

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.207 of 2012

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Awadhesh Singh S/O Late Ram Nandan Singh Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad, Town & District Aurangabad (Bihar).

.... Appellant

Versus

1. Ramashray Singh Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad, Town & District Aurangabad (Bihar).
2. Ram Pukar Singh Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad, Town & District Aurangabad (Bihar).
3. Dina Singh Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad, Town & District Aurangabad (Bihar).
4. Ram Janam Singh Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad, Town & District Aurangabad (Bihar).
5. Binda Devi @ Binda Kuer Resident Of Village Yasoiya, P.O. Aurangabad, P.S. Aurangabad.

.... Respondents

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Appearance :

For the Appellant : Mr. Kamal Nayan Choubey, Sr. Advocate
Mr. Jitendra Prasad Singh, Advocate
Mr. Abhishek, Advocate
Mr. Arvind Kumar Pandey, Advocate

For the Respondents : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Bhanu Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
Date: 02-08-2017

The instant appeal is directed against the judgment dated 11.10.2012 and decree dated 19.02.2013 passed by Sri Ramrang Tiwary, the then Sub-Judge Ist, Aurangabad in Partition Suit No. 01 of 2009 whereby and whereunder the suit was dismissed on contest.

2. The Partition Suit No. 01 of 2009 was filed by the appellant against respondents no. 1 to 4 claiming therein decree for partition of half share in the properties of his grandfather late Ramjatan Singh who died leaving behind two sons namely,



Ramnandan Singh and Nawrang Singh. The plaintiff is the son of Ramnandan Singh whereas the defendants-respondents no. 1 to 4 are the sons of Nawrang h. It is stated that one Kashi Singh was the common ancestor of both the parties having lands in village Yasoia, Dhabaul and Bharatpur. He was Kahtiyani Raiyat of cadastral survey, who died leaving behind his five sons in jointness, namely, Ishwar Dayal Singh, Parmeshwar Singh, Bahadur Singh, Ram Khelawan Singh and Ramjatan Singh. Ishwar Dayal Singh, Parmeshwar Singh, Bahadur Singh and Ram Khelawan Singh died issueless in jointness with Ram Jatan Singh and Ram Jatan Singh became the sole surviving heir who died leaving behind two sons Ramnandan Singh and Nawrang Singh. According to the plaintiff-appellant, there was unity of title and possession but for the sake of convenience the plaintiff and the defendants are residing separately and cultivating the lands separately without any partition. Ramnandan singh also died leaving behind plaintiff as only son and Nawrang Singh died leaving behind defendants no. 1 to 4 as his sons. The plaintiff feeling inconvenience, asked the defendants to partition the suit property by metes and bounds but they did not agree, resulting the necessity of the suit.

3. The defendants appeared and filed the written statements. Apart from the ornamental objections, they contended that the suit is barred by law of adverse possession



and bad for misjoinder and non-joinder of necessary parties. The wife of Ramnandan Singh has not been made party and in her absence the suit cannot proceed. There is no unity of title and possession. There was partition in the year 1950-51 between Ram Khelawan Singh and sons of Ramjatan Singh namely, Ramnandan Singh and Nawrang Singh and the Taktha allotted to Ram Khelawan Singh was sold in favour of sons of Nawrang Singh and subsequent thereto the plaintiff filed Partition Suit no. 38 of 1966 wherein the compromise was entered in between the parties and compromise petition was filed in the court wherein the lands purchased by defendants from Ram Khelawan Singh were allotted in the Thakta of the defendants and compromise has been acted upon. Even in land acquisition cases, on the basis of that compromise, awards were granted and the plaintiff has sold the lands on the basis of that compromise. The plaintiff has received the amount of award accordingly and the step mother of plaintiff has also received awarded compensation but she has not been made party. In Partition Suit No. 38 of 1966 Binda Devi, the mother of the plaintiff, was also allotted separate schedule and out of that land the plaintiff has purchased some of the lands from Binda Devi in the name of his wife Roshila Devi through Registered Sale Deed dated 27.11.1982 wherein there is clear recital that the land which has been sold has been acquired from partition suit no. 38/66, not only this, the son of the plaintiff



