

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 2114 of 2015

IN

Civil Writ Jurisdiction Case No 3583 of 2011

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Laxmi Narayan Singh S/o Late Hardeo Singh R/o Village Chakpul, P.O. Mittanchak, P.S. - Gopalpur (Gaurichak), Dist. - Patna.

.... Appellant/s

Versus

1. Basant Singh S/o - Late Hardeo Singh
2. Amit Kumar S/o - Sri Basant Singh
3. Sangam Kumar S/o - Sri Basant Singh All R/o - Village - Chakpool, P.O. - Mittanchak, P.S. - Gopalpur (Gaurichak), Distt. - Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Syed Arshad Alam, Prabhat Ranjan Singh, Pravin Kumar Singh, Alok Kumar, Fakhruddin Ali Ahmad & Deovind Kumar Singh, Advocates

For the Respondent/s : Mr Shashi Shekhar Dwivedi, Sr Advocate with Mr Devi Das Srivastava, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 22-06-2016

The present intra-Court appeal, under Chapter 10 of the Patna High Court Rules, arise out of judgment and order dated 23.09.2015 passed by learned Single Judge of this Court in CWJC No 3583 of 2011 (*Laxmi Narayan Singh –Versus- Basant Singh & Others*) whereby the writ petition was dismissed.

2 The writ petitioner is the appellant. The respondents have appeared. Heard Shri Syed Arshad Alam, learned counsel for

the petitioner-appellant and Shri Shashi Shekhar Dwivedi, learned Senior Counsel for the respondents. In the writ petition, the challenge was to an award dated 05.12.2003 passed by the Lok Adalat, Patna in Case No 262 of 2003. The learned Single Judge, noticing the facts in dispute, declined to interfere with the award.

3 As the matter has been argued at length by Mr Syed Arshad Alam, we may, once again, note the salient facts.

4 There was a family consisting of Hardeo Singh and his two sons Laxmi Narayan Singh, the petitioner-appellant and Basant Singh, one of the respondents and their sisters. It is not in dispute that a partition suit was instituted in the Civil Court, Patna being Title Partition Suit No 592/68 of 1988/1988 which was ultimately compromised and ended in compromise judgment and decree dated 10.04.1989. In so far as material to this litigation, as per the compromise partition decree from the joint family immovable properties, Hardeo Singh was allotted about 4 bighas of land whereas the sisters relinquished their share in favour of the two brothers and, accordingly, the two brothers got 11 bighas of land each. Thus, upon partition, joint family status came to an end. It is alleged on behalf of petitioner-appellant that on 24.06.2001, there was recorded a memorandum of partition having taken place as between Hardeo Singh, one of his sons Laxmi Narayan Singh and the sisters in respect



of the 4 bighas of land that was received by Hardeo Singh as his exclusive property in the earlier Court partition. Noticeably, the other brother Basant Singh was not even made a party to this so-called memorandum of partition. It appears, on 23.09.2003, another memorandum of partition was recorded, this time as between the father Hardeo Singh, Basant Singh and his two minor sons, namely, Amit Kumar and Sangam Kumar, who are also respondents in the writ petition. Under this memorandum of partition, the father Hardeo Singh, being the grandfather of Amit Kumar and Sangam Kumar, agreed to give the entire property to the two grandsons aforesaid. On basis of this memorandum of partition of the year 2003, the matter ended in a compromise order recognizing the transfer of land from the grandfather Hardeo Singh to his grandsons Amit Kumar and Sangam Kumar. This was award dated 05.12.2003. Petitioner-appellant urges that he was unaware of this collusive memorandum of partition and the award based thereon. It is not in dispute that in 2007, one of the sisters filed a suit, inter alia, to declare the award of the Lok Adalat to be vitiated and claiming right in the property of her father. Petitioner-appellant was a party to the said suit and also filed written statement supporting the plaintiff. Apparently realizing that in terms of Section 22E of the Legal Services Authority Act, 1987 (for brevity, *the Act*), it is in 2011 that the present writ petition was filed challenging the

award of the Lok Adalat. The learned Single Judge was of the view, and rightly so, that no such challenge would be maintained.

5 We may only add to it that from the facts noted above, the first thing to be noticed is that none of the parties dispute the Court partition of the year, 1989 wherein the joint family status stood disrupted and about 4 bighas of land was absolutely individually allotted to the father Hardeo Singh though it belonged to joint family property. Initially, upon complete partition having been taken, the status of joint family property came to an end. It became individual property of Hardeo Singh. He could deal with it in any manner he liked. No other person had any right therein. Then, for the petitioner-appellant to plead that the property became subject matter of partition in 1991, is not understood. Moreover, the said memorandum of partition dated 24.06.2001 cannot be taken to be valid inasmuch as if it was joint family property then the coparcenery that is Basant Singh was missing from it. This partition was taking place prior to 2005 when the Indian Succession Act was amended. The sisters had no right in the property not being coparceners. It is not explained as to why the brother Basant Singh who was, if the property was joint family property having equal interest to that of the petitioner-appellant, kept out. This memorandum of partition was not registered. It, not joint family property, we do not understand how it can be



partitioned. If at all it could be partitioned to the extent that the father, who was the individual independent owner of the property, gave up all his rights in the property. If at all, it would be a gift and if it was a gift of immovable property of the value in excess of Rs 1 lac, the same can only be made by a registered document which never came into existence. Thus, no property in the land of Hardeo Singh stood transferred to any person. That being so, the award by the Lok Adalat being independent of those transactions in which father Hardeo Singh joined cannot be impeached. If the petitioner-appellant has any grievance then it is for the petitioner-appellant to find ways and means to challenge and get rid of the award but so long as Section 22E of the Act is there, the award cannot be challenged by the petitioner-appellant in a proceeding before this Court.

6 There is yet another issue why we are not inclined to entertain this appeal. It was undoubtedly the property of the father Hardeo Singh, which he was free to deal in any manner he liked on partition and receiving of the properties, amongst him, his sons and daughters. He let go his properties to his grandsons. Grievance, if any, can be made by Hardeo Singh himself but none other can challenge this transaction. They have neither locus standi nor any interest in the said property. We may also notice that the father Hardeo Singh, during his lifetime, having died in 2009, never

challenged the award of the Lok Adalat in which he was party. That being so, the very maintainability of the writ petition becomes circumvent.

7 In view of the aforesaid, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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