

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.882 of 1999

IN

First Appeal No. 376 of 69

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1.Sri Surya Deo Prasad Sah @ Suryadeo Prasad

2. Sri Pradip Kumar @ Pradeep Kumar

Both sons of Jugeshwar Prasad Sah, resident of Mohalla- Salempur,
P.S.Barh,District- Patna.

Defendants 13 and 14

-----Appellants

Versus

3. Mostt. Manju Devi w/o late Harshbardhan Prasad

4. Saurabh Kumar s/o late Harshbardhan Prasad.

Both residents of Mohalla Salempur, P.S.Barh,District- Patna.

5. Smt. Manisha Kumari d/o late Harshbardhan Prasad and wife of Amar Bhushan Prasad, resident of Ahmad Ali Lane, Sikandarpur, Mirjim Hat,Town and District- Bhagalpur.

6. Smt. Lalki Devi d/o late Sri Basudeo Prasad Sah, wife of Sheo Prasad, University Colony,Bariyatu,Ranchi.

7. Smt. Chunni Devi d/o late Sri Basudeo Prasad Sah wife of Vijai Prasad, resident of Aliganj,Bhagalpur, District- Bhagalpur.

Plaintiffs- Respondent 1st set..... Respondent 1st Set

8. Sri Nabin Kumar Sah s/o late Sri Harilal Sah, resident of Salempur, P.S Barh,District- Patna.

9.Sri Arun Kumar Sah s/o late Rameshwasr Prasad Sah.

10. Mostt. Kalawati Devi widow of late Rameshwar Prasad Sah.

11. Niru Devi

12. Nirmala Devi

13.Meena Devi

All daughters of late Rameshwar Prasad Sah and resident of Salempur, P.S.Barh,District- Patna.

14. Bablu s/o Nabin Kumar Sah, resident of Salempur, P.S. Barh, District- Patna.

Defendants 1st set.... Respondent 2nd set.

15. Shanti Devi w/o late Surendra Prasad Sah

16. Sangita Devi d/o late Surendra Prasad Sah

17..Anju Kumari d/o late Surendra Prasad Sah

18. Sunita Kumari d/o late Surendra Prasad Sah

19. Bandana Kumari d/o late Surendra Prasad Sah

20. Bankim Chandra s/o late Surendra Prasad Sah

21. Suman Samir s/o late Surendra Prasad Sah

22. Prashant Kumar s/o late Surendra Prasad Sah

All residents of Mohalla Durga Asthan (Chaju Chak), Near Neelam Cinema, P.O. & P.S. Barh,District- Patna.

23.Smt. Aruna Devi w/o late Birendra Kumar Sah

24. Santu s/o late Birendra Kumar Sah

25. Umesh Kumar s/o late Birendra Kumar Sah

26. Neel Kumar s/o late Birendra Kumar Sah

27. Vivek Kumar s/o late Birendra Kumar Sah

All residents of Salempur, P.S. Barh, District- Patna.

28.Narendra Kumar Sah

29. Sri Mithilesh Kumar

30. Gopal Prasad s/o Mostt. Sarswari Devi, resident of Mohalla Upper Bazar (Dhabri Bazar), Ranchi, Jharkhand.

31. Smt. Prakash Devi.

All sons and daughters of late Sheo Lal Sah, resident of Salempur, P.S. Barh, Distrit- Patna.

32. Santu s/o late Birendra Kumar Sah

Both residents of Salempur, P.S.Barh, District- Patna

... Defendants 2nd set..... Respondents 3rd set

33. Smt. Pushpa Devi widow of late Dayanand Sah

34. Sri Anand Kumar @ Riki s/o late Dayanand Sah

35. Sri Sanand Kumar @ Chhotu minor son

36. Smt. Pinki minor daughter

37. Smt.Rinki minor daughter

38. Priyanka Kumari minor daughter of late Dayanand Sah

39. Puja Kumari minor daughter of late Dayanand Sah

All minor sons and daughters through their mothr Smt. Pushpa Devi being the natural guardian and well wisher.

All residents of village- Salempur, P.S. Barh, District- Patna.

40. Ashok Kumar Sah s/o late Baleshwar Prasad Sah

41. Ram Prasad h/o late Madhuri Devi

42. Himanshu Sekhar s/ o late Madhuri Devi

43.Sweta d/o late Madhuri Devi

All resident of Mohalla New Area Muradabad, New Jago Pahar, P.S.Ranchi, Town and District- Ranchi (Jharkhand).

4rh, District- Patna.

..Defendants 4th set... Respondents 4th set.