namely, Arvind Singh filed Partition Suit No. 106 of 1995 / 90 of 1997 with respect to the land allotted in the schedule of Partition Suit No. 38 of 1966 to the plaintiff together with the land purchased from Binda Devi in the name of the wife of the plaintiff Roshilaa Devi and the land covered by land acquisition case was excluded. The suit is also bad for partial partition since the land of khata no. 93 survey plot no. 443 area 5 acres 6 decimal and in the same khata plot no. 496 area 8 acres 58 decimal situated in village Yasoiya has been intentionally excluded in the plaint which is evident from cadastral survey khatian and schedule B of compromise petition filed in Partition Suit No. 38 of 1966. The plaintiff with dishonest motive has excluded the lands which he has also sold and the lands which have already been acquired by the Government under several land acquisition cases and included the self acquired properties of these defendants and by their ancestors in the plaint which is evident from schedule I of the compromise petition of Partition Suit No. 38/66. Revenue records are running according to the schedule of Partition Suit No. 38/66 in the name of the parties and accordingly, the names have been mutated and separate rent receipts are being granted. There is no unity of title and possession between the parties and as per compromise of Partition Suit No. 38/66, the parties are in separate exclusive possession. Unfortunately, Partition Suit No. 38/66 was dismissed in default but on the basis of compromise



filed in that partition suit, the parties came in separate possession and the compromise was acted upon by all the parties. The suit of the plaintiff is not maintainable and is fit to be dismissed as there was no cause of action to file the suit.

4. On the basis of petition filed by intervener Binda Devi, she was made defendant no. 5 by order dated 19.08.2009 and she has supported the case of the defendants by stating that her daughter Sumitra Devi is also a necessary party.

5. On the basis of the pleadings of the parties, following issues have been settled on recast by learned trial judge:-

- (i) Whether the suit is maintainable in the present form ?
- (ii) Whether the plaintiff has valid cause of action for the suit ?
- (iii) Whether the plaintiff has filed proper court fee in this case ?
- (iv) Whether the suit suffers from non-joinder of the necessary parties ?
- (v) Whether there was previous partition and the same has been acted upon among the parties ?
- (vi) Whether there is unity of title and unity of possession between the plaintiff and defendants



with regard to the suit property ?

- (vii) Whether the plaintiff is entitled for half share in the suit property ?
- (viii) Whether the plaintiff is entitled for relief of decree for the suit ?
- (ix) Whether the plaintiff is entitled to any other relief or reliefs in the suit ?

6. Learned trial judge took up issues no. (v) & (vi) together and came to the conclusion that there was previous partition between the parties and the same has been acted upon amongst them and there is no unity of title and unity of possession between the plaintiff and defendants with regard to the suit property. Thereafter, the learned trial judge took up issues no. (iv) and came to the conclusion that the suit is bad for non-joinder of necessary party. Issue No. (iii) was decided in favour of the plaintiff and against the defendants. Issue no. (i) (ii) (vii), (viii) and (ix) were decided against the plaintiff and in favour of the defendants and accordingly, the suit was dismissed on contest but without cost.

7. The appellant being aggrieved and dissatisfied with the judgment and decree has preferred this appeal challenging the legality, correctness and propriety of the same on the grounds that there is presumption of jointness in the joint family. The



defendants who have alleged partition must have proved the same but the defendants have failed in proving the partition by metes and bounds. The case of the defendants is that there was partition in the year 1950-51 between Ram Khelawan Singh and sons of Ram Jatan Singh, father of defendants no. 1 to 4, but the same has not been proved. The sale deed alleged to be executed by Ram Khelawan singh in favour of the defendants no. 1 to 4 is forged and fabricated and defendants no. 1 to 4 have not acquired any right title and possession over the same. At the time of filing of the Partition Suit No. 38/66 the plaintiff was minor and Nawrang Singh got filed the said partition suit in the name of the plaintiff, he has managed every thing. Compromise petition was also filed but no compromise decree was granted and the suit was ultimately dismissed in default. So there is no binding effect of the compromise of that partition suit. Some alienation made by the plaintiff has got no binding effect and it was only for the shake of convenience . A coparcener even before partition can sale his share in the joint family properties to the extent he desires to sale and as such sale deed is no proof of partition. Learned counsel for the appellant has relied upon a judgment reported in **2007 (1) PLJR page 126 (para 11)** in the matter of **Mostt. Sakuntala Devi & Ors...Appellants vs. Hardeo Rai.. Respondent**. On mere severance of status of joint family, the character of any joint family property does not change with such severance. It retains



the character of joint family property till partition and for that reliance has been placed upon a judgment reported in **(2002) 4 Supreme Court Cases 743 (para 31)** in the matter of **M. L. Subbaraya Setty (Dead) by Lrs & Ors. ...Appellants Versus M. L. Nagappa Setty (Dead) by lrs. And Ors.... Respondents.** It has been argued that there is no proof of partition and as such dismissal of the suit by the learned court below is not legal, proper and correct and the same is fit to be set aside.

