

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.198 of 2013

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Ram Layak Singh S/O Bala Singh (Deceased) Resident Of Village Narayanpur, P.S- Narayanpur, District- Bhojpur. **Appellant.**

Versus

1. Ram Jee Singh S/O Ram Sharan Singh (Deceased) Resident Of Village- Narayanpur, P.O- Narayanpur, P.S- Narayanpur, District- Bhojpur.
2. Gabudan Singh S/O Ram Sakal Singh Resident Of Village Narayanpur, P.O- Nrayanpur, P.S- Narayanpur, District- Bhojpur..... **Respondents.**

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

6 13-07-2015

Heard the learned counsel for the appellant in

support of this appeal.

The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit.

The suit was filed by the plaintiff for partition of the property purchased by him by sale deed dated 29.09.2001. By this sale deed (Ext.3/b) the plaintiff has purchased 4 decimal land of Plot No.2501 from Chhatrapati Singh. According to the case of the plaintiff, in short, one Chandrika Yadav had three sons namely Ram Sakal Yadav, Ram Saran Yadav and Nathu Yadav. Ram Sakal Yadav had two sons Gabudan Yadav @ Ramchandra and Nandji Yadav. Ram Saran Yadav had also two sons Ramjee Singh and Satyendra Singh (who according to the plaintiff had been traceless for last 8 years). The 3rd son Nathu Yadav had two



daughters Manju Devi and Genda Devi. It is the case of the plaintiff that the Plot No.2501 area 11 decimal was recorded in the revisional survey khatian in exclusive possession of Nathu Yadav and out of this 11 decimal, Ram Sakal Yadav did not get any share and only Nathu Yadav to the extent of 7 decimal and Ram Saran Yadav to the extent of 4 decimal had got their share. It is further case of the plaintiff that Nathu Yadav executed a gift deed in favour of one of his daughters namely Manju Devi transferring the entire 7 decimal land of his share in Plot No.2501. It is further case of the plaintiff that Manju Devi by sale deed dated 06.10.1999 (Ext.3/c) sold 4 decimal land to her sister Genda Devi and after the death of Genda Devi, the plaintiff has purchased this 4 decimal land through sale deed dated 29.09.2001(Ext.3/b) executed by Chhatrapati Singh who was husband of Late Genda Devi. The plaintiff has thus filed the suit claiming the relief of partition of this purchased 4 decimal of land out of 11 decimal.

The defendants filed their written statement contesting the claim and assertions of the plaintiff. It was the case of the defendants that Chhatrapati Singh (vendor of the plaintiff) was not the husband of Late Genda Devi and was therefore not entitled to her estate. It was further case of the defendants that Nathu Yadav alone was not entitled to the 11 decimal land of Plot



No.2501 which was recorded in the survey khatian in the name of Chandrika Yadav and all his three sons had got equal share in the same. It was further averred that Nathu Yadav was not entitled to 7 decimal of land in his share and he could not have been legally alienated the same by gift in favour of his daughter Manju Devi in the state of jointness. It was also the case of the defendants that the plaintiffs had not impleaded all the co-sharers (descendants of Chandrika Yadav) in the suit and further that there was no unity of title and possession between the parties with regard to the suit property.

Both the courts below have concurrently come to the finding that Chhatrapati Singh (vendor of the plaintiff) was not the husband of Late Genda Devi. It has been further found that the property belonged to Chandrika Yadav and was recorded in the name of Chandrika Yadav in the survey khatian(Ext.6/A) and there was no pleading or evidence on behalf of the plaintiff to establish partition between his three sons in the manner as propounded by him. Thus deciding all the issues against the plaintiff, the suit was dismissed. The appellate court, on reappraisal of evidence, has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.



The learned counsel for the appellant has firstly submitted that the findings by both the courts below on the issue of relationship between Chhatrapati Singh and Late Genda Devi is vitiated for non-consideration of the sale deed (Ext.3/c) in view of the provision as contained in Section 32(5) Evidence Act as well as Section 50 Evidence Act. It has been canvassed that this sale deed (Ext.3/C) has been executed by Manju Devi who is admittedly the sister of Genda Devi and she has described the purchaser Genda Devi as wife of Chhatrapati Singh in the sale deed. It has thus been argued that the finding by both the courts below that Chhatrapati Singh is not the husband of Genda Devi becomes vulnerable as the same has been recorded ignoring the material evidence on record. It has further been submitted that the defendant no.1 Ramji Singh has himself purchased three decimal of land from Manju Devi and has also admitted this fact in the written statement, as such this admitted fact of inter se transaction is sufficient to establish the partition in the family as pleaded by the plaintiff and the entitlement of Manju Devi, and in sequel, Late Genda Devi over 4 decimal of land in question at present. It has, thus, been posited that substantial questions of law arise for consideration in this appeal.