44. Umesh Devi d/o late Sri Rajendra PrasadSah, resident of Barh, P.S. Barh, District- Patna.

..Defendants 5th Party....Respondent 5th set

45. Mostt. Kalamati Devi widow of late Ram Chandra Sah

46. Ram Narain Prasad.

47. Sharda Prasad.

48. Prahlad Prasad s/o late Ram Chandra Sah.

49. Raju Prasad grand son of late Ram Chandra Sah.

50. Aruna Prasad

51. Punia Devi

52. Santa Devi

All daughters of late Ram Chandra Sah

53. Mungeri Devi second widow of late Ram Chandra Sah

54. Dukhi Devi

55. Rama Devi

56. Chinta Devi

57 Putta Devi

All daughters of late Ram Chandra Sah.

58. Kamla Prasad

59. Sunil Kumar

Both sons of late Ram Chandra Sah, all residents of Salempur,

P.S.Barh,District- Patna.

60. Most. Uma Devi wife of late Shiv Balak Prasad

61. Sri Gopal Sah s/o late Sri Shiv Balak Prasad

Both residents of Nuruddinpur, P.S. Talna, District- Patna.

Defendants 6th set—Respondent 6th set.

62. Smt. Phula Devi

63 Smt.Shyama Devi

Both daughters of late Hira Lal Sah, resident of Khandak Biharsharif, Patna, at present Dalsingsarau, P.S. Dalsingsarai,District- Samastipur.

Defendants 7th set....Respondents 7th set

64. Smt. Urmila Devi d/o late Jugeshwar Prasad Sah wife of Sri R.N. Vidyathi, resident of village and P.S. Khusarupur, District- Patna.

65.Smt.Bila Devi d/o late Jugeshwar Prasad Sah w/o Sri Pramod Kumar Gupta, resident of Ganganagar Colony, Jawalpur, Madhya Pradesh

66. Sachidanand Prasad h/o late Geeta

67. Deepak Kumar s/ o late Geeta Devi

68.Rakesh Kumar

69.Ritesh Kumar

Sons of late Geeta Devi

70.Sai Kumari d/o late Geeta Devi

All residents of Warsaliganj, P.S. Warsaliganj,District- Nawadah.

Defendants 8th set.

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Letters Patent Appeal No. 1153 of 1999

IN

First Appeal No.376 of 69

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1.Smt. Urmila Devi d/o late Jugeshwar Prasad Sah w/o Sri R.N. Vidyarthi, resident of village & P.S. Khusrupur, District- Patna.

2. Smt.Bimla Devi d/o late Jugeshwar Prasad Sah w/o Sri R.N. Vidyarthi, resident of village & P.S. Khusrupur, District- Patna.

3. Sachidanand Prasad h/o late Geeta Devi

4. Deepak Kumar s/o late Geeta Devi

5. Rakesh Kumar s/o late Geeta Devi

6. Ritesh Kumar s/o late Geeta Devi

7.Soni Kumari d/o late Geeta Devi

All residents of Warsaliganj, P.S.Warsaliganj, District- Nawadah.

8. Sri Surya Deo Prasad Sah alias Surya Deo Praad.

9. Sri Pradip Kumar Sah alias Pradip Kumar

Both sons of late Jugeshwar Prasad Sah, resident of Mohalla Salempur. P.S.Barh, District- Patna.

.... Appellant/s

Versus

1. Mostt. Manju Devi w/o late Harshbardhan Prasad

2. Saurabh Kumar s/o late Harshbardhan Prasad.

Both residents of Mohalla Salempur, P.S.Barh,District- Patna.

3. Smt. Manisha Kumari d/o late Harshbardhan Prasad and wife of Amar Bhushan Prasad, resident of Ahmad Ali Lane, Sikandarpur, Mirjim Hat,Town and District- Bhagalpur.

4. Smt. Lalki Devi d/o late Sri Basudeo Prasad Sah, wife of Sheo Prasad, University Colony,Bariyatu,Ranchi.

5. Smt. Chunni Devi d/o late Sri Basudeo Prasad Sah wife of Vijai Prasad, resident of Aliganj,Bhagalpur, District- Bhagalpur.

Plaintiffs..... Defendant 1st set

6. Sri Nabin Kumar Sah s/o late Sri Harilal Sah, resident of Salempur, P.S Barh,District- Patna.

7.Sri Arun Kumar Sah s/o late Rameshwasr Prasad Sah.

8. Mostt. Kalawati Devi widow of late Rameshwar Prasad Sah.

9. Niru Devi

10. Nirmala Devi

11.Meena Devi

All daughters of late Rameshwar Prasad Sah and resident of Salempur, P.S.Barh,District- Patna.

12. Bablu s/o Nabin Kumar Sah, resident of Salempur, P.S. Barh, District- Patna.

Defendants 1st set.... Respondent 2nd set.