8. On the other hand, learned counsel for the respondents no. 1 to 4 arguing in this appeal has stated that the plaintiff has filed Partition Suit No. 38/66 and in paragraph 6 of the plaint he has stated his age. According to which, he is major, further in the counter affidavit dated 20.10.2016 of I. A. No. 8337 of 2016, the plaintiff has stated his age as 72 years and as such his date of birth comes near the year 1944 and he was major at the time of filing Partition Suit No. 38/66. The plaintiff has not mentioned in his plaint and in this partition suit regarding filing of earlier Partition Suit No. 38/66 wherein compromise was filed by the parties and in that Partition Suit No. 38/66 separate Taktha was allotted to all the parties including the step mother of the plaintiff the defendant no. 5. Further the plaintiff has not stated that he was minor at the time of filing of the Partition Suit No. 38/66 and without pleading he wants adjudication. The plaintiff has not come in the court with clean hands and he seeks relief after suppressing



all these hard facts. The learned counsel for the respondents no. 1 to 4 has relied upon a judgment reported in **AIR 1994 Supreme Court 853 (paras 7 and 8)** in the matter of **S.P.Chengalvaraya naidu (dead) by L.Rs...Appellants v. Jagannath (dead) by L.Rs. and others.....Respondents**. Ext. E/1 is the certified copy of registered sale deed executed by Binda Kuer in favour of Roshila Devi the wife of plaintiff dated 27.11.1982 from which it reveals that the plaintiff has admitted the compromise arrived in Partition Suit No. 38/66 whereby Binda Devi was allotted separate Taktha and out of those lands the plaintiff has purchased some properties in the name of his wife from defendant no. 5 Binda Kuer. Ext. I/1 is the sale deed dated 22.07.1977 executed by Awadhesh Singh in favour of Smt. Shyamjhari Devi. Ext. I/3 is the sale deed dated 16.08.1980 executed by Awadhesh Singh in favour of Shyamjhari Devi and Ext. I/5 is sale deed dated 24.04.1980 executed by Awadhesh Singh (plaintiff) in favour of Shyamjhari Devi. In all these sale deeds the plaintiff has admitted the compromise of Partition Suit No. 38/66 and has stated that on that basis he got the separate lands out of that he is selling these lands. No doubt, undivided share of coparcener can be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds. In the plaint of this partition suit, the plaintiff has executed the lands covered in those sale deeds and has not made purchasers as party



and in recitals it is mentioned that possession has already been handed over. Thus, it clearly proves partition. Recitals of these sale deeds prove partition. The learned counsel has relied upon a judgment reported in **2009 (4) PLJR Supreme Court page 225 (para 11 to 13)** in the matter of **Gajara Vishnu Gosavi....Appellant vs. Prakash Nanasahdev Kamble & Ors. ..Respondents**. Here possession has been handed over which is not possible in undivided share of a coparcener. Here share has not been transferred rather separate lands with boundary have been transferred. Mutual transaction between two members is strong evidence of separation. In the present case, the parties are dealing with the properties separately by executing various documents in respect of their specific shares and as such the presumption of jointness had been sufficiently rebutted by good and cogent evidence in the present case and for that reliance has been placed upon a judgment reported in **AIR 1977 Patna page 59** in the matter of **Ram Bahadur nath Tiwary...Appellant v. Kedar Nath Tiwary and others..Respondnetns (para 14)**. The son of plaintiff namely, Anil Singh also filed Partition Suit No. 106 of 1995 against the plaintiff and others on the basis of partition effected in Partition Suit No. 38/66 in terms of compromise and in that partition suit no. 106 of 1995 filed by Anil Singh the plaintiff and others filed compromise petition and compromise decree was granted and this fact has also been



suppressed in the plaint of this partition suit. Ext. B-1 is plaint of Partition Suit No. 106 of 1995 filed by Anil Singh son of plaintiff, Ext. D-1 is the compromise filed in Partition Suit No. 106 of 1995 and Ext. K-1 is compromise decree. In view of all these documentary evidences, available on the record, partition in the year 1966 is well proved and the plaintiff cannot challenge his own assertion later on. The learned counsel for the respondents no. 1 to 4 has relied upon a judgment reported in **AIR 1969 (2) Supreme Court Cases page 201** in the matter of **Baldevdas Shivlal and another ..appellants Versus Filmistan Distributors (India) P. Ltd. And others....Respondents.** Further reliance has been placed upon a judgment reported in **2009 (2) PLJR Supreme Court page 168** in the case of **Sneh Gupta ...Appellants Vs. Devi Sarup & Ors.. Respondents.** A consent decree, as is well known is merely an agreement between the parties with the seal of the court superadded to it. If a compromise is to be held to be binding, as is well known, must be signed either by the parties or by their counsel or both, failing which, the order 23 Rule 3 of the Code of Civil Procedure could not be applicable. Here the parties and their learned counsels have signed the compromise and as such the same is binding. According to the learned counsel, the parties have received compensation as awarded in land acquisition case in Land Acquisition Case No. 28 of 1990 compensation of Rs. 36,14,000/-



was awarded to the plaintiff for some of the lands which he got from Schedule of Partition Suit No. 38/66 and the same has been received by the plaintiff. The defendant no. 5 was also awarded compensation on that basis. So the partition is well proved and the learned trial judge has rightly dismissed the suit.

