

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.669 of 1994

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1. Lal Babu Singh, son of Late Hari Prasad Singh.
Resident of village-Harichak, P.S. Phulwari Sharif, P.O. Anisabad, District-Patna.
- 2(a). Upendra Kumar, son of Late Kamta Prasad Singh.
- 2(b). Most. Kamla Devi, wife of Late Kamta Prasad Singh.
- 2(c). Mina Devi, daughter of Late Kamta Prasad Singh.
2(a) and 2(b) are residents of village- Harnichak, P.S. Phulwarisharif, District-Patna and 2(c) wife of Ram Nagina Rai, resident of village-Gulmahiya Bagh, P.S. Fathua, District-Patna.
3. Manohar Singh, resident of village-Harichak, P.S. Phulwari Sharif, P.O. Anisabad, District-Patna.

.... (Plaintiffs).....Appellants.

Versus

- 1(i) Moosmat Devanti Devi, wife of Late Bibhishan Rai, resident of Mohalla-Punaichak, P.S. Shastri Nagar, District-Patna.
- 1(ii) Pramila Devi, daughter of Late Bibhishan Rai and wife of Sri Umesh Roy of Mohalla-Punaichak, P.S. Shastri Nagar, District-Patna.
- 1(iii) Smt. Manju Devi, daughter of Bibhishan Rai and wife of Sri Bishan Dayal Singh of village-Bhusaula Dinapur, P.S. Phulwarisharif, District-Patna.
- 2(a) Smt. Manju Devi, wife of Late Dayanand Singh.
- 2(b) Bishal Kumar, minor son of Late Dayanand Singh.
- 2(c) Jyoti Kumari, daughter of Late Dayanand Singh.
- 2(d) Rani Kumari, minor daughter of Late Dayanand Singh.
- 2(e) Khusboo Kumari, minor daughter of Late Dayanand Singh.
All 2(a) to 2(e) are resident of Phulwari Sharif, P.S. Phulwari Sharif, District-Patna.
3. Binod Kumar Singh.
4. Arun Kumar Singh.
All sons of Late Bibhishan Rai.
5. Deonandan Singh.
6. Brijnandan Rai.
All sons of Late Ram Autar Singh.
All resident of village-Phulwari Sharif, P.S. Chunauti Kuan, P.S. Phulwari Sarif, District-Patna.
7. Bhagmatia Devi, wife of Late Ram Lakhan Singh, resident of village-Baluati, P.S. Masauri, P.O. Gangachak, District-Patna.

.... (Defendants).....Respondents.

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Appearance :

For the Appellants : Miss. Mallika Mazumdar, M/s. Sanat Kumar Mishra and Prem Kumar Advocates.

For the Respondents : Mr. Satyendra Narain Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT

Date: 3 -09-2015:

The plaintiffs have filed this appeal against the Judgment

and Decree dated 19.08.1994 passed in Title Partition Suit No.259 of 1991/177 of 1993, whereby the court of Sub Judge-XIII, Patna, dismissed the aforesaid partition suit filed by the plaintiffs.

2. The plaintiffs had filed the aforesaid suit for partition of $\frac{1}{4}$ th share in the property as detailed in Schedule-I of the plaint. The case of the plaintiffs is that one Narku Rai had four sons, namely, Dumri Rai, Sheo Charan Rai, Raman Rai and Chhathu Rai. After the death of Narku Rai, partition took place amongst four sons under which $\frac{1}{2}$ share was allotted to Dumri Rai and Sheo Charan Rai and $\frac{1}{2}$ share was allotted to Raman Rai and Chhathu Rai. Raman Rai had a son Mohar Rai, who died issueless and, therefore, the entire property of the share of Raman Rai and Mohar Rai was devolved to Chhathu Rai. Chhathu Rai had four sons, namely, Kalicharan Rai, Ramsnehi Rai, Sricharan Rai and Sadashiv Rai. Sricharan Rai died unmarried in state of jointness with his three brothers and, as such, the property of Sricharan Rai devolved to his three brothers, namely, Kalicharan Rai, Ramsnehi Rai and Sadashiv Rai. Kalicharan Rai had a son, namely, Ram Dihal Bhagat, who had a son Bibhishan Singh (defendant no.1). Bibhishan Singh had three sons, namely, Dayanand Singh, Vinod Kumar Singh and Arun Kumar Singh, defendant nos.2, 3 and 4 respectively. Similarly, Ramsnehi Rai had a son Ishwar Dayal Rai, who had a son Ramautar Rai, who had two sons, namely, Deonandan Rai and Brijnandan Rai, defendant nos.5 and 6 respectively. Sadashiv Rai

