

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.716 of 1976

Against the judgment and decree dated 20.07.1976 passed by 3rd Additional Subordinate Judge, Gopalganj in Partition Suit No.115 of 1971/06 of 1975

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Sardha Devi & Ors.

.... Defendants-Appellants

Versus

Most. Panmati & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellants : Mr. Raju Giri, Advocate.
Mr. Santosh Kumar, Advocate.

For the Respondents : Mr. Ranjan Kumar Dubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date:19-06-2017

The defendants have filed this first appeal against the judgment and decree dated 20.07.1976 passed by the learned 3rd Additional Subordinate Judge, Gopalganj in Partition Suit No.115 of 1971/06 of 1975 whereby the plaintiff-respondent's suit has been decreed to the extent of his 1/24th share in Schedule I of the plaint and 1/12th share in Schedule II and 1/6th share in Schedule III & IV.

2. The plaintiff-respondent claimed the aforesaid relief alleging that the common ancestor Abilakh Bhagat had two sons namely Niranjan Bhagat and Ram Narayan Bhagat. Niranjan Bhagat had three sons namely Indrasan Bhagat, Sahdeo Bhagat and



Ramawtar Bhagat. Indrasan Bhagat is defendant no.7 whereas Ramawtar Bhagat is defendant no.1. Sahdeo Bhagat died during lifetime of his father leaving behind widow Most. Sarli Kuer. Ram Narayan Bhagat also died leaving behind his sons namely Brahmdeo, Ramraj and Ram Raksha. Ram Raksha is defendant no.12. The rest two sons of Ram Narayan died in jointness. Defendant nos.13 and 14 are sons of Ram Raksha (defendant no.12) whereas defendant nos.8 to 11 are sons of defendant no.7.

3. The further case is that the two brothers Niranjana and Ram Narayan separated according to convenience after death of their father. They were cultivating some lands jointly and some lands separately. One Kulanjan Kurmi was their co-sharer. They partitioned their lands with him and came in separate possession. The lands allotted to both the brothers Niranjana and Ram Narayan were in possession jointly which are mentioned in Schedule I of the plaint which is the ancestral land.

4. The plaintiff further pleaded that Sahdeo Bhagat died issueless leaving behind widow Sarli and Ramawtar (defendant no.1) married with this Most. Sarli. After the death of Niranjana the defendant no.7 separated from his brother Ramawtar (defendant no.1) about 20 years ago in mess and business according to their convenience. Since Niranjana Bhagat was heavily indebted he



executed a farji and benami sale deed in the name of his bahnoi Ram Rekha Bhagat in 1935 to defeat the demand of the creditors. However, the possession of the land remained with Niranjana and after his death it came to the possession of the parties. The sale deed remained with Niranjana Bhagat. Subsequently after the death of Ram Rekha Bhagat, his son Harihar executed a laddavi in the name of Indrasana and Ramawtar which is also joint property. Niranjana Bhagat sold 15 katha 7 dhoor which is mentioned in Schedule V of the plaint to the plaintiff and delivered possession and, therefore, this property is the self-acquired property.

5. The further case is that Ramawtar had two wives. The plaintiff Chhatu Singh is the son through Most. Sarli and defendant nos.2 to 4 are sons of Ramawtar through the other wife Bahuri. The ancestral lands are very fertile and from the savings of the income some properties were acquired by sale and jarpesgi which are described in Schedule II & III of the plaint. The plaintiff and the defendants are members of the joint family and defendant no.1 is the karta. The immovable property of the plaintiff and defendant nos.1 to 4 and 6 has been mentioned in Schedule IV of the plaint. Since the land purchased by plaintiff from Niranjana Bhagat mentioned in Schedule V is included in Schedule I, the partition may be effected excluding the said property. Accordingly, the plaintiff claimed the



aforesaid share.

6. On being noticed defendant no.1 filed contesting written statement. The main defence is that there is no unity of title and possession between the parties. The plaintiff has no concern with the family of defendant no.1 and so he has no share in the property. The plaintiff is not the son of defendant no.1 nor he has got any concern with defendant no.1. At the time of death of Sahdeo, his widow Most. Sarli was a young lady. In 1947 Niranjana died leaving behind two sons Indrasana and defendant no.1 and Most. Sarli (widow of Sahdeo Bhagat). At the time of death of Sahdeo Bhagat, the defendant no.1 was a minor boy. It is correct that after death of Niranjana this defendant no.1 and Indrasana separated among themselves but the ancestral property was not partitioned by metes and bounds. Therefore, in Schedule I Indrasana has got half share and the remaining half share belonged to this defendant no.1.