9. Learned counsel for the respondents no. 5 has adopted the argument advanced by learned counsel for the respondents no. 1 to 4 and has stated that the suit is bad for non-joinder of necessary party also as daughter of Ramnandan Singh namely, Sumitra Devi has not been made party and as such the suit is bad for non-joinder of necessary party.

10. On the basis of rival contentions of the parties the following points are important for decision:-

(i) Whether there is unity of title and unity of possession between the plaintiff and defendant with regard to suit properties or whether there was previous partition and the same has been acted upon amongst the parties ?

(ii) Whether the suit is bad for non-joinder of necessary parties ?

(iii) Whether the plaintiff is entitled to any other relief or reliefs in the suit ?



11. Point No. (i) :- The plaintiff in support of this case has produced three oral witnesses in this case. Out of which PW 1 is Awadhesh Singh who is plaintiff of this case in his examination in chief has supported his plaint. According to him, there is no partition by metes and bounds in the family and the plaintiff has half share in the suit property. He has denied that Ram Khelawan Singh has sold his share to the sons of Nawrangh Singh and the suit property was partitioned in Partition Suit No. 38/66 and Binda Devi is his mother who has sold the land on 27.11.1982 in favour of his wife. He has also denied that his land was acquired by the government and he has received compensation from the government rather the land was jointly acquired. He has also said that at the time of filing of partition suit in the year 1966 he was aged about 15-16 years, in paragraph 25 of cross-examination he has said that he got education till matriculation from Gait High school, Aurangabad but he has no knowledge about the year in which he was admitted nor he can file any document of his date of birth. In paragraph 31 of the cross-examination he has admitted that there was partition suit between him and his sons in which compromise was filed. He has further said that in that case he has not said that there was no partition from the sons of Nawrang Singh and they should be made party in the case. In paragraph 35 of cross-examination he has said that he has no knowledge about whom he has sold the land before filing of this case and he has



not made purchasers as party in this case. In paragraph 37 of cross-examination he has said that his step sister Sumitra Devi has filed suit No. 151 of 2008 which is pending in this court, in which his sister sought partition against her mother Binda Kuer. He has also said that he is also a party in that case.

12. PW 2 is Ramayan Singh, he has also said in his examination in chief that there was no partition by metes and bounds between the plaintiff and defendants, he has denied that Binda Kuer is the member of the family or wife of Ramnandan Singh. In paragraph 6 of cross-examination he has said that he has seen Kashi Singh who died about 40 years back. Kashi Singh had two sons Ramnandan Singh and Nawrang Singh. Thus, from the evidence of this witness it appears that he has no knowledge about the genealogy. He has further said that the suit land is situated at Dani Bigha, electricity office and Hazari village but he has no house near the suit land. He has also not disclosed the area of the suit land and khata plot of the suit land. Thus, he has no knowledge about the suit land.

13. PW 3 is Bidhi Singh. He has stated in examination in chief that there was no partition by metes and bounds. He has denied that Binda Kuer is the wife of Ramnandan Singh and the member of family. In his cross-examination he has stated that his village is situated about 12-14 kilometers from mauja Yasoiya. He has also said that the plaintiff is his brother-in-law (Bahnoi). In



cross-examination he has admitted that the plaintiff has sold the land and the Government has acquired the land for factory and the plaintiff has got compensation for the same. In paragraph 7 of his cross-examination he has admitted that Ramnandan Singh got four marriages but he cannot say the names of any of his wives. He has also said that his sister is not in service and she has no source of income. He has denied that the plaintiff had filed a partition suit in which compromise petition was filed. He has also denied that Binda Devi had 10 acres of land from the compromise. In paragraph 8 of his cross-examination he has said that he had not seen Kashi Singh nor he has knowledge about how many brothers he has. He has further said that Kashi Singh had two sons. Thus he has no knowledge about genealogy of the party.