had two sons, namely, Bahadur Rai and Bhageru Rai. Bahadur Rai died issueless while Bhageru Rai had a son, namely, Harihar Rai, who was married to Smt. Dinbahuri Devi. Harihar Rai died in the year 1940 in the state of jointness with his father, Bhageru Rai, who died in the year 1955. Harihar Rai and Smt. Dinbahuri Devi had a son, namely, Teni Rai and a daughter Mahadiya Devi. Dinbahuri Devi died in the year 1960. Teni Rai died in July, 1956 leaving behind his widow Most. Somaria Devi and a daughter, Bhagmatia Devi (defendant no.7). Most. Somaria Devi also died in the year 1987 in the state of jointness. Mahadiya Devi, daughter of Harihar Rai and Dinbahuri Devi, was married to Sri Hari Prasad Singh of village-Harni Chak, P.S. Phulwarisharif, District-Patna and she died in the year 1976 leaving behind three sons, namely, Lal Baboo Singh, Kamta Singh and Manohar Singh, who are respectively plaintiff nos.1, 2 and 3 in the suit. The properties of the branch of Chhathu Rai was inherited by the plaintiffs and the defendants. After the enforcement of Hindu Succession Act, the estate of Harihar Prasad, who died in the year 1940, was devolved upon his widow Dinbahuri Devi and after her death it devolved upon the plaintiffs through her mother, Mahadiya Devi, who died in the year 1976. The plaintiffs and defendants are the members of Joint Hindu Family and defendant no.1 is the Manager and Karta of the Joint Family and he is managing the properties and the plaintiffs and their mother were getting share out of the produce from the lands as

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detailed in Schedule-I of the plaint. The lands, as detailed in Schedule-I of the plaint, are joint family properties under the management of defendant nos.1 to 5 jointly and their names are also recorded in Jamabandi (Tenants' Register) and jointly rent receipts are issued. The plaintiffs, who has 1/4th share in the property, as detailed in Schedule-I of the plaint, made demand of partition because of differences and disputes but the defendant no.1 refused.

3. Defendant nos.1 to 6 and defendant no.7 filed their separate written statements. The defendant no.7 in her written statement has challenged the claim of the plaintiffs supporting the defence of the defendant nos.1 to 6. The defendants have not challenged the genealogy, as detailed in the plaint, but the case of the defendants is that Mohar Rai died in state of jointness, therefore, his interest passed on to three branches of his uncles equally, namely, Dumari Rai, Sheo Charan Rai and Chhathu Rai. Accordingly, in C.S. Khatian, the names of Manbahal Bhagat, Ram Lal Bhagat and Kali Charan Bhagat recorded with their specified share. The further case of the defendants is that Harihar Rai, the maternal grandfather of the plaintiffs, died 72 years earlier near 1920 leaving behind his son, Teni Rai, who also died about three years after the death of Harihar Rai, leaving behind his widow Most. Somaria Devi and a daughter, Bhagmatia Devi (defendant no.7). After the death of Teni Rai, his interest in the property passed on to the other two branches of Kali