13. Shanti Devi w/o late Surendra Prasad Sah

14. Sangita Devi d/o late Surendra Prasad Sah

15..Anju Kumari d/o late Surendra Prasad Sah

16. Sunita Kumari d/o late Surendra Prasad Sah

17. Bandana Kumari d/o late Surendra Prasad Sah

18. Bankim Chandra s/o late Surendra Prasad Sah

19. Suman Samir s/o late Surendra Prasad Sah

20. Prashant Kumar s/o late Surendra Prasad Sah

All residents of Mohalla Durga Asthan (Chaju Chak), Near Neelam Cinema, P.O. & P.S. Barh,District- Patna.

21.Smt. Aruna Devi w/o late Birendra Kumar Sah

22. Santu s/o late Birendra Kumar Sah

23. Umesh Kumar s/o late Birendra Kumar Sah

24. Neel Kumar s/o late Birendra Kumar Sah

25. Vivek Kumar s/o late Birendra Kumar Sah

All residents of Salempur, P.S. Barh, District- Patna.

26.Narendra Kumar Sah

27. Sri Mithilesh Kumar

28. Gopal Prasad s/o Mostt. Sarswari Devi, resident of Mohalla Upper Bazar (Dhabri Bazar), Ranchi, Jharkhand.

29. Smt. Prakash Devi.

All sons and daughters of late Sheo Lal Sah, resident of Salempur, P.S. Barh, District- Patna.

30. Santu s/o late Birendra Kumar Sah

Both residents of Salempur, P.S. Barh, District- Patna

... Defendants 2nd set..... Respondents 3rd set

31. Smt. Pushpa Devi widow of late Dayanand Sah

32. Sri Anand Kumar @ Riki s/o late Dayanand Sah

33. Sri Sanand Kumar @ Chhotu minor son

34. Smt. Pinki minor daughter

35. Smt. Rinki minor daughter

36. Priyanka Kumari minor daughter of late Dayanand Sah

37. Puja Kumari minor daughter of late Dayanand Sah

All minor sons and daughters through their mother Smt. Pushpa Devi being the natural guardian and well wisher.

All residents of village- Salempur, P.S. Barh, District- Patna.

38. Ashok Kumar Sah s/o late Baleshwar Prasad Sah

39. Ram Prasad h/o late Madhuri Devi

40. Himanshu Sekhar s/o late Madhuri Devi

41. Sweta d/o late Madhuri Devi

All resident of Mohalla New Area Muradabad, New Jago Pahar, P.S. Ranchi, Town and District- Ranchi (Jharkhand).

42. Chunni Devi d/o late Baleshwar Prasad Sah, resident of Salempur, P.S. Barh, District- Patna.

..Defendants 4th set... Respondents 4th set.

43. Smt. Usha Devi d/o late Sri Rajendra Prasad Sah, resident of Barh, P.S. Barh, District- Patna.

..Defendants 5th Party....Respondent 5th set

44. Mostt. Kalamatani Devi widow of late Ram Chandra Sah

45. Ram Narain Prasad.

46. Sharda Prasad.

47. Prahlad Prasad s/o late Ram Chandra Sah.

48. Raju Prasad grand son of late Ram Chandra Sah.

49. Aruna Prasad

50. Punia Devi

51. Santa Devi

All daughters of late Ram Chandra Sah

52. Mungeri Devi second widow of late Ram Chandra Sah

53. Dukhi Devi

54. Rana Devi

55. Chinta Devi

56. Putta Devi

All daughters of late Ram Chandra Sah.

57. Kamla Prasad

58. Sunil Kumar

Both sons of late Ram Chandra Sah, all residents of Salempur, P.S. Barh, District- Patna.

59. Most. Uma Devi wife of late Shiv Balak Prasad
60. Sri Gopal Sah s/o late Sri Shiv Balak Prasad
Both residents of Nuruddinpur, P.S. Talna, District- Patna.

Defendants 6th set—Respondent 6th set.

61. Smt. Phula Devi

62 Smt. Shyama Devi

Both daughters of late Hira Lal Sah, resident of Khandak Biharsharif, Patna, at present Dalsingsarai, P.S. Dalsingsarai, District- Samastipur.

Defendants 7th set....Respondents 7th set

.... Respondent/s

with

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Letters Patent Appeal No. 1024 of 1999

IN

First Appeal No. 423 of 69

=====

1. Sri Arun Kumar Sah s/o late Rameshwar Pd.Sah.

2. Most. Kalawati Devi w/o late Rameshwar Pd. Sah

3. Smt. Niru Gupta d/o late Rameshwar Pd. Sah.

4. Smt. Nirmala Devi d/o late Rameshwar Prasad Sah

5. Smt. Meena Devi d/o late Rameshwar Prasad Sah

All residents of Mohalla Salempur Kasba, P.O. and P.S. Barh, district- Patna.