14. So far as the documentary evidence is concerned, the plaintiff has filed Ext. -1 to 1/B- certified copy of khatian of schedule I property which is recorded in the name of sons of Kashi Singh, namely, Ishwar Dayal Singh and others. Ext. 2 is the certified copy of order sheet dated 04.07.1970 passed in Partition Suit No. 38/66 by which the suit was dismissed in default. Ext. 3 is the certified copy of deposition of Sumitra Devi wife of Raj Kishore Singh in which she has stated that her father's name was Ramnandan Singh and Ramnandan Singh has no brother. She has further said that Ram Jatan Singh was her grandfather. She has further accepted that the compromise petition was filed in that



case. Ext. 3/A is the certified copy of deposition of Binda Kuer wife of late Ramnandan Singh in Partition Suit No. 151 of 2008 filed by Sumitra Devi against Binda Kuer defendant no. 5. It appears from the deposition that Binda Kuer has admitted that a case has been filed by her daughter and further said that her husband got land from partition. Ext. 4 to 4/F are sale deeds purchased in the name of Nawrang Singh and other family members. Thus, from the oral and documentary evidence the plaintiff wants to prove that the suit property is joint.

15. The defendants no. 1 to 4 have produced 8 witnesses. DW 1 Ajit Kumar Singh a formal witness and has proved the rent receipts as Ext. A to Ext. A / 2. DW 2 Kaushlendra Kumar, the son of Sumtra Devi and grandson of defendant no. 5, has supported the case of his maternal grandmother and said that about 60 years back there was a partition between Ram Khelawan Singh, Ramnandan Singh and Nawrang Singh and since then the parties are in separate possession over their share. He has also stated that Ram Khelawan Singh sold 18.76 acres of land in favour of sons of Nawrang Singh in the year 1961 and since then sons of Nawrang Singh are in possession over the same. He has also said that the plaintiff has brought Partition Suit No. 38/66 in the court of learned Sub-Judge, Gaya against defendants no. 1 to 4 in which Binda Kuer was also a party and in that suit compromise was filed and accordingly all parties came in



possession over the same on the basis of compromise. He has also said that plaintiff has purchased some land from Binda Kuer in the name of his wife Roshila Devi which has been given in the share of Binda Kuer in Partition Suit No. 38/66. He has also stated that after partition, the plaintiff has sold some land in which he has made description for partition in Partition Suit No. 38/66 and all the parties are paying separate rent receipts on the basis of mutation. Some lands have been acquired by the State Government for which award has been made in the name of Binda Kuer also and she got compensation for the same. In cross-examination he has said that Binda Kuer is the 4th wife of Ramnandan Singh and she had a sole daughter Sumitra Devi and he has also stated that the property which his maternal grandmother Binda kuer got from Partition Suit No. 38/66 was possessed by her and demand was also running in her name. Land of Khata No. 93 plot no. 431 was acquired by the government and compensation was paid to Binda Kuer. He has also said that Binda Kuer has sold the land to different persons whose land was also acquired by the State of Bihar. Purchasers have got compensation for the same. DW 3 Satyendra Singh is a formal witness and has proved rent receipts Ext. A/3 to A/13. DW 4 Sunil Singh is also a formal witness and has proved the rent receipts Ext.A/14. DW 5 Baleshwar Prasad is also a formal witness who has proved the plaint of Partition Suit No. 38/66 ad Ext. B and has further proved



the signature of typist on both the compromise petition filed in Partition Suit No. 38/66. DW 6 Kamta Singh is also a formal witness who proved rent receipts A/15. DW 7 Arun Kumar is an Assistant in the office of District Sub-Registrar, Gaya and has proved the letter of Sub-Registrar as Ext. D and sale deed executed by Ram Khelawan Singh in favour of Ramashray Singh and others dated 12.01.1961 as Ext. E. DW 8 Dina Singh is the son of Nawrang Singh and defendant no. 3 in this case. He has supported the written statement by saying that defendants no. 1, 2 and 4 are his brothers and he is also giving evidence on behalf of his all brothers. He has said that Kashi Singh had five sons, Ishwar Dayal Singh, Paremeshwar Singh, Bahadur Singh, Ram Khelawan Singh Ram Jatan Singh and after the death of Kashi Singh, Ishwar Dayal Singh, Parmeshwar and Bahadur Singh also died leaving behind Ram Khelawan Singh and Ram Jatan Singh as their heirs. Ram Jatan Singh has two sons Ramnandan Singh and Nawrang Singh and Ram Jatan Singh also died leaving behind his two sons and he has also said that Binda Kuer defendant no. 5 is the wife of Ramnandan Singh and Sumitra Devi is his daughter. He has further said that there was partition of ancestral property in the life time of Ram Khelawan Singh, Ramnandan Singh and Nawrang Singh in the year 1950-51 and the land which Ram Khelawan Singh got from share has been sold by him to Ramashray Singh, Ram Pukar Singh, Dina Singh and Ram Janam