Charan and Ram Sanahi Rai. Dinbahori Devi, widow of Harihar Rai, died in year 1955 and his daughter Somaria Devi died in 1986 and cremated by defendant no. 5 and she was never in possession of any land. Further case of the defendants is that Bhageru Rai had died before the death of his son Harihar Rai and not in 1955 as stated by the plaintiffs. In 1979, the partition took place in between the defendant no.1 and defendant no.5 in which 1/2 share was allotted to defendant nos.1 to 4 and 1/2 share was allotted to defendant nos.5 and 6. After spot verification, their names also recorded separately in Jamabandi and they have been paying rent separately. The plaintiffs have no interest in the property of Harihar Rai and Teni Rai as both died much before the enforcement of Hindu Succession Act. The plaintiffs have no unity of title and possession in respect of the Schedule-I property as detailed in the plaint, as such, no question arises for the partition as claimed by the plaintiffs.

4. On the basis of the pleadings of the parties, the learned trial court framed altogether following seven issues:

- (i). Is the present suit, as made out, maintainable?
- (ii). Is the present suit barred by time?
- (iii). Is the present suit barred by the law of estoppel, acquiescence and waiver?
- (iv). Is the present suit barred by the provision of Section 34 of the Specified Relief Act?
- (v). Had the plaintiffs sufficient cause for bringing out the present suit?

(vi). Are the plaintiffs entitled to get decree of partition in respect of suit property?

(vii). Are the plaintiffs entitled to get any other relief?

5. During trial, the plaintiffs have examined altogether 10 witnesses whereas the defendants have also examined 7 witnesses and also got exhibited several documents.

After hearing the parties and perusing the evidence available on the record, the learned Sub Judge-XIII, Patna, decided all the issues against the plaintiffs and dismissed the aforesaid Title Partition Suit of the plaintiffs.

6. Learned counsel appearing on behalf of the plaintiffs-appellants argued that even if the finding of the trial court is to be taken correct in respect of the death of Bhageru Rai, his son, Harihar Rai and Teni Rai, prior to 1930-31 in spite of that Dinbahuri Devi, the widow of Harihar Rai, died in 1966 as admitted by the D.W.11, Deo Nandan Rai (defendant no.5) in paragraph-59 of his evidence, as such, after the enactment of Hindu Women's Right to Property Act, 1937, Dinbahuri Devi, the widow of Harihar Rai, acquired limited interest in the joint property in respect of the share of her husband and she was also being maintained from the produce of the land. Therefore, after the enactment of the Hindu Succession Act, 1956, Dinbahuri Devi, who died in 1966, became absolute owner of the share of her husband in the joint family property and her property devolved in her daughter Mahedia Devi,

mother of the plaintiffs-appellants but the learned trial court illegally dismissed the suit of the plaintiffs-appellants. In support of her submission, learned counsel for the appellants placed reliance on a decision in the case of **Vaddeboyina Tulasamma and others Vs. Vaddboyina Sesha Reddi (dead) by L.Rs. { AIR 1977 Supreme Court 1944}**.

7. On the other hand, learned counsel for the respondents submits that the learned trial court on considering the documentary evidence adduced by the defendants-respondents arrived at the conclusion that Bhageru Rai, died prior to 1911, Harihar Rai, husband of Dinbahuri Devi, died prior to 1920-21 and his son, Teni Rai, also died prior to 1930-31. As such, under the Hindu Women's Right to Property Act, 1937, Dinbahuri Devi, could make no claim because the provision of Section 4 of this Act clearly says that the provision of this Act would not apply to the property of any Hindu dying before the commencement of Act. Moreover, there is no case of the plaintiffs that Dinbahuri Devi, widow of Harihar Rai, had acquired the property in respect to share of her husband to joint property for her maintenance or she had possession over any piece of land of the joint property in lieu of her maintenance. As such, no question arises about becoming her absolute owner of the share of her husband, Harihar Rai, under Section 14 of the Hindu Succession Act.

