

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.475 of 1985

(Against the judgment and decree dated 29.06.1985 passed by 2nd Additional Subordinate Judge, Vaishali, Hajipur in Partition Suit No.71 /45 of 1982).

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Shail Devi & Ors

.... Defendants-Appellants

Versus

Chandreshwar Pd Singh & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Triloki Nath Maitin, Sr. Advocate
Mr. Rajeev Kumar Sinha, Advocate with him.

For the Respondent/s : Mr. Laxmi Kant Tiwary, Advocate
Mr. Ujjwal Kumar Sinha, Advocate
Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
C.A.V. JUDGMENT

Date: 09-02-2016

1. The defendants have filed this First Appeal against the judgment and decree dated 29.06.1985 passed by the learned 2nd Additional Subordinate Judge, Vaishali at Hajipur in Partition Suit No.71/45 of 1982 decreeing the plaintiff-respondent's suit for partition.

2. The plaintiffs-respondents filed aforesaid suit for partition of 1/4th share in Schedule I and II properties. The plaintiffs claimed the aforesaid relief alleging that one Amrit Lal Singh had 7 sons namely Parmeshwar Singh, Jagdeep Singh, Newaji Singh, Jadu Singh, Dhodha Singh, Thithar Singh and Tilleshwar Singh. Out of



them, Newaji, Jadu, Dhodha and Tilkeshwar died issueless in jointness. The remaining 3 sons of Amrit Lal Singh had 1/3rd share. However, Thithar Singh long ago separated himself by taking his 1/3rd share. Parmeshwar Singh had a son, Nandipat Singh. Plaintiff No.1 and defendant No.4 are sons of Nandipat Singh. Jagdeep Singh had a son, Gagandeo Narain Singh who had a son, Rajendra Prasad Singh who is defendant No.1 and the defendant Nos.2 and 3 are the sons of defendant No.1. The parties are still joint and there is unity of title and possession. Gagandeo Narain Singh was the karta as Nandipat died in the year 1944-45. Gagandeo continued as karta till his death and after his death, the plaintiff and the defendant separated their mess but there was no partition by metes and bounds.

3. The further case of the plaintiff is that the parties have joint family property in various villages and those are recorded jointly and also some separately in record of right and the ancestral properties have been detailed in Schedule I. One Bashisth Narain Singh has bequeathed his entire property in favour of Nandipat Singh and Gagandeo Narain Singh. Both of them got the Will probated. These properties are mentioned in detail in Schedule II. Now the plaintiff is residing at village Shahwazpur and there he is looking after the family property. The defendants 3rd party are the purchasers from the parties. The area which was sold by the parties may be adjusted in

their share.

4. The defendants-appellants filed contesting written statement. The main defence is that there had already been partition of some properties by sada kurra and prior to that, the ancestral properties were partitioned prior to old survey and again in 1948. Further, there was partition by a decree of Court in Partition Suit No.107 of 1951. After partition of the ancestral property, the defendants have acquired the properties which are also made subject matter of the suit. The wife of defendant No.1, Nonia Devi and mother, Most. Nainwati Devi had also acquired personal property which are also made subject matter of the suit. Therefore, the suit is not maintainable. There was separation between the brothers at the time of separation of Thithar Singh and thereafter there is no unity of title and possession. The defendants-appellants denied the kartaship of Gagandeo Narain Singh and the case of the plaintiff that Nandipat died in jointness in the year 1944-45. In fact, there was partition between the sons of Amrit Lal in the year 1893. Factually, Thithar Singh has taken his 1/3rd share long ago and then there was partition between the plaintiffs and defendants in the year 1948.

5. Further case of the defendants is that the lands of survey khata No.85 is the self-acquired property of Gagandeo which is recorded separately in his name. The lands of Khata No.247 and



248 are the self-acquired lands of Nonia Devi and Nainwati Devi which are recorded separately in their names. The defendants admitted that land of Khata No.485 has rightly been recorded in the name of the defendant as it is his self-acquired property which he acquired after separation. The lands of Khata Nos.86, 87 and 475 are joint property and recorded in the joint names. Likewise, the lands of Khata Nos.600 and 702 are the joint lands which have been recorded in the joint names. The defendants admitted that lands of Khata No.425(ka) is the land of the plaintiffs. The lands of Khata No.750, 754 and 755 are the self-acquired property of defendant Nos.2 and 3. The lands of plot Nos.112, 118 and 119 are the self-acquired property of Gagandeo Narain Singh which he obtained in partition from Court and those are recorded in his name. The defendants also admitted that the lands of Plot Nos.905 and 916 is auction purchased land of the plaintiff and defendant No.1 jointly wherein defendant No.4 has no share. The Plot No.646 and 1514, the leechi orchard is the self-acquired property of defendant Nos.2 and 3. The defendants 2nd party and defendant No.4 also filed written statement supporting the case of the plaintiff.