Singh through sale deed dated 12.10.1961 and possession was delivered. He has said that the plaintiff filed Partition Suit No. 38/66 in the court of Sub-Judge Ist, Gaya in which all defendants were parties and that case was disposed of on the basis of compromise. In the compromise petition the land sold by Ram Khelawan Singh in favour of defendant no. 1 to 4 was allotted in the share of defendants no. 1 to 4 along with other lands but this suit has been brought for partition by the plaintiff with dishonest intention. He has further stated that the plaintiff has sold the land which he has got from Partition Suit No. 38/66 by the compromise to different persons and even defendant no. 5 Binda Kuer has sold the land in favour of Roshila Devi wife of plaintiff which she had got from Partition Suit No. 38/66. This witness has further said that the plaintiff had got the land from the compromise petition and some of his land was acquired by the government in Land Acquisition Case No. 28 of 1990 and similarly land of defendant no. 5 was also acquired in land Acquisition Case No. 127 of 1990 and Awards were also prepared in the name of the plaintiff and also in the name of defendant no. 5. Similarly land of defendants no. 1 to 4 which they got from compromise was also acquired by Land Acquisition Case No. 14 of 1990 and Award was prepared in their names. Anil Singh the son of plaintiff had filed Partition Suit no. 106 of 1995 / 90 of 1997 for partition of his share of the land which his father got from the compromise in Partition Suit No.



38/66. This witness has denied that there is unity of title and possession over the suit land between the plaintiff and defendants. In cross-examination nothing has been said which falsifies the statement of this witness.

16. The defendants no. 1 to 4 have filed documentary evidence also which are rent receipts in their names marked as Ext. A series, Ext. B is plaint of Partition Suit No. 38/66 filed by the present plaintiff against defendants in which plaintiff has made a claim of 6 Anna share from the suit property consisting ancestral movable and immovable property. Ext. C is the compromise petition filed between plaintiff and defendants no. 1 to 6 by which separate schedule has been shown to the parties of compromise petition. Ext. D is letter dated 06.01.2011 issued by the District Sub-Registrar, Gaya by which the register of sale deed has been sent to the trial Court. Ext. E is the certified copy of sale deed executed by Ram Khelawan Singh in favour of sons of Nawrang Singh dated 12.10.1961. Ext. E /1 is the sale deed executed by defendant no. 5 in favour of Roshila Devi wife of plaintiff dated 12.03.1984 by which khata no. 77 plot no. 568 area 7 decimal and khata no. 79 plot no. 584 area 3.5 decimal has been sold. Ext. F is the certified copy of judgment passed in Land Acquisition Case No. 19 of 1990 and other analogous cases with regard to khata no. 84 plot no. 470.

17. The defendant no. 5 has also produced 9 witnesses.



DW 9 is Binda Devi herself defendant no. 5 in this case and the plaintiff is her step son and defendants are her cousins. She has said that she is legally married wife of Ramnandan Singh son of Ramjatan Singh. She has a daughter Sumitra Devi from Ramnandan Singh. She has also said that Kashi Singh was the common ancestor and have five sons out of which four died issueless and her father-in-law Ram Jatan Singh died leaving behind two sons Ramnandan Singh and Nawrang Singh. It has also been said that after 7-8 years of the death of her husband in the year 1966 the plaintiff had filed a suit in which compromise petition had been filed by which she got 10 acres of land at village Yasoia and Dhabaul and rest 18 acres of land had been given to the plaintiff Awadhesh Singh. She has also said that she is pardanashin lady and the plaintiff with ill intention left pairvy in that case but from the compromise the persons got land and started getting rent receipts separately and they became separate in all respects. She has further stated that some of the land which she got from the partition along with plaintiff was acquired by the Government for which compensation was received by the plaintiff and she has also received compensation. She has also said that the plaintiff has sold the land for which the purchasers are in possession. She has also said that the plaintiff has also purchased that land in the name of his wife Roshila Devi in which he is residing. She has denied that there was no any partition. She has



also denied that she is not the wife of Ramnandan Singh. She has said that she is living with her daughter Sumitra Devi and grandsons Kaushlendra and Parmendra Kumar at Satyendra Nagar Aurangabad. Nothing has been taken in cross-examination to disbelieve her testimony. DW 10 Amresh Singh has supported the case of defendant no. 5 and has said that Amaresh Singh is his Sutela Phuphera Bhai and Ramashray Singh is his Chachera Fufera Bhai and Binda Kuer is Fua. He has further said that there was partition between the parties and his Fua was in possession of the land which she got from the partition. He has said that his Fufa Ramnandan Singh died in the year 1958 in train accident. His father informed him about the partition in the year 1966. He has also identified the signatures of his father on the compromise petition as Ext. C/1 and A/1.