8. In view of the submissions as made on behalf of the

parties, the following points require for consideration:

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- (i). Whether the interest of Harihar Rai in the joint family property was acquired by his widow, Dinbahori Devi, for limited purpose under the Hindu Women's Right to Property Act, 1937, and she became absolute owner under Section 14 of the Hindu Succession Act, 1956?
 - (ii). Whether the plaintiffs, who are the maternal grand son (Naati) of Dinbahori Devi are entitled for partition in the joint family property as detailed in Schedule-I of the plaint?

9. The both points are inter connected hence taken up together for appreciation of argument of the learned counsel for the parties. The fact is not in dispute that parties are governed by the Mitakshara School of Hindu Law. Bhageru Rai, his son, Harihar Rai, the husband of Dinbahori Devi, and his son, Teni Rai, died in the state of jointness in the joint family. According to the plaintiffs-appellants, Bhageru Rai, died in the year 1955, his son, Harihar Rai, the husband of Dinbahori Devi, died in the year 1940 and Teni Rai, son of Harihar Rai, died in the year 1956, Whereas the case of the defendants is that Harihar Rai died before 70 years near 1920, Teni Rai died after three years of the death of Harihar Rai and Bhageru Rai died earlier to Harihar Rai.

10. The trial court while deciding the issue no.6, relied on Ext.D/2, certified copy of Entry No.6 of Register-D of village-Nausa in

respect of Touzi No.25/313, Ext.D, certified copy of Entry No.4 of Register-D in respect of Touzi No.5168 and Ext.C, the certified copy of Khewat arrived at finding that Harihar Rai, Teni Rai and Bhageru Rai had died respectively prior to 1920-21, 1930-31 and 1911. The learned counsel for the appellants has not disputed the finding of the trial court in respect of time of death of Harihar Rai, Teni Rai and Bhageru Rai.

11. The relevant provisions of Hindu Women's Right to Property Act, 1937 and the Hindu Succession Act, 1956, which are necessary to appreciate the argument of the learned counsel for the parties are read as under:

The Hindu Women's Right to Property Act, 1937:

“3(1) When a Hindu governed by the Dayabagha school of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate *leaving separate property*, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son:

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son:

Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow

shall, subject to the provisions of sub-section(3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies.

4. Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act."

The Hindu Succession Act, 1956:

"14. Property of a female Hindu to be her absolute Property.

- (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation. -In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award

where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

12. While according to Section 3 of the Women’s Right of Property Act, 1937, if a Hindu governed by the Mitakshra School dies having interest in joint family property his widow have limited interest known as Hindu Women’s estate and she shall have right for partition as male owner. But Section 4 put the bar in respect to application of Section 3 to Hindu died intestate before the commencement of the Act. As such, Dinbahori Devi had no interest, under the Hindu Women’s Right to Property Act, 1937, in respect to property of her husband, Harihar Rai, who died prior to 1920-21, before the enactment of Act.

13. Section 14 of the Hindu Successions Act, 1956, speaks that the widow must have possess of the property acquiring either by way of inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift. There is no case of the plaintiffs that Dinbahori Devi, widow of Harihar Rai, had got possession of the land in respect to share of her husband in lieu of maintenance or arrears of maintenance after the enforcement of Hindu Women’s Right to Property Act, 1937. As such, mere due to maintaining of Dinbahori Devi after the death of her husband Harihar Rai by joint family without acquisition of property of the share of her husband by her for her maintenance, Section 14 of the Hindu Succession Act, 1956, would not

be applicable. Since Dinbahori Devi, widow of Harihar Rai, had not acquired and came in possession to the property in respect to the share of her husband in her life time for her maintenance, therefore, no question arises resulting of her full ownership under the Hindu Succession Act, 1956 and devolving the share of Late Harihar Rai through his widow, Dinbahori Devi to her daughter Mahadia Devi and to the plaintiffs.