6. On the basis of the aforesaid pleadings of the parties, the learned Court below framed various issues. The issue No.3 relates to the question as to whether there was partition by metes and bounds in the year 1893 and 1948 as claimed by the defendant. Issue

No.4 is as to whether there is unity of title and possession between the parties.

7. The learned Court below on the basis of the materials and evidences available on record recorded clear finding that there was no partition as claimed by the defendants-appellants, therefore, there is unity of title and possession between the parties. Accordingly, the plaintiff's suit was decreed.

8. The learned senior counsel, Mr. T.N.Maitin appearing on behalf of the appellants submitted that in the body of the plaint, the plaintiffs stated that he has filed this partition suit for partition of property of one village but in the Schedule I, he has described the properties of more than one village. There is no pleading regarding acquisition of Schedule I land except the pleading with regard to some of the properties. However, evidences have been adduced by the plaintiff about the acquisition of the lands out of joint family fund. When there was no pleading the Court below could not have recorded the finding on the basis of evidence adduced by the plaintiff for which there was no pleading. So far Khata No.85 is concerned, it is recorded in the name of appellant's father in the khatian. The other sale deeds Exhibit B to B/13 are in the name of defendant Nos.1, 2 and 3 but the Court below has wrongly decreed the partition suit with respect to the properties covered under these 14 sale



deeds. Only khata Nos.86, 87 and 475 are the lands which are not purchased and those properties are jointly recorded. The lands of Khata Nos.248 and 246 are the purchased land of mother of the defendant No.1 and wife of defendant No.1 respectively. These purchases are of the year 1943, 1948, 1950, 1960, 1961, 1965, 1966 etc. Exhibit B/3 is of the year 1943. The learned counsel further submitted that the defendants pleaded that there was no partition but with respect to Schedule II property, the defendants alleged that if this property mentioned in Schedule Ii is partitioned, the defendant has no objection but the Court below on this ground held that the Schedule II is joint family property which is wrong. According to the learned counsel, the brother of the plaintiff who is defendant No.4 has been examined as D.W.24 who has clearly admitted that there was partition between the parties. P.W.11 also admitted that defendant No.1 was the teacher, therefore, there is separate source of income but the learned Court below wrongly recorded the finding that all the properties are joint family properties. The Court below has wrongly also did not rely on the partition by kurra. In fact, the defendants themselves have also partitioned their property in the year 1974. A petition was filed by them for separate mutation which has been produced and marked as Exhibit G but the Court below did not rely on the same. In no case, the properties acquired by a person after

separation/severance of status can be held to be the joint family property.

9. The learned counsel further submitted that the Court below wrongly placed reliance on Exhibit 3, Exhibit 6, Exhibit 5 series and Exhibit 8 in support of the finding that the parties are still joint although it is admitted fact that the defendants also acquired separate properties, the plaintiffs also acquired separate properties and admitted fact is that both the parties have sold many properties to third persons who are also party. The further admitted fact is that the parties are separate in mess since long and they were dealing the properties exclusively treating themselves as owner thereof but the Court below wrongly held that there was no partition. According to the plaintiff, there had been partition in the year 1893 and to prove this partition, the appellants produced various documents in the Court below to show the conduct of the parties i.e. since thereafter the parties were dealing with properties as their own properties. The learned counsel further submitted that the Court below has not properly appreciated the evidences oral as well as documentary. On these grounds, the learned counsel submitted that the appeal be allowed and the impugned judgment and decree be set aside and the plaintiff's suit be dismissed.