7. The further defence is that the plaintiff, Chhatu Singh was born to Most. Sarli in the year 1946 through Indrasana Bhagat. Most. Sarli had illicit connection with Indrasana Bhagat (defendant no.7). The sale deed in favour of plaintiff by Niranjana is forged and fabricated document. The defendant no.1 was married only once with his wife Bahuri Devi and defendant nos.2 to 4 are sons of Bahuri Devi through this defendant. The Schedule I properties are the self acquired



property of defendant nos.1 and 7. The lands were not fertile and there was no saving. This defendant acquired the lands out of his own money by purchase or by jarpesgi. Therefore, the plaintiff has got no share in the suit land. Most. Sarli and the plaintiff are residing with Indrasan Bhagat and Indrasan Bhagat got the present suit filed. The other allegations made in the plaint were denied by this defendant no.1.

8. On the basis of the above pleadings of the parties the learned trial court framed the following issues:-

- (i) Is the suit, as framed, maintainable?
- (ii) Has the plaintiff got a valid cause of action for the suit?
- (iii) Is the suit barred by the law of limitation?
- (iv) Is the suit bad for non-joinder of the parties?
- (v) Is the court fee paid sufficient?
- (vi) Is the plaintiff, the son of Ramautar Bhagat, the defendant no.1?
- (vii) Is the property mentioned in Schedules 1 to 4 or the plaint the joint family property of the parties?
- (viii) Is there any unity of title and possession between the parties over the suit property?
- (ix) Is the plaintiff entitled to a decree for partition of the suit land, if so, to what extent?
- (x) To what relief or reliefs, if any, is the plaintiff entitled?

9. After hearing the parties the learned trial court came to the conclusion that plaintiff is the son of defendant no.1, Ramawtar. The court below also recorded finding that Schedule I properties are the joint family property of the parties and not self-acquired property



of defendant nos.1 and 7. The learned trial court also found that Schedule III property is also joint family property and there is unity of title and possession over the suit land between the parties and accordingly, decreed the plaintiff's suit in its entirety.

10. The learned counsel Mr. Raju Giri for the appellants submitted that the learned trial court has misappropriated the evidence and has wrongly recorded the finding that the plaintiff, Chhatu Singh @ Bhagat is the son of defendant no.1, Ramawtar Singh. In fact he is the son of Indrasan Bhagat, defendant no.7. According to the learned counsel, sufficient reliable evidence has been produced by the appellants to show that plaintiff is not the son of defendant no.1.

11. On the other hand, the learned counsel Mr. Ranjan Kumar Dubey appearing on behalf of the plaintiffs-respondents submitted that the learned trial court has appreciated the oral and documentary evidences minutely and then has recorded the finding regarding parentage of the plaintiff, therefore, the finding needs no interference. On these grounds, the learned counsel submitted that the first appeal be dismissed.

12. The genealogy stated by the plaintiff is admitted by the defendants. The only difference between the parties is whether the plaintiff, Chhatu Singh is the son of defendant tno.1 or is the son of Indrasan Bhagat, defendant no.7.



13. In view of the above submissions of the parties and the real controversy between the parties, the only point arises for consideration in this first appeal is whether the plaintiff is the son of defendant no.1 (original appellant no.1) or is the son of defendant no.7 (original respondent no.2)?

14. It is admitted fact between the parties that Sahdeo died issueless leaving behind his widow. The property of Niranjana Bhagat is to be divided between the branches of his two sons i.e. branches of Indrasan Bhagat and branches of Ramawtar Bhagat. Indrasan Bhagat is defendant no.7 and Ramawtar Bhagat is defendant no.1. Plaintiff is the son of Sarli Devi i.e. widow of Sahdeo. According to the plaintiff Chhatu Singh, he is the son of Ramawtar Singh whereas according to Ramawtar Singh, plaintiff Chhatu Singh is the son of Indrasan Bhagat. It may be mentioned here that the defendant no.1 claimed that all the properties mentioned in Schedule I are self acquired property of defendant no.7 and defendant no.1 and not the joint family property. This was one of the issues in the trial court. However, the trial court held that the property is the ancestral property and not the self acquired property. In such circumstances, this issue was also important issue because once it is held that it is self acquired property of defendant nos.7 and 1 then plaintiff will have no share but during the pendency of this first appeal the defendant no.1



and defendant no.7 both died. Therefore, even if the properties are self acquired property of defendant nos.1 and 7, it will devolve on their heirs equally. Therefore, this issue is not argued by the parties.

