana) had four daughters, Dhania Devi, Pania Devi, Pasia Devi and Kushumi Devi. Kushumi Devi was his mother. At the death of Nana, Heman Rai, his wife and four daughters were alive. His Nana was separated with Maharaj Rai. After death of his Nana, his four daughters came in possession and he is cultivating the land of his Nana. He has sold 1 Bigha 9 Katha of land situated in his Nanihal to Ram Chandra Rai, defendant no.1 on consideration of Rs. 10,000/- and thereafter, he came in possession over the land. It is not true that his Nana Heman Rai had died in jointness with his brother Maharaj Rai rather he died before 30 years. It is also not true that he is not the maternal-grand-son of Heman Rai. He has further stated in cross-examination that he did not hear the name of Pirtan Rai and Tokan Rai and also he did not know Sheo Rai and Bhajan Rai. He has further stated in his cross-examination in paragraph-9 that after death of Heman Rai, his 7 Bigha land was being cultivated by his four daughters, but he could not say when he started to cultivate the land after death of Heman Rai.



He has further stated in his cross-examination in paragraph-14 that the year of independence is not in his memory but till that time his Nana had died. He further stated in paragraph-14 that he did not know the name of father-in-laws of three other daughters of Heman Rai. Sakal Rai is the son of Pania Devi, but he did not know the name of children of two other daughters of Heman Rai. He also stated that his father (Kapildeo Rai) is alive. He has also stated in paragraph 16 that he had sold the land in dispute for the Shradh of his Nana. He has also stated that he did not know, who are the plaintiffs in the suit.

From the evidence of D.W. 12, who claims himself the maternal-grand-son of Heman Rai, Heman Rai died leaving behind four daughters including his mother Kushumi Devi but he is not able to disclose the name of father-in-laws of three other daughters and also the names of children of his two other daughters. While he has stated that Sakal Rai is son of Pania Devi, one daughter of Heman Rai and his father Ram Sakal is alive but Sakal Ram and Kapildeo Rai have not been examined in support of this case. This witness has specifically stated in his written statement that Heman Rai is his maternal-grand-father and died in the year 1959 but in his cross-examination in paragraph-11, this witness specifically stated



that his Nana (Heman Rai) was not alive in the year of independence of the Country i.e. 1947, which clearly indicates that Heman Rai died before 1947 not in the year 1959. Admittedly, Pirtan Rai and Tokan Rai are the grandfather and uncles of Heman Rai, Sheo Rai and Bhajan Rai or cousin of Heman Rai but this witness shows his ignorance about them, which also creates serious doubt in respect to the claim of this witness about his stay with Heman Rai, being his maternal-grand-son (Nati).

9. DW14, Ram Chandra Rai, defendant no.1 has stated in his evidence that he got executed 1 Bigha 9 Katha land from Ram Janam Rai, defendant no.2, who is the maternal-grand-son of Heman Rai. Heman Rai was separate to his brother and nephew and died leaving behind four daughters and defendant no.2 is son of Kushmi Devi, one of the daughters of Heman Rai. He also stated in his cross-examination in paragraph 14 that at the time of execution of the sale deed in respect to land in dispute Ram Janam had shown the paper of partition of the land but he did not hand over the same. There is still some land in his possession. This witness has stated about showing the paper of partition of Heman Rai but that document has not been brought before the Court by the defendants.



10. D.W.13, Sheo Pujan Jha has stated in his evidence that he knew Heman Rai. He used to collect Choukidari to his village. Badri Lal was his Clerk, who used to maintain the Chawkidari Assessment Register. He proved the entry of serial nos. 765 and 766 of Choukidari Assessment Register, in which the name of Maharaj Rai and Heman Rai have been entered as Exhibit-C. He has further stated that this Choukidari Register is related to collecting the Choukidari in year 1958. He has further stated in paragraph 3 that he used to discharge the work under the Sub-Divisional Officer and used to receive Choukidari Register from the office of Sub-Divisional Office, but after completion of financial year, he did not use to deposit the Register in the office rather he used to retain the same himself. This witness has also proved the signature of Sub-Divisional Officer, Register 'C/1' but did not disclose the name of the Officer, who put the signature. This witness has firstly stated that at the time of receiving the Chawkidari, he retained himself half portion of the receipt and rest used to handover the payee but he could not say whether the retaining portion of the receipt is available or not. Mere entry of the name of Heman Rai, Maharaj Rai in the Choukidari Register in year 1958 at Serial nos. 765 and 766 separately,

inference could be drawn that Heman Rai was alive in the year 1958 because according to evidence of DW 12 Ram Janam Rai, his Nana Heman Rai was not alive in the year of independence of the country (in year 1947).

11. D.W.6 Kewal Bhagat has stated in his evidence in paragraph-2 that Heman Rai was separate to his brother Maharaj Rai and after death of Heman Rai, his wife came in possession and after her death, his four daughters came in possession but in paragraph 10 of his cross-examination, this witness has stated that he did not know when defendant no.2 Ram Janam Rai came in possession over the suit land. Similarly, D.W.7 Bilash Rai has stated in paragraph 1 in his evidence that over the land in dispute, there was possession of Ram Chandra Rai, defendant no.1, but he has further stated in his cross-examination in paragraph 7 that he has not seen the paper regarding the possession of Ram Janam Rai, defendant no.2 over the land in dispute. No any document has been filed on behalf of defendants showing the possession of Heman Rai or Ram Janam Rai, defendant no.2. The Exhibit -A and A/1 are two rent receipts in the name of defendant no.1 Ram Chandra Rai for the year 1989-90 and 1987-88 regarding Khata No. 199, which are of after filing the Title Suit by the plaintiffs in the



year 1985 for cancellation of sale deed dated 09.09.1985, (Exhibit B) executed by defendant no.2, Ram Janam Rai in favour of defendant no.1 Ram Chandra Rai. Exhibit-4 is the sale deed dated 1982 executed by Aklu Rai heir of branch of Tokhan Rai in favour of Rajendra Rai, brother of defendant no.1 Ram Chandra Rai in respect of 6 Katha 10 Dhoor of Plot no.144. If Defendant no.2 Ram Janam Rai, being the Nati of Heman Rai, came in possession after his death on his property, his name should be mentioned in the boundary with the plaintiffs, but plaintiff no.1 Chulahai Rai is in the Northern boundary in Plot no. 144 of Khata no. 19 area 10 Katha 17 Dhurs. Plot no. 148 is also suit land, which was also sold through the said sale deed dated 04.10.1982 (Ext.4) and in the Western boundary, the name of Rajeshwar Rai plaintiff no.2 is mentioned.

12. On the basis of the discussions made above, I arrive at the conclusion that Heman Rai has not died in year 1959 as claimed by the defendants leaving behind his four daughters rather he died in the year of 1934 issueless. Moreover, for the sake of argument if the evidence of defendant no.2 Ram Janam Rai (PW12) is accepted that his Nana Heman Rai was not alive at the time of independence of the Country



i.e. in year 1947, in such circumstances also, no question arises about inheriting the property of Heman Rai by her daughters. The learned Trial Court has discussed the oral and documentary evidence in the light of the pleadings of the parties in detail and has rightly arrived at the conclusion that Heman Rai died in the state of jointness with Maharaj Rai issueless in the year 1934 and accordingly, decreed the plaintiffs’ suit declaring the sale deed dated 09.09.1985 executed by defendant no.2 is illegal, void and not binding upon the plaintiffs.

13. In the result, this appeal is dismissed, being no merit. However, there shall be no order as to cost.

(Rajendra Kumar Mishra, J.)

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