10. On the other hand, the learned counsel appearing



on behalf of the respondents submitted that all the properties in suit are the joint family property purchased by the karta Gagandeo Narain Singh out of the joint family fund, therefore, the learned Court below has rightly held that the properties are joint family property. The defendants failed to prove partition alleged by him and moreover, the plaintiffs produced several evidences Exhibit 3, postcard, Exhibit 1, sale deed, Exhibit 6, sudbharna deed showing jointness and Exhibit 5 series which are executed by both the parties in the year 1954-55. The R.S. khatyan, Exhibit 8 is in the joint names, therefore, the learned Court below considering all these evidences has rightly held that there was no partition. The learned counsel further submitted that there was sufficient nucleus and out of that, the properties which are acquired by Gagandeo Narain Singh in the name of his sons, wife or himself, the presumption will be that all these properties are the properties acquired out of the joint family. The defendants admitted that there was vast ancestral land as has been mentioned by the plaintiff in the schedule of the plaint. Further, there is no evidence adduced on behalf of the defendants-appellants in support of their case that the properties have been acquired out of the earning of defendant Nos.1, 2 or 3 or wife of the defendant No.1. The Court below has considered all these aspects of the matter and then held that the properties are joint family properties. So far kurra partition is concerned, the learned counsel



submitted that on the basis of this kurra, no finding can be recorded that in fact, there was partition and so far partition decree in the year 1951 is concerned, according to the learned counsel, nothing has been brought on record except the decree. The judgment of the Court below is based on the admissible evidences, therefore, the first appellate Court should not interfere in the findings of the lower Court. On these grounds, the learned counsel submitted that the First Appeal be dismissed with cost.

11. In view of the above rival contentions of the parties, the points arise for consideration in this First Appeal is as to “whether the plaintiffs have been able to prove that there is unity of title and that the properties standing in the name of the appellants are the acquisition made out of the joint family fund” or “whether there had already been partition between the parties and the properties standing in the name of the appellants are their self-acquired property?”

12. From perusal of the plaint, it appears that the plaintiffs have filed the suit for partition simpliciter. It is simply pleaded that the branch of the plaintiffs and the defendants 1st party did not separate and they remained member of the joint family. Gagandeo Narain Singh was karta and guardian of the family and Nandipat Singh died in the year 1944-45 in jointness. After death of



Gagandeo, the plaintiff and defendant separated in mess but the landed properties of the parties are still joint vide paragraph 5 of the plaint. In reply to this, the defendant at paragraph 14 of the written statement pleaded that there was separation of interest prior to cadastral survey in 1893 during lifetime of sons of Amritlal Singh. Thithar Singh separated long ago taking his 1/3rd share and the branches of Parmeshwar Singh and Gagandeo Narain Singh completely partitioned their ancestral land of village Chahuta in 1948. At paragraph 17 of the written statement regarding schedule II, it was stated that the said land was also partitioned partly and part lands were left joint in which the outsiders have also got share. In subsequent paragraphs of the written statement, the defendants-appellants have given details of the properties which are claimed by them as self-acquired property of the defendant Nos.1, 2, 3 and Nonia Devi and Nainwati Devi. In support of their respective pleadings, the parties have examined witnesses and have also produced documentary evidences.

13. It may be mentioned here that in schedule I, the land is about 48.63 acres which includes the ancestral land as well as the purchased lands. In schedule II, 53.47 acres land is there which is said to be the land given by Will to Nandipat and Gagandeo. P.W. 1 to 4 have only stated that the parties are still joint and the parties have



landed properties in different villages mentioned in their evidences. P.W.5 is the son of Thithar Singh who admitted the case that his father had separated taking 1/3rd share. P.W.6 is the plaintiff, Ram Pavitra Narain Singh. He has repeated the same thing as pleaded in the plaint in his evidence. In his evidence, he has denied the case of the defendant regarding previous partition. In his evidence, he also admitted that both the parties have sold many properties and the properties sold may be adjusted in the share of the parties who has sold the properties. The other witnesses examined by the plaintiff on the point of jointness or no partition are P.W.9, 11 who have only stated that the parties are joint and there has been no partition. The other witnesses of the plaintiffs are formal in nature who have proved the documents. These are the oral evidences produced by the plaintiffs. There is neither pleading nor any evidence to the effect that the properties which are purchased by defendant No.1, 2 and 3 and Nonia Devi and Nainwati Devi are the properties which have been acquired by the karta out of the joint family income or joint family nucleus.