15. In support of their respective cases regarding parentage of the plaintiff, the parties have adduced evidences. Let us consider the evidence.

16. P.W.2 is defendant no.7, Indrasan Bhagat. He has stated that his brother Sahdeo Bhagat died during the lifetime of his father Niranjan Bhagat. According to this witness, after death of Sahdeo, Sarli Devi went to her naihar and married there. It is not the case of any party i.e. either the plaintiff or the defendant. Therefore, his evidence that Sarli Devi married to some person in her naihar is just liable to be ignored. The case as pleaded by the parties is that, according to the plaintiff, his mother married with defendant no.1 and according to defendant no.1, plaintiff's mother had illicit relation with defendant no.7 and because of that illicit relation plaintiff was born. This defendant no.7 has not filed written statement.

17. P.W.4. is Prasad Choudhary. This witness has stated that he knows both the parties and he had seen Sarli Devi who was the wife of Sahdeo. After the death of Sahdeo, she married with Ramawtar in sagai form and Chhatu, the plaintiff, is their son. Chhatu calls Ramawtar as "Babuji" and Ramawtar calls him as "Babu" and



since then Sarli and plaintiff were residing in the house of Ramawtar.

18. P.W.5 is Jagdish Prasad. The evidence of this witness is also same as that of P.W.4. In addition to that this witness has stated that Niranjana Bhagat has sold 15 katha land to the plaintiff by registered sale deed.

19. P.W.7 is relation of the parties. According to him, Niranjana Bhagat was his *mama* and Abilakh Bhagat was his *nana*. This witness has also stated that after death of Sahdeo Bhagat, Sarli Devi remarried with defendant no.1. This is the evidence of P.W.8 and P.W.9 is the plaintiff, Chhatu Bhagat himself.

20. The plaintiff has also produced Ext.1, the registered sale deed dated 27th July, 1946 executed by Niranjana Bhagat in favour of Chhatu Bhagat. This Niranjana Bhagat is non-else than the father of defendant no.1 and defendant no.7. In this sale deed Niranjana Bhagat described the plaintiff as the son of Ramawtar Bhagat (defendant no.1). There is no reason as to why Niranjana Bhagat will describe plaintiff as son of defendant no.1, if in fact he is not the son of defendant no.1. This registered sale deed is of the year 1946 when there was no dispute between the parties. There is no explanation at all as to how and why Niranjana Bhagat described the plaintiff to be the son of defendant no.1. Therefore, this statement made by the common ancestor is admissible and is a strong piece of evidence fully



supported by oral evidences of the plaintiff discussed above.

21. The plaintiffs have also produced *parivarik pustika* maintained in *gram-panchayat* which has been marked Ext.3 wherein also plaintiff has been shown to be son of defendant no.1.

22. So far the defendants' evidence is concerned, D.W.3 and D.W.4 both have only stated that Chhatu Bhagat is not the son of Ramawtar Bhagat.

23. D.W.5 has stated that Chhatu Bhagat does not live in the house of defendant no.1. From perusal of the evidence of D.W.6, it appears that he expressed his ignorance about the marriage of Sarli in *sagai* form with defendant no.1.

24. D.W.7 has also denied marriage with defendant no.1. D.W.8 and D.W.9 both have stated that Sarli had illicit connection with Indrasan.

25. D.W.12 is the defendant no.1 himself. Therefore, defendant's evidence is in the negative form. Although it is categorical pleading in the written statement that plaintiff is son of defendant no.7 because there was illicit relationship of Sarli with defendant no.7 but except this bald statement, there is no reliable evidence. It is settled principle of law that negative needs no proof. Denial is sufficient. The defendant no.1 adduced negative evidence whereas the plaintiff produced positive evidence and the oral



evidences are admissible under Section 50/60 of the Evidence Act. The witnesses are either of the same village or are closely related and even the plaintiff himself has deposed. Over and above the oral evidences, the documentary evidences have also been produced by the plaintiff in support of his parentage.

26. In view of my above discussion, I find that the plaintiff Chhatu Singh is the son of defendant no.1 (Ramawtar Bhagat). Thus, the finding of the trial court on this point is hereby confirmed. The point formulated is answered against the appellants and in favour of the respondents.

27. In the result, I find no merit in this first appeal and accordingly, this first appeal is dismissed. The parties shall bear their own cost.

(Mungeshwar Sahoo, J)

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AFR/NAFR	NAFR
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