

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.394 of 2013

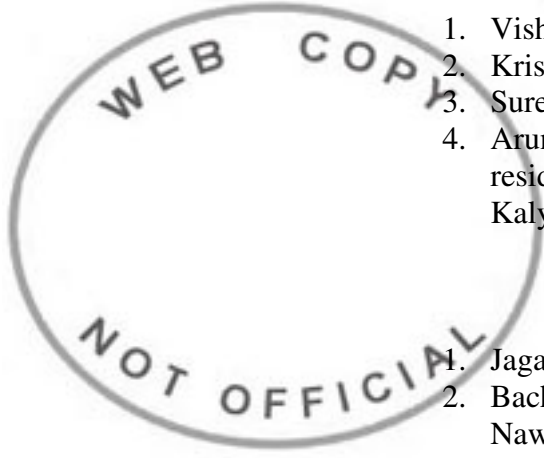
- =====
1. Vishwanath Singh
 2. Krishna Singh
 3. Suresh Singh, sons of Late Sheoraj Singh
 4. Arun Singh, son of Late Narad Singh, son of Late Sheoraj Singh, resident of Village Darmaha Tola Bhusaulawa, P.O. Rajpur, P.S. Kalyanpur, District East Champaran at Motihari
- Defendant Nos. 3 to 7/Appellants 2Ka, 3 to 5

.... Appellants

Versus

1. Jagarnath Tiwari, son of Deoraj Tiwari
2. Bachcha Tiwari, son of Jagarnath Tiwari, resident of Sagar Tola Nawada, P.O. Damodarpur, P.S. Pipra, District East Champaran
3. Chanda Devi, w/o Baleshwar Thakur, d/o Jagarnath Tiwari of Tenua, P.O. Tenua, P.S. Kalyanpur, District East Champaran Plaintiffs
- Respondent 1st party
4. Hari Narayan Singh
5. Laxmi Narayan Singh, both sons of Late Ramphal Singh
6. Shambhu Singh
7. Prabhu Singh
8. Umesh Singh
9. Naresh Singh
10. Ashok Kumar, all sons of Hari Narayan Singh
11. Om Prakash Singh @ Mantu Singh, son of Laxmi Narayan Singh, Nos. 4 to 11 residents of Darmaha Tola Bhusaulawa, P.O. Rajpur, P.S. Kalyanpur, District East Champaran
12. Antu, minor son of Laxmi Narain Singh, residents of Darmaha Tola Bhusaulawa, P.O. Rajpur, P.S. Kalyanpur, District East Champaran, through Sri Akhtar Hussain Rizvi appointed GAL by the court Defendants 1, 2, 8 to 14 of defendant 1st set/ respondent 2nd set
13. Gautam Singh, s/o Sukhdeo Singh, residents of Village Darmaha Tola Bhusaulawa, P.O. Rajpur, P.S. Kalyanpur, District East Champaran
14. Sushila Devi, w/o Jai Narain Tiwari, d/o Shukdeo Singh of Village Chiutaha, P.O. Chiutaha, P.S. Kotwa, District East Champaran
15. Shanti Devi, w/o Lalbabu Thakur, d/o Sukhdeo Singh of Village & P.O. Mishraulia, P.S. Chiraiya, District East Champaran
16. Kanti Devi, w/o Dinesh Singh, d/o Shukdeo Singh of Village 7 P.O. Ahiraulia Ojha Tola, P.S. Chakia, District East Champaran Defendants 2nd Set / Respondent 3rd Set
17. Parmshankar Singh,
18. Chandan Singh, both sons of Late Narad Singh, resident of Village Darmaha Topla Bhusaulwa, P.O. Rajpur, P.S. Kalyanpur, District East Champaran Appellant 2 Kha, @Ga/ Respondent 4th Set
19. Ramawati Devi, w/o Sri Kant Singh, D/o Late Narad Singh of Village Madhopur Harani, P.S. Sahebganj, District Muxaffarpur
20. Manju Devi, w/o Late Hardeo Singh, D/o Late Narad Singh, of Village Daramaha, P.S. Kesharia, District East Champaran
21. Kasruna Devi, w/o Anil Singh, D/o Late Narad Singh, of Village Harazi, P.S. Sahebganj, District Muzaffarpur

.... Respondents



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Appearance :

For the Appellant/s : Mr. Yashraj Bardhan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-03-2016

Heard learned Counsel for the appellants.