.... Appellant/s

Versus

1. Shanti Devi w/o late Surendra Prasad Sah

2. Sangita Devi d/o late Surendra Prasad Sah

3..Anju Kumari d/o late Surendra Prasad Sah

4. Sunita Kumari d/o late Surendra Prasad Sah

5. Bandana Kumari d/o late Surendra Prasad Sah

6. Bankim Chandra s/o late Surendra Prasad Sah

7. Suman Samir s/o late Surendra Prasad Sah

8. Prashant Kumar s/o late Surendra Prasad Sah

All residents of Mohalla Durga Asthan (Chaji Chak), Near Neelam Cinema, P.O. & P.S. Barh, District- Patna.

9. Birendra Kumar Sah s/o late Sheo Lal Sah

10.Smt. Aruna Devi w/o late Birendra Kumar Sah

11. Santu s/o late Birendra Kumar Sah

12. Narendra Kumar sah s/o Sheo Lal Sah

13.Tunnu Sah @ Mithilesh Sah s/o Sheo Lal Sah.

All resident of Mohalla Durga Asthan (Kaji Chak), P.O. & P.S. Barh, District- Patna.

14. Gopal Prasad s/o late . Sarswari Devi, w/o late Chandradeo Sah, resident of Mohalla Upper Bazar (Dhabri Bazar), Ranchi, Jharkhand.

15. Prakash Devi. s/o late Sheo Lal Sah and w/o name not known, resident of Bisakhapatnum, Andhra Pradesh.

16. Mostt. Manju Devi w/o late Harshbardhan Prasad

17. Saurabh Kumar s/o late Harshbardhan Prasad.

18. Manisha Kumari

Both son and daughter. All presently residing at Mohalla- Nilami Gali, P.O. and P.S. Barh, District- Patna.

19.. Sobha Devi d/o Basudeo Pd. Sah Bibhuti and w/o Prof. Ram Prasad Sah, resident of Ranchi University, Zoology Department, Ranchi.

20.. Sunita Devi d/o late Basudeo Pd. Sah Bibhuti and w/o Dr.Vijay Kumar, resident of Aliganj, P.O. Bhagalpur, District- Bhagalpur.
(Plaintiffs... Respondent 1st Party)

..Respondent 2nd set.

21. Sri Suryadeo Prasad Sah

22. Sri Pradip Kumar Sah

Both sons of late Jugeshwar Pd. Sah, residents of Kankarbagh, P.S. Kankarbagh, Patna-20.

23. Urmila Devi d/o late Jugeshwar Pd. and w/o Ramanand Vidyarthi, Executive Engineer, Kendriyaa Lok Nirman Bivag, Ashiyana Nagar, New Vikash Lane, Patna.

24. Bimla Devi d/o late Jugeshwar Prasad Sah and wife not known, Jabalpur, Madhya Pradesh

25. Sachidanand Prasad h/o late Geeta Devi

26. Deepak Kumar

27. Rakesh Kumar

Both sons of late Geeta Devi

28. Soni Kumar d/o late Geeta Devi.

All residents of village Warsaliganj, P.O. Waraliganj, District- Nawadah

29. Smt. Pushpa Devi widow of late Dayanand Sah

30. Sri Anand Kumar @ Riki s/o late Dayanand Sah

31. Sri Sanand Kumar @ Chhotu

32. Smt. Pinki

33. Smt. Rinki

34. Priyanka Kumari

35. Puja Kumari

All residents of Mohalla- Nilamigali, P.O. & P.S. Barh, District- Patna..

36. Ashok Kumar Sah s/o late Baleshwar Pd. Sah.

Resident of Mohalla Nilami Gali, P.O. and P.S. Barh, District- Patna.

37. Madhuri Devi d/o late Baleshwar Pd. And w/o Ram Prasad, Electric Executive Engineer, Sindwar Toli, New Area, Morahabadi, Ranchi.

38. Renuka Kumari d/o late Baleshwar Pd. And w/o Ashok Kumar Sah, resident of Loha Patti. Jhariya, P.O. Jharia, District- Dhaanbad.

(Defendant 4th party- Respondent 4th Party)... Respondent 4th set.

39. Usha Devi d/o late Rajendra Pd. Sah

(defendant 5th party.....Respondent 5th party)

..... Respondent 5th set.

40. Ram Narain

41. Sharda Prasad

42. Kamla Prasad

43. Sunil kumar @ Surendra Pd. Sah

All sons of late Ram Chandra Sah.

