

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.70 of 2012

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1. Shiv Ratan Singh S/O Late Dwarika Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 2. Nil Ratan Prasad Singh @ Arun Kumar S/O Late Dwarika Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.

.... **Appellants.**

Versus

1. Madan Pd. Singh S/O Late Harihar Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 2. Krishna Nandan Singh S/O Late Harihar Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 3. Gurudee Singh S/O Sardar Mahendra Singh Industrial Village- Harnaut, Police Station- Harnaut, District- Nalanda.
 4. Rajdeo Prasad Singh S/O Late Lal Narain Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 5. Mahendra Prasad Singh S/O Late Gulal Narain Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 6. Sardar Balwant Singh S/O Sardaw Seva Singh Resident Of Harnaut, Police Station- Harnaut, District- Nalanda.
 7. Sardar Satepal Singh S/O Sardar Tahal Singh Resident Of Harnaut, Police Station- Harnaut, District- Nalanda.
 8. Nalanda Industrial Works Nalanda At Village- Harnaut, Resident Of Harnaut, Police Station- Harnaut, District- Nalanda.
 9. Umesh Prasad Singh S/O Late Mathura Singh Resident Of Village- Diharigarh, Police Station- Harnaut, District- Nalanda.
 10. Kusum Devi W/O Late Ram Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 11. Anju Kumar S/O Late Ram Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 12. Sunil Kumar S/O Late Ram Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 13. Veena Kumari D/O Late Ram Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 14. Rina Devi W/O Suresh Sharma Resident Of Gram Padari, Police Station- Chandi, District- Nalanda.
 15. Munni Devi W/O Niwash Sharma Resident Of Mohalla- Aliganj, Jehanabad Town, District- Jehanabad.
 16. Sumitra Devi W/O Late Shyam Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 17. Pankaj Singh S/O Late Shyam Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 18. Pintu Kumar S/O Late Shyam Ratan Prasad Singh Resident Of Diharigarh, Police Station- Harnaut, District- Nalanda.
 19. Gudia Devi W/O Vikash Choudhary Resident Of Village- Nayagaun, P.O Gayagaun, And Police Station- Pravatta, District- Khagaria.
 20. Partima Devi, Wife of Mahesh Singh.
 21. Sonue Kumar, Son of Mahesh Singh.
 22. Chhoti Kumari, Daughter of Mahesh Singh.
- All Residents of Village-Diharigarh, P.O.-Harnaut, P.S.-Harnaut, District-

Nalanda.

... Respondents.

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Appearance :

For the Appellant/s : Mr. Madan Kumar

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

20 26-02-2015

Heard Mr J.S.Arora, the learned counsel for the appellants. The learned counsel for the contesting respondents is also present.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance, dismissing the suit.

The plaintiffs filed the suit praying initially for declaration that they were entitled to half share in the disputed plots and further for declaration that the suit land as mentioned in Schedule-I of the plaint were the properties allotted in the share of the plaintiffs. The plaintiffs also prayed that after the grant of the aforesaid relief, the further declaration be made that the sale deed dated 04.08.1980 executed by the defendant no.1 in favour of defendant no. 5 was not binding upon the plaintiff. During the pendnecy of the suit, the plaintiffs added the relief, by amendment, praying for partition of their half share in the plot, if there was difficulty before the court in granting the first relief.

The plaintiffs' case, in short, is that the disputed plots were the joint family property of the plaintiffs and the defendants,



and in partition of the year 1950, the suit land (Schedule-I of the plaint) has been allotted in the specific share of the plaintiffs and since thereafter they are coming in possession over the suit land. The defendants contested the aforesaid case of the plaintiffs and came out with the case that there was partition of all the properties of the family in the year 1920 and since then they are separately coming in possession of the properties of their share. It is the specific case of the defendants that the suit land as mentioned in Schedule-I of the plaint and as demarcated in the sketch map appended with the plaint has not been the allotted property of the share of the plaintiffs and they have got no title and possession over the same as claimed.