18. DW 10 to 17 are formal witness who have proved the documents. Ext. A-1 is the signature of the plaintiff on compromise petition filed in Partition Suit No. 38/66. Ext. A-2 and A-3 are signatures of Advocates on the plaint and Partition Suit No. 106 of 1995 filed by Anil Singh against his father and others. Ext. B-1 is the plaint of Partition Suit No. 106 of 1995, Ext. C-1 is the affidavit sworn by Anil Singh in Partition Suit No. 106 of 1995. Ext. D-1 is the compromise petition filed by plaintiff Awadhesh Singh and his sons in Partition Suit No. 106 of 1995. Ext. E-1 is the written statement filed by Awadhesh Singh and his sons in



Partition Suit no. 106 of 1995. Ext. E-2 is the written statement filed on behalf of defendant 1 to 3 in Partition Suit No. 38/66. Ext. F to F/3 are the rent receipts issued in favour of defendant no. 5. Ext. G is the summons issued to Shyamjhari Devi purchaser of the plaintiff for production of the sale deed executed by the plaintiff in her favour. Ext.-H/1 is Award passed in Land Acquisition Case No. 15 of 1991 in favour of defendant 5 with regard to her land. Ext. H-2 is Award in Land Acquisition Case No. 109 of 1990 passed in favour of Ram Pukar Singh son of Nawrang Singh. Ext. H-3 is the Award in Land Acquisition Case No. 37 of 1990 in favour of Ramashray Singh. Ext. H-4 is award in Land Acquisition Case No. 141 of 1990 in favour of Ramnandan Singh with regard to his land. Ext. H-5 is the Award passed in Land Acquisition Case No. 62 of 1990 in favour of Umahsankar Prasad. Ext. H-6 is the Award in Land Acquisition Case No. 63 of 1990 in favour of Moti Devi. Ext. H-7 is the Award passed in Land Acquisition Case No. 75 of 1990 in favour of Rakesh Kumar. Ext. H-8 is the Award in Land Acquisition Case no. 76 of 1990 passed in favour of Kishun Rani Devi. Ext. H-9 is Award passed in Land Acquisition Case No. 78 of 1990 in favour of Sumitra Devi wife of Bajrangi Singh. Ext. I-1 is the certified copy of sale deed executed by the plaintiff in favour of Shyamjhari Devi. Ext. I-2 is the certified copy of sale deed executed by Awadhesh Singh in favour of Smt. Tilara Devi. Ext. I-3 is the certified copy of sale deed executed by plaintiff in favour



of Shyamjhari Devi. Ext. I-4 is the certified copy of sale deed executed by plaintiff in favour of Jasmati Devi. Ext. I-5 is the certified copy of sale deed executed by the plaintiff in favour of Shyamjhari Devi. Ext. J-1 is the certified copy of judgment passed in Land Acquisition Case No. 75 of 1990 / 76 of 1991, 78 of 1990 dated 30.03.1994. Ext. K-1 is the certified copy of order sheet dated 2.05.2000 passed in Partition Suit No. 106 of 1995 filed by Anil Singh against the plaintiff. Ext. K-2 is the certified copy of order sheet in Execution Case No. 61 of 1997 which arises from land Acquisition Case in which Award has been made in favour of plaintiff. Ext. K-3 is the certified copy of order sheet dated 22.08.2009 in Execution Case No. 13 of 1997 Binda Devi Vs. State with regard to land acquisition case. Ext. L-1 is the certified copy of cadastral survey khatiyan of khata no. 6 and others of village Yasoia.

19. From perusal of documentary evidences, it is clear that the plaintiff has not filed any proof regarding his minority at the time of filing of the Partition Suit No. 38/66 rather subsequent act goes to prove that the plaintiff has acted upon on the basis of the compromise petition in Partition Suit No. 38/66. In that compromise the plaintiff has admitted the sale deed executed by Ram Khelawan Singh in favour of sons of Nawrang Singh and as such the plaintiff cannot escape from the statement made in the compromise petition filed in Partition Suit No. 38/66. In this suit