44. Manorama Devi @ Dukhni

45. Rama Devi

46. Chinta Devi

47. Putil Devi @ Manjula Devi

All d/o late Ram Chandra Sah.

48.Raj Kumar

49. Arun.

50. Kuna.

51. Bebi

All minor sons and daughters of late Prahlad Sah under the guardianship of their mother Ramratidevi @ Uma Devi
(Defendants 6th party ... Respondent 6th Party)

..., Respondents 6th set.

All residents of Mohalla Salempur, Kasba, P.O. and P.S. Barh, District- Patna.

52. Sri Nabin Kumar Sah s/o late Hari Lal Sah

53. Ajay Kumar @ Bablu minor son of Sri Nabin Kumar Sah under the guardianship of his father.

Both resident of Mohalla Salempur Kasba, P.O. and P.S. Barh, District- Patna.
(Defendant 1st Party....Respondent 2nd party)... Respondent 7th set.

... Respondent/s

Appearance :

(In LPA No. 882 of 1999)

For the Appellant/s : Mr.T.N.Maitin, Sr. Adv.
Mr. Ajay Kumar Sharma

For the Respondents
6th set : Mr. Ram Kishun Prasad

For Respondent nos.
5 to 11 : Mr. Srinandan Pd. Singh
Mr.Ashok Kumar

For 3rd set : Mr. P.N. Shani, Sr. Advocate with
Mr. Manish Kumar No.2

(In LPA No. 1153 of 1999)

For the Appellant/s : Mr. T.N. Maithin,Sr.Adv.
Mr. Ajay Kumar Sharma

For the Respondent
2nd set (Respondent nos. 5 to 11)
: Mr. Srinandan Prasad Singh and Mr.Ashok Kumar

(In LPA No. 1024 of 1999)

For the Appellant/s : Mr. Srinandan Pd.Singh, Mr.Ashok Kumar, Mr.
Manish Kumar and Mr. Surendra Prasad

For the Respondent/
1st set : Mr. P. K.Shahi, Sr. Advocate
Mr. Manish Kumar No.2

For respondent 6th set Mr. Ramkishun Prasad.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-04-2015

Letters Parent Appeal No. 1024 of 1999 is preferred by defendant nos. 1 to 5 in Title Suit No. 33/ 2001 of 1964-69 on the file of 1st Additional District Judge, Patna. They feel aggrieved by the judgment and decree passed in F.A.No. 423 of 1969 on the file of this Court.

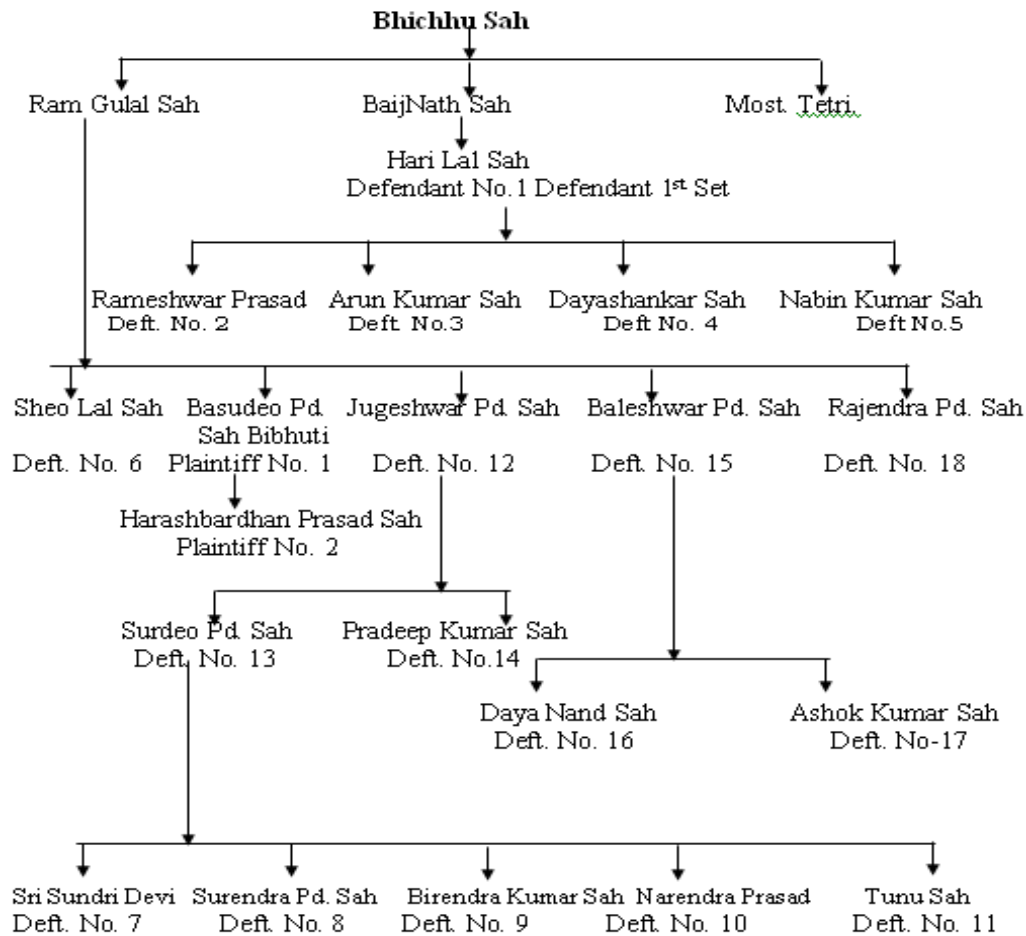
2. In all fairness, learned counsel for the appellants submitted that there was default in substituting the deceased party and thereby the L.P.A. is abated. We, therefore, dismiss L.P.A.No. 1024 of 1999 as abated.