2. Some of the defendants in the suit are the appellants in this appeal against the judgment and decree of affirmance granting the decree to the plaintiffs for partition after declaring that the earlier decree in Partition Suit No. 88 of 1988 would not be binding upon the plaintiffs.

3. The plaintiffs filed the suit for declaration that the decree passed in the earlier Partition Suit No. 88 of 1988 was not binding upon the plaintiffs and further for partition of the share of the plaintiffs in the suit property.

4. The facts are not in dispute that there were three brothers namely Ramphal, Ram Autar and Sheoraj. The descendents of Sheoraj are the present appellants, whereas the descendents of one of the deceased daughter of Ramphal were the plaintiffs in the suit. It is also not in dispute that the remaining third brother Ram Autar died issueless. The defendants contested the claim of the plaintiffs on the ground that there had earlier been partition in the joint family sometime in the year 1961 and thereafter all the three brothers separated in mess and residence and started cultivating the joint family property according to the convenience. It was also the case of the defendants that they filed a suit for partition bearing Partition Suit No. 88 of 1988 for partition, which was decreed after declaring that the share of Ram Autar had devolved upon

his brother Sheoraj as there was a reunion between Ram Autar and Sheoraj.

5. The trial court returned the finding on issues in favour of the plaintiffs and granted the decree. The appellate court below on reappraisal of evidence concurred with the findings of the trial court.

6. Learned Counsel for the appellants while criticizing the judgment of both the courts below has submitted that both the courts below have erred in law in not appreciating that there had been disruption of joint status among the three brothers after they separated in mess and business and also started cultivating the lands separately by coming in possession. It has been further contended that the present suit is a collusive suit filed by the plaintiffs in collusion with the sons of Ramphal as those sons were parties in the earlier Partition Suit No. 88 of 1988 and they did not disclose that these plaintiffs were also necessary parties. It has been strenuously canvassed that the finding in the earlier suit has been recorded that the share of Ram Autar has devolved upon Sheoraj. The learned Counsel for the appellants, however, has accepted that there was no dispute that Ramphal had a daughter Prabhawati Devi, whose descendents are the present plaintiffs. It has also been accepted that Ram Autar died in the year 1988, whereas Ramphal died in the year 1973 and the remaining brother Sheoraj died sometime in the year 2005, during pendency of the appeal in the court below. The learned Counsel for the appellants has also submitted that after reunion there was no necessity for partition by metes and bounds and reunion can be possible even when the parties are separate by convenience. No other submission has been made on behalf of the appellants.



7. After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the status of the present plaintiffs being the descendents of the daughter of Ramphal is not in dispute. It is also not in dispute that the three brothers Ramphal, Ram Autar and Sheoraj were members of the joint family holding the property in joint. It is, however, the case of the defendants that there had been separation in mess and business sometime in the year 1961 and thereafter the joint status amongst the three brothers disrupted. Both the courts below have taken into notice the averments in this regard made in para 6 of the written statement and have come to the conclusion that the same does not establish complete disruption of the joint status of the family amongst the three brothers and at the most it only shows that there was separation in mess and business and the joint family land was being separately cultivated by the three brothers for convenience. The fact also cannot be ignored that the present appellants themselves had filed the Partition Suit No. 88 of 1988 for partition of the family property by metes and bounds. The filing of the said suit itself is an admission of the fact that there had been no complete disruption of joint status between the parties till 1988. The fact is also admitted that Prabhawati Devi, daughter of Ramphal, or her descendents were not impleaded as parties in the said suit although the fact is not in dispute that Prabhawati Devi died after the death of Ramphal.

8. The Courts below have considered the evidence and have scrutinized the same for coming to the conclusion that the plaintiffs are not bound by the decree passed in the earlier Partition Suit No. 88 of 1988 and they are also entitled for their share in the suit property. This

Court during the course of submission has not been persuaded to find unreasonableness or perversity in the same in any manner. The submission on behalf of the appellants amounts to reappreciation of evidence for taking another view of the matter, but such course is not possible in the second appellate jurisdiction. These principles in this regard have been laid down by the apex court in the case of Damodar Lal vs. Sohan Devi, 2016(3) SCC 78.

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

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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