the plaintiff has not made Binda Kuer as defendant and has denied that she is his step mother but it is the plaintiff who has made Binda Kuer as defendant in Partition Suit No. 38/66. Even he has made compromise with defendant no. 5 by which 10 acres of land of his share was given to defendant no. 5 and thereafter, the plaintiff also purchased the land from Binda Kuer in the name of his wife and Binda Kuer has executed several sale deeds in favour of another person who got compensation from the government for their purchased land. The plaintiff has also sold so many lands to different persons and they along with the plaintiff have got compensation from the land for their lands acquired by the Government. Thus, there is no unity of title and possession between the plaintiff and defendants. The plaintiff has filed simple suit for partition in which he has not mentioned any partition suit filed by him in the year 1966 and filing of compromise petition and dismissal of the suit in default. The plaintiff has also not challenged the contents of the compromise petition or his minority, not only this even in his examination he has stated that he had no knowledge about his date of birth and when he was admitted in the school. Thus, there is no evidence on record to show that the plaintiff was minor in the year 1966 when he had filed a suit for partition against the defendants. It appears from the documentary evidences filed by the defendants that even after dismissal of Partition Suit No. 38/66 in default the, parties have



got mutated the lands and rent receipts were issued in their favour for which Ext. A series are in the name of defendants no. 1 to 4. Ext. F series are issued in favour of defendant no. 5. It also appears that the plaintiff has sold the land which she got from the compromise in Partition Suit No. 38/66 in favour of Shyamjhari Devi of his share. Not only this, the plaintiff has also purchased the land from the defendant no. 5 in the name of his wife which is Ext. E/1 in this case. It also appears from the document that the land of mauja Yasoiya has been acquired by the government and Land Acquisition Proceeding was started against plaintiff and defendants no. 1 to 5 and even against the purchasers from the plaintiff and defendants by which they got compensation from the government which is Ext. H-1 series filed by defendant no. 5 in this case. In none of the cases the plaintiff has made objection by saying that the partition had not taken place among the family and he is jointly entitled for compensation in above land acquisition cases. It also appears that even the son of the plaintiff namely, Anil Singh had filed Partition Suit No. 106 of 106 of 1995 the plaint of which is Ext. B-1. He has sought partition against the plaintiff and his brothers for the land which his father got from compromise in Partition Suit No. 38/66 and in the above suit a compromise has been filed by the plaintiff and his sons but in the proceedings also he has not said anything about any partition of the land from the defendants nor he made any objection for non-



joinder of the parties. It also appears from the Ext. K-2 and A-3 that even Awadhesh Singh has got compensation in Execution Case No. 61 of 1997 and defendant no. 5 Binda Kuer got compensation in Execution Case no. 13 of 1997 which goes to show that there was partition amongst the parties in the year 1966 in Partition Suit No. 38/66 even after dismissal of the suit in default, parties have acted upon on compromise petition. They got mutated and even sold the land of their shares and not only to another person but even to co-sharers. They have also got compensation by the government for the land which got from partition. Even the purchasers have got compensation from the government for their purchased land. The facts of this case is quite on different footing than that of **Mostt. Shakuntla Devi & Ors. Vs. Hardeo Rai** (supra) and **M.L. Subbaraya Setty & Ors. Vs. M.L. Nagappa Setty and ors.** (Supra). It is well proved that there is no unity of title and possession over the suit land between the plaintiff and defendants and there was previous partition. Thus, point no. 1 is decided in favour of the respondents and against the appellant.

20. Point No. (ii):- From the documentary evidences and oral evidences, it is manifest that in this suit Sumitra Devi has not been made party, even Binda Kuer was also not made party in the plaint but on her intervention she has been made defendant no. 5. The plaintiff in para 37 has admitted that he has step sister



Sumitra Devi who has filed Partition Suit No. 151 of 2008 against his mother Binda Kuer in which she also filed written statement and claimed her share. Thus, it appears that there is a daughter of Ramnandan Singh who has not been made party in this case. It also appears that the plaintiff has sold the land to different persons and on behalf of the defendant sale deeds executed by Awadhesh Singh has been produced as Ext. I-1 to I-5. It appears from the sale deeds that the plaintiff has sold the land of Khata No. 93 plot no. 443 and 497 to different persons but they have not been made parties in this case. It is settled principle of law that purchasers of co-sharers are necessary parties of the case or particularly when the said sale deeds were not challenged by the plaintiff in this case. Thus, from the facts and circumstances as discussed above, it is held that the suit is also bad for non-joinder of necessary parties. Accordingly, this point is also decided against the plaintiff and in favour of the defendants.

21. Point No.(iii) :- From the facts and circumstances as discussed above and as per findings given for point no. (i), it is evident that there was a partition amongst the parties in the year 1966 on the basis of compromise petition filed in Partition Suit No. 38/66 and the same has been acted upon and the parties have been in possession over their respective shares dealing with the properties independently and they got compensation for the lands of their respective possession. Thus, it is held that the plaintiff is



not entitled for any relief in the suit.

22. In the result, this appeal is hereby dismissed on contest but without cost.

(Jitendra Mohan Sharma, J)

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