3. Letters Patent Appeals .Nos. 882 and 1153 of 1999 arise out of the judgment and decree in F.A.No. 376 of 1969 passed by a learned Single Judge of this Court. The First Appeal in turn is filed against the preliminary decree dated 14.06.1969 passed by learned Additional District Judge, Patna in Title Suit No.33/2001 of 1964-69.

4.L.P.A.No.882 of 1999 is preferred by defendant nos. 13 and 14 in the suit (for short defendant 3rd set).L.P.A.No.1153 of 1999 is filed by the wife of defendant no.12 in her individual capacity and during the pendency of the appeal she died and her legal representatives were brought on record.

5.As issues, in both the appeals, are common and hardly there is any conflict of interest, these appeals have been heard together and are being disposed of by this common judgment.

6.The suit was filed for partition of joint family property. The joint family comprised of the lineal descents of one Bichhu Sah. For better understanding of the matter, the family tree is re-produced:-



7.From perusal of the family tree it is evident that Bichhu Sah had two sons by name Ram Gulal Sah and Baij Nath Sah . The suit was filed by one of the sons of Ram Gulal Sah i.e. Basudeo Prasad Sah and his son Harashbardhan Prasad Sah. There are four sets of defendants; the first set comprised of the son of Baijnath Sah i.e. Hari Lal Sah (1st defendant) and his sons defendants no. 2 to 5. The second set comprised of one of the sons of Sheo Lal Sah (defendant no.6), one of the sons of Ram Gulal Sah and his (Sheo Lal Sah) five sons i.e. defendant nos. 7 to 11.The third set of defendants is another son of Ram Gulal Sah i.e. Jugeshwar Prasad Sah (defendant no.12) and his two sons i.e. defendant nos. 13 and 14.The fourth set of defendants comprised of Baleshwar Prasad Sah, defendant no.15, his two sons (defendant nos. 16 and 17)and Rajendra Prasad Sah(defendant no.18). It is stated that the defendant 1st

set and 4th set sailed with the plaintiffs, whereas the 2nd and 3rd sets of defendants have opposed the suit.

8. The plaintiffs pleaded that the joint family possessed various items of movable and immovable properties, including the Cinema Halls by name Neelam Picture Palace at Barh, and Ambe Picture Palace at Barauni and in spite of repeated demands, the persons who are in the management of properties did not effect partition. In their written statements the defendants 3rd set and 4th set have supported the plaintiffs' case.

9. The second set of defendants i.e. defendant nos. 6 to 11 opposed the suit by raising the plea of prior partition. It was also pleaded that Neelam Picture Palace is the self acquisition of defendant no.6 and in that view of the matter, even if the partition is to be effected, the said item of property needs to be kept out side the purview of division.

10. The 3rd set of defendants i.e. the appellants herein have also taken the plea of prior partition. It has also been urged that Ambe Picture palace is self- acquisition of defendant no.12 and even if a preliminary decree is to be passed in the suit, that item must be kept out side of the partition.

11. The trial court rejected the plea of partition or that two Cinema theaters are the self acquisitions of defendant 2nd and 3rd set respectively. Accordingly it passed the preliminary decree and directed division of the properties into 10 (ten) parts of allotment of one such part to the plaintiffs. The shares of the other defendants were also determined.

12. The 2nd set of defendants filed F.A.No. 423 of 1969 before this Court, feeling aggrieved by the rejection of their plea, in respect of Neelam Cinema Palace. Similarly, 3rd set of defendants filed F.A.No. 376 of 1969, not satisfied with the decree of the trial court as regarding Ambe Picture Palace.