14. From perusal of the evidence of P.W.11, it appears that he has clearly admitted that the defendant No.1 was the Headmaster of the school. It is the specific case of the defendant that properties described in the written statement in detail are the self-



acquired property. It is settled principles of law that when in a suit for partition a party claims that any particular item of the property is joint family property, the burden of proving that it is so rests on the party asserting it. To render the property joint, the plaintiff must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the properties possessed by the family is joint family property or that it was purchased with joint family funds, such as the proceeds of sale of ancestral property or by joint labour. None of these alternatives is a matter of legal presumption. It can only be brought to the cognizance of a Court in the same way as any other fact namely by evidence.

15. The Hon'ble Supreme Court in the case of **Mudigowda Gowdappa Sankh and others v. Ramchandra Revgowda Sankh, AIR 1969 Supreme Court 1076=1969(1) Supreme Court Cases 386** has held that the law on this aspect of the case is well settled. Of course, there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by



a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.”

16. In the present case, at our hand, the plaintiff in the plaint nowhere stated about the nucleus of the joint family property. It is simply stated that the parties have many landed properties described in various villages. In the schedule I of the plaint, the ancestral properties including the property purchased in the name of defendant Nos.1, 2, 3 and Nainwati Devi and Nonia Devi have been included. Nowhere either in the evidence or in the pleading, the plaintiff stated about what was the income from the ancestral property excluding the purchased property. It is the specific case of the appellant that almost all the schedule I lands are purchased land of the defendants. Only khata Nos.86, 87 and 475 are not purchased land rather these lands are jointly recorded. The lands of Khata No.248 is in the name of mother of the appellant No.1 whereas the lands of Khata No.246 is in the name of wife of defendant No.1-appellant. The other lands covered in 14 sale deeds are all in the name of the defendant Nos.1, 2 and 3. As



has been settled by the Supreme Court, there cannot be any presumption that because the properties were purchased during the period when there was no partition, it is the joint family property. It may be mentioned here that the sale deeds are from the year 1943 upto the year 1966. In the year 1943, the plaintiff's father, Nandipat Singh was alive. It is the specific case of the plaintiff that after death of Nandipat, Gagandeo became the karta. The question is how the property was purchased in the year 1943 by defendant No.1 through Exhibit B/3 in his own name as it is the specific case of the plaintiff that Nandipat died in the year 1944-45, therefore, at that time, Gagandeo was not the karta. Moreover, it is also not pleaded by the plaintiff that in fact, Gagandeo purchased the property in the name of his son or grandson. On the contrary, it is admitted by the plaintiff's witness, P.W.11 that defendant No.1, Rajendra Prasad was the Headmaster. There is no bar in acquisition of the property by a coparcener exclusively out of his own earning.

17. The plaintiff has produced Exhibit I to show that Gagandeo Narain Singh had purchased lands from Ranchandra Thakur on 26.05.1956 which is admittedly joint family property. So far this Exhibit I is concerned, it is admitted that it was in the name of Gagandeo Narain Singh and the defendant is not disputing that it is the separate property of Gagandeo. But the question is only because



this property is the joint family property, can it be presumed that all the other properties which are standing in the name of the defendants and/their mother and wife of defendant No.1 are joint family property. For that, the plaintiffs have to specifically plead and prove but certainly there cannot be any presumption particularly when the plaintiffs and the defendants herein are the fourth generation of the founder of the family i.e. the common ancestor, Amrit Lal Singh.

18. It is settled principles of law that the presumption of union is greatest in the case of father and sons. Stronger in the case of brothers than in the case of cousins and the farther you go from the founder of the family, the presumption becomes weaker and weaker. The reason is that brothers are for the most part undivided, second cousins are generally separated and third cousins are most part separated. Therefore, here in the present case, the presumption of jointness itself is very weak. The plaintiff neither pleaded nor produced any evidence in support of the fact that what was the area of the ancestral land and what was the nature and kind of the usufruct constituting nucleus from the income of the land. Here, the nucleus is not admitted. Schedule I contains the lands most of which are the purchased lands in the name of the defendants. Nainwati and Nonia are not made parties to the suit. They are not coparcener. On the ground that all the properties are joint family property that property



standing in the name of Nonia Devi or Nainwati Devi cannot be presumed to be the joint family property. It is not the case of the plaintiff that the joint family or the karta purchased the property in the name of either his mother or his wife. Unless a declaration is made to this effect, the property standing in the name of the aforesaid two ladies who are not coparceners cannot be partitioned.