The trial court, after scrutiny of pleadings and evidence, returned the finding in favour of the plaintiffs that they were entitled to half share in the disputed plots but further declined to accept the case of the plaintiffs that the suit land as described in Schedule-I of the plaint and as demarcated in the sketch map appended to it, was allotted in their specific share in the partition of the year 1950, as claimed. In sequel, the trial court also refused to grant the relief against the sale deed dated 04.08.1980, as prayed by the plaintiff. The trial court also expressed the opinion that the plaintiffs being conscious of their

failure to establish the case of partition as pleaded, had added the alternative relief for partition by amendment at the fag-end of the argument. However, the said alternative relief was also declined after the finding that the plaintiffs could not make out a case of unity of title and jointness of possession for the disputed plots, and had also failed to bring the entire land of the disputed plots as subject matter of the suit which factually contained only the half share of the plaintiff according to their own case. The suit, therefore, on the basis of these findings, was decreed in part only.

The plaintiffs filed appeal against the decree dismissing the suit in part. The appellate court, after reappraisal of evidence, has concurred with the findings of the trial court and dismissed the appeal upholding the part dismissal of the suit.

Mr Arora, the learned counsel for the appellant has submitted that both the courts below have committed error in law in not granting the alternative relief to the plaintiffs once after disbelieving the story of partition. It has been propounded that there is presumption of jointness of the family property of the parties in the suit and the said presumption can be rebutted only when the partition is proved to have taken place. The learned counsel has also made the submission that both the courts below have not properly considered the material evidence

on record.

After perusal of the judgments of both the courts below and considering the submissions, it is limpid that the first relief as prayed by the plaintiffss was for declaration that the plaintiffs were entitled to half share in the disputed plots and also for declaration that the suit land, as described in Schedule-I of the plaint and the sketch map appended to it, was specifically allotted in the share of the plaintiffs. The plaintiffs have come out with the specific case of partition in the year 1950 in the family and allotment of the suit land in their share therein. The defendants have categorically denied this case of the partition as pleaded by the plaintiffs and have come out with their case that there was complete partition in the family in the year 1920 and the suit land was not the property allotted in the share of the plaintiffs and they were not entitled to the same.

Both the courts below after scrutiny of the evidence of the parties have come to the concurrent findings that the plaintiffs have failed to substantiate by cogent evidence of their case of partition in the family in the year 1950 and the allotment of the suit land in their specific share. The courts below have taken into consideration, in particular, the deposition of the



plaintiff no.1 who has been examined as P.W.10 alongwith the sale deeds and mortgage deeds (Ext.B Series and Ext.C Series) some of which were transactions between the parties inter-se for coming to the conclusion that the plaintiffs have failed to prove their case of partition as well as the manner in which, according to their case, it was effected. This Court during the course of argument has not been persuaded to hold unreasonableness or perversity in any manner in those findings by the courts below.

It is well settled that the pleading and proof of unity of title and jointness of possession by the plaintiff are sine qua non for grant of relief in a suit of partition. In the present case, the plaintiffs have come out with their definite case of partition in the year 1950 and allotment of the suit property in their share whereas the defendants have denied the said case and manner of partition in the year 1950 as pleaded by the plaintiff and have come out with their own case of partition in the year 1920. In this fact situation, it is manifest that the united status of the family properties was not the case of either of the parties in the suit. There is, thus, apparent fallacy in the submission on behalf of the appellants with regard to raising the presumption of jointness of the family properties after the plaintiffs' failure to



establish the case of partition as pleaded. In the presence of the specific case of the defendant that the partition of the family property was not done in the manner and the year as claimed by the plaintiff but was done differently, there could have been no inference that there was no partition at all entitling the plaintiffs to the alternative relief of partition. Both the courts below have considered this aspect in right perspective and have reached to the correct conclusion in this regard. Besides, it has also been found by both the courts below that the subject matter of the suit was only the property of the share of the plaintiff as claimed by them and not the entire property with regard to which the relief for partition could have been granted. There is no explanation on behalf of the appellants for their omission to bring the entire area of the disputed plots. It also does not appear from the records including the memo of this appeal that all the co-sharers have been impleaded as parties for claiming the relief for partition as prayed in alternative. In this backdrop, this Court is unable to align with the submission on behalf of the appellants that both the courts below have erred in law in refusing the alternative relief for partition as prayed by the plaintiff.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is,

accordingly, dismissed.

Nitesh/-

(V. Nath, J)

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