Through a common judgment dated 29.06.1999, the learned Single Judge of this Court allowed F.A.No. 423 of 1969, taking the view that Nelam Cinema Palace was held by the partnership firm and partition thereof must be effected in terms of partnership deed. F.A.No. 376/ 1969 was dismissed, affirming the findings of the trial court that Ambe Picture Palace is a joint family property. Hence these appeals by the 3rd set of defendants.

13.Heard the learned Senior Counsel for the appellants, Shri T.N.Maitin, Shri Ram Kishun Prasad, learned counsel for 6th set of respondents, Shri Shrinandan Prasad Singh, learned counsel for respondent 2nd set and Mr. Pushkar Narain Shahi, learned counsel for respondent 3rd set.

14. As is the case with many typical partition suits particularly of those business families, the proceedings in this case are also pending for the past half century. The structure of the family has already been indicated through the genealogical tree at the threshold of the judgment. The suit was filed for partition and separate possession of the properties held by the family. The suit was opposed by two sets of defendants. Their common plea was that the division of the family had already taken place. Apart from that , they laid exclusive claims, in respect of two Cinema Palaces. On the basis of the pleading before it, the trial court framed the following issues:

- “1. Is the suit as framed maintainable ?
2. Have the plaintiffs any cause of action for the suit ?
3. Is the suit bad for multifariousness ?
4. Has the suit been properly valued and court fee paid sufficient ?
5. Whether the family properties and business are still held in jointness by the plaintiffs or a partition has been effected by metes and bounds in the month of Jeth 1957 as alleged by defendants 6 and 12 ?
6. Is the Nilam picture palace at Barh a joint family business of the plaintiffs and defendant 1st to 5th party in partnership with others or it is a separate business of defendant no.6 as claimed ?
- Is this alleged partnership legal and valid ?

Is the partnership agreement barred by the principle of pavidlecto also ?

7. Is the cinema business of Ambay Picture Palace at Barauni joint family undertaking or it is separate business of defendant no. 12 as claimed ?

8. Was the business of Govt. grains stockiest at Barh a joint family business or it was the separate and personal business of defendant no. 12 as claimed?

9. Is the property going in the name of Sundari Devi defendant no.7 as per schedule no.5 of the plaint joint family property of the plaintiff and defendant 1st to 5th party ?

10. Is the Firm Hiralal Chandradeo at Dalsingsarai a joint family Firm of the plaintiffs and defendants 1st to 5th party?

11. Are the plaintiffs entitled to decree for partition as prayed for ?.What is the extent of their share in the partition claimed properties ?

12. Are defendants 19 and 20 entitled to any declaration or any other relief in this suit ?

13. Are defendants 1,6 and 12 liable to render account as claimed ?

14.To what exact relief or reliefs the plaintiffs are entitled ?

15. It is stated that about two hundred witnesses were examined on behalf of the parties. Voluminous documentary evidence was also adduced by both the parties.

16. The trial court repelled the contention as to the prior partition or separation of the properties and passed a preliminary decree, as prayed for. While the second set of defendants challenged the findings about the Neelam Picture Palace on which they laid exclusive claim, the third set of appellants here challenged the findings about Ambe Picture Palace, by filing appeals.

17. The learned Single Judge heard both the appeals together. There again, the plea raised by the defendants 2nd and 3rd set of defendants regarding prior partition was not accepted. When it came to the plea of self acquisition of Neelam Picture Palace and Ambey Picture Palace; the learned Single Judge found certain differentiating factors. It was found that Neelam



Picture Palace was held by a partnership firm in which not only the defendant 1st party but also the outsiders are the partners. Following the judgment of the Supreme Court in the case of Loonkaran Sethia –v- Mr. Irvan E.John & ors (A.I.R. 1977 S.C.336) and the judgment of this Court in Uma Shankar Bajaj & ors –v- Narain Das (A.I.R. 1983 Patna 329), the learned Single Judge took the view that where the business is carried out by any partnership firm, the subject matter thereof cannot be treated as joint family, particularly when, some of the partners are from outside the joint family. It was left open to the partners of the firms, to seek dissolution of the firm by filing a suit. It is brought to the notice of this Court during the pendency of the appeal, Title Suit No.38 of 1991 was filed in the Court of Subordinate Judge-II,Barh and preliminary decree was passed therein on 23rd December, 2009. The finding recorded by the learned Single Judge vis –a -vis the Neelam Picture Palace has become final and is not the subject matter of this appeal. The only controversy is about Ambe Picture Palace which is claimed by the 3rd set of defendants as their exclusive property.