14. In the case of **Vaddeboyina Tulasamma** (supra), Venkatasubba Reddy, husband of appellant no.1, Vaddeboyina Tulasamma, died in the year 1931 in a state of jointness with his step brother V. Sesha Reddy. The appellant Vaddeboyina Tulasamma filed a petition for maintenance as forma pauperis against the respondent in the Court of the District Munsif, Nellore in October, 1994. Subsequently, the said petition was registered as a suit and an ex-parte decree was passed against the respondent on June 29. 1946. The respondent preferred an appeal before the District Judge, Nellore, which was also dismissed. Thereafter, appellant filed a case for the execution of the decree in which parties appeared to have arrived at a settlement out of court which was certified by the Executive Court on 30.07.1949 under Order XXI Rule 2 of the Code of Civil Procedure. Under the compromise the appellant Vaddeboyina Tulasamma was allotted the schedule properties but was to enjoy only a limited interest therein with no power of alienation with a further condition that the properties will

be reverted to respondent after the death of appellant Vaddeboyina Tulasamma. After coming into force the Hindu Succession Act, 1956, the appellant Vaddeboyina Tulasamma leased out and sold some portion of the property vide two registered deeds dated 12.04.1960 and 25.05.1961. Thereafter, the respondent filed the suit on 31.07.1961 before the District Munsif, Nellore, for a declaration that the alienation made by the appellant Vaddeboyina Tulasamma were not binding upon the plaintiff-respondent and could remain valid only till the lifetime of the widow. The Munsif decreed the suit of the plaintiff holding that the appellant Vaddeboyina Tulasamma got merely a limited interest in the properties to enjoy only and not alienate the properties. Appellant, Vaddeboyina Tulasamma then filed an appeal before the District Judge, Nellore, which was allowed reversing the findings of the trial court holding that the appellant Vaddeboyina Tulasamma had acquired an absolute interest in the properties by virtue of the provisions of the Hindu Succession Act, 1956. The respondent preferred the Second Appeal in the High Court against the Judgment of the District Judge, which was allowed with the finding that the case is clearly covered by Section 14(2) of the Hindu Succession Act, 1956 and as the compromise was an instrument as contemplated by Section 14(2) of the Hindu Succession Act, 1956, Vaddeboyina Tulasamma could not get an absolute interest under Section 14(1) of the Hindu Succession Act, 1956, and by virtue of the compromise the appellant Vaddeboyina

Tulasamma got title to the properties for the first time and it was not a question of recognizing a pre-existing right which she has none in view of the fact that her husband had died before the Hindu Women's Right to Property Act, 1937. Thereafter, the appellant Vaddeboyina Tulasamma preferred Civil Appeal before the Apex Court.

The Apex Court held that since the property in question acquired by the appellant under the compromise in lieu of satisfaction of her right of maintenance, it is sub-Section (1) and not sub-Section (2) of Section 14 of the Hindu Succession Act, 1956 which would be applicable and hence the appellant must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest for her in the properties.

The aforesaid case on which the reliance has been placed by the learned counsel for the appellants would not be applicable in the present case as admittedly, in the present case, Harihar Rai, husband of Dinbahori Devi, died in the state of jointness before 1920-21, which is not disputed by the appellants in the present appeal. There is also no case of the plaintiffs that after the death of Harihar Rai, his widow, Dinbahori Devi, came in possession on acquiring the property in respect to share of her husband by partition or gift for her maintenance.

15. On the basis of the facts and circumstances of the case and the discussions, made above, I find no infirmity and illegality in the impugned Judgment and Decree in dismissing the suit of the plaintiffs

filed for partition claiming 1/4th share in the property as detailed in Schedule-I of the plaint.

16. In the result, I find no merit in this appeal and, accordingly, it is dismissed. However, there would be no order as to costs.

(Rajendra Kumar Mishra, J)

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