19. The plaintiff has produced a postcard which has been marked as Exhibit 3. This letter has been written by Gagandeo Narain Singh in the year 1975 to the plaintiff narrating his anxiety to get all the lands of the family partition. On the basis of this postcard also, it cannot be presumed that all the properties includes the property which are self-acquired property. Admittedly, Schedule II which are the Will property of both the parties has not been partitioned.

20. From perusal of the impugned judgment, it appears that the learned Court below did not consider either the pleadings or the settled law of the Supreme Court or the evidences adduced by the plaintiff and held that it is for the defendant to prove that from where the properties were acquired by the defendants. The Court below did not notice that all the sale deeds are in the name of the aforesaid defendants and/mother of wife of defendant No.1. In such circumstances, the initial burden is on the plaintiff to prove that these



properties are acquired out of the income from the joint family nucleus. Unless this onus is discharged, there is no question of proving by the defendant about self-acquisition arises. As stated above, neither there is pleading nor there is evidence regarding nucleus or the income of the joint family so as to acquire those properties by the joint family. On the other hand, it is admitted that defendant No.1 was the Headmaster of the school, therefore, he had separate source of income. If the plaintiff would have pleaded regarding acquisition by the joint family, the defendants could have shown that from where he got the source of consideration amount but this was not the issue before the Court nor any evidence was adduced but the Court below placed wrong onus on the defendants.

21. Further, from the judgment of the Court below, it appears that the Court below held that in the year 1943, the defendant No.1 was minor and likewise, his two sons were also minor at the time of acquisition of the property. So far these presumptions of the learned Court below, it may be mentioned here that nowhere in the registered sale deed, it is mentioned that the sale deed has been executed in favour of a minor. The purchasers are shown as the major persons. The Court below on the basis of the conjectures and surmises held that it is not possible that minors could have purchased the property. Further, it is not the case of the plaintiff that in the year the

properties were acquired either the defendant No.1 or the defendant No.2 or the defendant No.3 were minors and the consideration amount was provided by Gagandeo Narain Singh out of the joint family nucleus.

22. From perusal of the impugned judgment, it further appears that the Court below held that the defendants failed to show that from where Nonia Devi and Nainwati Devi got consideration amount has not been disclosed nor anything has been produced by the defendant to show that those properties are the acquired property of the two ladies, therefore, are their shreedhan. So far this approach of the Court below, in my opinion, is wrong because the ladies are not coparcener. There is no pleading nor any evidence adduced by the plaintiff to show that the properties have been purchased by the joint family property or by Gagandeo or by defendant No.1 out of the joint family nucleus.

23. It is admitted case of the parties that both of the parties have sold many properties in favour of third persons who are defendants 3rd party in the suit. It is admitted by the plaintiff in the plaint itself about this transfer. The plaintiff also admitted that Thithar Singh had already separated by taking 1/3rd share. The defendants also admitted this fact that Thithar Singh had taken 1/3rd share and it is further specifically pleaded that at that time the other sons also

separated. Since it is the plaintiff's case which is admitted by the defendant about separation of Thithar, the family being coparcenary family ceased. According to the defendants, this separation took place in the year 1893. It is not the case of the plaintiff that after 1893, Thithar Singh separated.

24. The Hon'ble Supreme Court in the case of **Bhagwan Dayal v. Mst. Reoti Devi, AIR 1962 Supreme Court 287** has held that "the general principle is that every Hindu family is presumed to be joint unless the contrary is proved; but this presumption can be rebutted by direct evidence or by course of conduct. There is no presumption that when one member separates from others, the latter remain united; whether the latter remain united or not must be decided on the facts of each case. To these it may be added that in the case of old transactions when no contemporaneous documents are maintained and when most of the active participants in the transactions have passed away, though the burden still remains on the person who asserts that there was a partition, it is permissible to fill up gaps more readily by reasonable inferences than in a case where the evidence is not obliterated by passage of time."