18. The principal contention urged is that issue no.8 was not dealt with by the learned Single judge at all. However, a perusal of the judgment discloses that the contention of the 12th defendant was dealt with under issue nos. 7 and 8. While issue no. 7 is larger in scope, issue no.8 is a facet thereof. Obviously for that reason, the learned Single Judge did not feel it necessary to undertake discussion separately in respect of issue no.8.

19. The appellants i.e. 3rd set of defendants made an attempt to oppose the suit by raising the plea of prior partition but they have given up the same. Hence it has to be proceeded as though the family remained joint till the suit was filed. The only question that needs to be considered is as to whether Ambe Picture Palace was the exclusive property of defendant no.12 and his sons



i.e. appellants. The plea of defendant no. 12 was that he started his own business of a stockiest in contract with the government in 1944, and from the profits earned from that business, he purchased the land and constructed the Ambe Picture Palace. It is fairly well settled that once the jointness of the family is not disputed, the properties held by a co-parcener are liable to be partitioned. If one of the co-parceners raises the plea that he acquired the property shown in the schedule in a suit exclusively, the burden rest upon him to prove (a) that he was possessed of adequate re-sources to acquire the property and (b) he acquired it with clear intention to hold it to the exclusion of the joint family. Therefore, burden rested upon defendant no.12 to prove that (a) he had acquired himself or had the resources, to acquire the property and (b) he acquired Ambe Picture palace with clear intention to own it , to the exclusion of other members of the joint family. The evidence of Defendant no.12 as D.W.124 becomes relevant in this behalf.

20. In his examination in chief, he has stated that he discontinued study in Class VIII in 1944, under the fear of being arrested during the freedom movement, when he came to know about the warrant of arrest issued against him, and two years thereafter he started the business of stockiest of the government. In the cross examination, he admitted that he was only studying in VIII class in 1942. The age of a student who was studying in Class VIII would be hardly 13-14 years. Two years thereafter by 1944 the age of defendant no.12 would have hardly 16-17 years. The business of a stockiest particularly with the government is one of execution of agreement and he did not even attain the age of majority. He did not file any document or agreement, if any, executed between him and the government. In the cross examination it was elicited from him that the business required deposit of Rs. 5,000/- as security. The relevant

portion of his cross examination reads as under:

“On acceptance of the tender I an agreement was executed. I do not remember the month and season of 1944 when I executed the first agreement. In the agreement the first points (?) was Govt. of Bihar and the second points was Jugeshwar Prasad proprietor of firm Baijnath Sah Ramgulel Sah of Barh. As per agreement I had to deposit Rs. 5,000/- as security money. The money was deposited in National Saving Certificate. The National Saving Certificate issued were in my name personally and not as proprietor of the firm. The certificate were filed before the then Barh S.D.O. and they are still in his office. Two sureties had also to be given. The sureties were Ramchandra Prasad s/o Ram Pabitra Prasad Salimpur Barh and Om Prakash s/o Chhatu Sao of Mahalla Talimpur Barh. Both these sureties are alive. Neither of them had any business running in 1944. They had lands and houses.”

21. He did not even mention that he mobilized five thousand rupees from any particular source. A student, who did not even complete matriculation and was under threat of arrest, that too under an alien government just cannot be expected to enter into the business of stockiest with the same government, by making deposit of huge amount. He did not even indicate where from the amount of Rs.5,000/- was arranged. The falsity of his claim is evident from the cross examination contained in paragraph no. 78, which reads as under:-

“ Separate Registers of stocks were maintained godown wise. These godowns will (?) Registeries would show as to on which date or dates how much was the stock in particular godown. They would also record as to on which date or dates how much had been taken out. Godown Registers would also so where in which plot a particular godown is situate. I have not filed any of the godown Register in this suit since all have been stolen away. This theft took place 5/6 months back during the hearing of this suit. In all I had 5/6 godowns Registers with me then says 50/60 such Registers were with me. The number and pages of the Registers varied from 20-100. All these Registers had been kept in the office room of the mil godown. The godown had been locked some time back and no guard was kept. Some Registers were in the Almirah and some in boxes. The book was quite strong. My opposite party in the suit actually committed the theft through hired men. I do not remember the date and month of the theft. It was however early this

year (i.e. 1968).”

22. The rest of the cross examination proceeded on same lines.

Therefore, the trial court as well as learned Single Judge have concluded that 12th defendant i.e. appellant herein i.e. 3rd set has miserably failed to prove that Ambe Picture Palace is their self acquisition . Learned counsel for the appellants is not able to persuade us to take a different view.

23. We do not find any basis to interfere with the concurrent findings recorded in the suit and the first appeal. Letters Patent Appeals are accordingly dismissed.

24. Since passing of final decree has been delayed on account of pending L.P.As, we direct the trial court to expedite the process of passing the final decree and conclude the same within three months from the date of receipt of this judgment.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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