After perusal of the impugned judgments and

consideration of the submissions on behalf of the appellant, it is manifest that the plaintiff's basis of title over 4 decimal of land of Plot No.2501 is the sale deed dated 29.09.2001 (Ext.3/b) which has been executed by Chhatrapati Singh in favour of the plaintiff. The serious note of discord between the parties is the status of Chhatrapati Singh as husband of Late Genda Devi in view of the specific case of the plaintiff that after death of Genda Devi her husband Chhatrapati Singh inherited the property of Genda Devi and had executed the sale deed in favour of the plaintiff which he had inherited as such. The plaintiff in his deposition as P.W.1 has stated that the marriage of Chhatrapati Singh with Genda Devi took place in the registry office and he has seen the court papers regarding the marriage. However, Chhatrapati Singh in his deposition has stated that his marriage with Genda Devi took place at village-Narayanpur where at the time of marriage only the father of Genda Devi was present and no other relative was present. This witness has also expressed ignorance about Dhanwantri Devi who was admittedly the mother of Genda Devi and who was impleaded in the suit as defendant no.2 as widow of Nathu Yadav. The affidavit (Ext.X/1) of the father of Chhatrapati Singh has also been brought on record wherein the statement has been made that Chhatrapati Singh was married with Genda Devi



in a temple according to Hindu custom in presence of relatives of both the parties. The courts below have taken into notice these divergent evidence on the issue of marriage of Chhatrapati Singh with Genda Devi. The defendants, on their part, in support of their plea that Genda Devi was married with Uday Lal Yadav have examined the witnesses being near relatives including the maternal uncle of Genda Devi and other persons having special means of knowledge of the relationship besides adducing the certified copy of voter-list (Ext.D) wherein the husband name of Genda Devi has been mentioned as Udal Lal Yadav. Both the courts below have elaborately analyzed the oral and documentary evidence led on behalf of the parties on this issue, and thereafter, have come to the conclusion that Chhatrapati Singh (vendor of the plaintiff) was not the husband of Late Genda Devi.

With regard to the submission on behalf of the appellant on the basis of Section 32(5) of the Evidence Act, no pleading or evidence aliunde has been pointed out on behalf of the appellant to show that Manju Devi, who has executed the sale deed (Ext.3/c), is dead. The provision contained in Section 32 of the Evidence Act applies in cases in which statement of relevant fact has been made by a person who is dead or cannot be found. In the memo of this appeal also no averment regarding the death of

Manju Devi has been made. In view of the absence of the basic ingredient, this Court is not inclined to accept this submission on behalf of the appellant.

It has been found by both the courts below that there is no pleading or evidence regarding partition of among the three sons of Chandrika Yadav of 11 decimals land of Plot No.2501. The courts below have also found that 11 decimals of Plot No. 2501 has been recorded in the recent survey khatian (Ext.6/A) in the name of Chandrika Yadav and on this basis the case of the plaintiff that this 11 decimal was recorded in the survey khatian exclusively in the name of Nathu Yadav has been disbelieved. Even otherwise also the plaintiff has failed to substantiate his case that Ram Sakal Yadav was excluded for having any share in the 11 decimal land in which only the two sons namely Nathu Yadav to the extent 7 decimal and Ram Saran Yadav to the extent 4 decimal had got their share. During the course of submission also, no evidence on record could be pointed out to substantiate the manner of partition of 11 decimal of land as per the case of the plaintiff. In this backdrop, the learned courts below have rightly held that all the descendants of Chandrika Yadav were required to be made parties in this suit for partition filed by the plaintiff. The learned counsel for the appellant has laid

much stress on the purchase of 3 decimal of land by the defendant no.1 and has submitted that this being inter se transaction was sufficient to establish the manner of partition as pleaded by the plaintiff. However, the purchase of 3 decimal of land by the defendant no.1 from Manju Devi cannot per se lead to the inferences of exclusion of the share of the 3rd brother Ram Sakal Yadav in the 11 decimal of land of Plot No.2501 as in any view of the matter, the branch of Nathu Yadav was entitled to more than 3 decimals in its share out of 11 decimals. This Court, therefore, does not find any illegality in the conclusion by the courts below that the suit suffers from non-joinder of necessary parties in absence of cogent evidence on behalf of the plaintiff to establish the exclusion of branch of Ram Sakal Yadav from its share in the 11 decimals of land. It is also well settled that the plaintiff has to succeed on the strength of his own case and not on the weakness of the defendant. This Court has not been persuaded to take the view that the findings by both the courts below are unreasonable or perverse in any manner requiring interferences at the second appellate stage.

Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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