25. Here, it is admitted case that Thithar separated long ago. There cannot be any presumption under law that the other brothers remained joint or that the coparcenary was not disrupted. It is



the case of the defendant that there was disruption in the year 1893. Admittedly, this period is very old transaction and no document is available. It is settled principles of law that if properties were not partitioned then the same can be partitioned at any stage subsequent to the disruption of the coparcenary status. Now, if the separation according to the plaintiff, no year has been mentioned but according to the defendant, it was in the year 1893, then this separation can be presumed considering the subsequent conduct of the parties. As stated above, the plaintiffs admitted that both the parties sold many properties. Admittedly, the parties acquired properties in the name of the defendant Nos.1, 2 and 3. The lady members also acquired separate property in their own name.

26. A Division Bench of this Court in the case of **Arjun Mahto and others v. Monda Mahatain and others, AIR 1971 Patna 215** has held that if separation in mess, business, cultivation are since long and the parties are acquiring properties independently and selling the properties treating the same to be their own property since long may not if taken separately constitute partition but the cumulative effect thereof certainly would lead to presume that there had been partition between the parties.

27. Here, in the present case, the Court below in the impugned judgment held that the plaintiff has to prove that the family



is joint and Gagandeo Narain Singh was the karta and if it is proved by the plaintiff then the defendant has to prove that the properties have been acquired by the defendants without the aid of the joint family fund. So far this observation/approach of the Court below is concerned, in my opinion, it is contrary to law settled by the Supreme Court. There is no bar to acquire property by a coparcener separately it is for the plaintiff to plead and prove that the property has been acquired out of the nucleus of the joint property income.

28. It is the case of the defendant that after separation, these properties have been purchased by the defendants in their own names. The Hon'ble Supreme Court in the case of **M. N. Aryamurthi and another (In both the Appeals) v. M. L. Subbaraya Setty, AIR 1972 Supreme Court 1279** has held that "if one of the members remains in possession of the entire properties of the family even after severance in status, there is no presumption that the property, which is acquired by him after severance of the status, must be regarded as acquired for the family." In the present case, as stated above, a simple suit for partition has been filed alleging that there has been no partition although it is admitted that there was severance of coparcenary status since long ago as Thithar Singh separated by taking 1/3rd share long ago.

29. So far the partition of schedule II property is



concerned, the appellants did not dispute the fact that it was the property got by them through Will which was probated. However, it is not the case of the plaintiff that out of the income of this property, the defendants acquired Schedule I property. This property is not ancestral property rather it was the property of Gagandeo and Nandipat. Further, the defendants have produced Exhibit H which is a decree passed by the Court in partition suit of the year 1951. However, it is clear that the suit was filed for partition and final decree was passed. The Court below rejected this Exhibit H on the ground that the plaintiff has stated that he had no information about this partition suit. The Court below also held that there is no proof that pursuant to the decree possession was delivered. The Court below also said that D.W.19 in his evidence stated that he is unable to say whether notice was served on the plaintiff or not, therefore, this Exhibit H is self-created document. In my opinion, again, the Court below approached the case in wrong angle as the decree is the document produced by the defendant which is the public document which was the act of the Court. So far this decree is concerned, the plaintiff nowhere challenged the same.

30. It may be mentioned here that in Exhibit H, the final decree by which property has been partitioned and whether the present suit properties have been partitioned or not is not clear.

However, it appears that there was some partition between the parties.

It is the case of the appellant that if schedule II property is partitioned he has got no objection because it is the property which they got through Will. Further, the specific case of the defendant is that in the year 1948, there was complete partition and in support of the same, kurra was produced. From perusal of this kurra, I find that on the basis of this document, no categorical finding can be recorded that there was partition between the parties. However, so far the properties which are standing in the name of the defendants and/the daughter or wife of defendant No.1 are concerned, the plaintiffs failed to prove that those properties are the joint family properties acquired out of the joint family nucleus.

31. In view of my above discussion, I find that the plaintiffs are entitled to partition only with respect to the joint family property acquired by both the parties in their joint names and the Schedule II property which Gagandeo and Nandipat got through Will. The plaintiffs are not entitled to partition the properties acquired by the defendants by Exhibit B series i.e. Exhibit B to B/13. These properties are the self-acquired properties of the defendants-appellants. The findings of the Court below on these points are therefore, hereby reversed.

32. In the result, this appeal is allowed in part and the

judgment and decree of the trial court is hereby modified and the plaintiff's suit for partition is decreed in part as indicated in the preceding paragraphs. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

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