

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.61 of 2010

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1. Shashi Bhushan Prasad S/O Late Nand Lal Sinha R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
 2. Permeshwar Prasad S/O Late Nand Lal Sinha R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
 3. Raja Bikram Kumar Minor S/O Shashi Bhushan Prasad And Under Guardianship Of Their Natural Guardian Father Shashi Bhushan Prasad Who Has No Adverse Interest Against Minor Son R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
 4. Biku Kumar Minor S/O Shashi Bhushan Prasad and under guardianship of their natural guardian father Shashi Bhushan Prasad Who Has No Adverse Interest Against Minor Son R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
 5. Sweeti Sinha Minor D/O Shashi Bhushan Prasad and is under guardianship of her natural guardian father Shashi Bhushan Prasad who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura

(Plaintiffs).... Appellant/s

Versus

1. Most. Sawitri Devi Widow Of Late Mahesh Prasad R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
2. Radhey Shyam Kashyap S/O Late Narendra Kumar Sinha @ Kailash Prasad Singh R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
3. Nawal Kishore Kashyap S/O Late Narendra Kumar Sinha @ Kailash Prasad Singh R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
4. Ishwar Dayal Kashyap S/O Late Narendra Kumar Sinha @ Kailash Prasad Singh R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
5. Goriya Kumari @ Soni Kumari Minor D/O Radhey Shyam Kashyap and is under guardianship of natural guardian father Radhey Shyam Kashyap who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
6. Mona Kumari Minor D/O Radhey Shyam Kashyap and is under guardianship of natural guardian father Radhey Shyam Kashyap who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
7. Bholia Kumar @ Gorey Lal Minor Son Of Radhey Shyam Kashyap and is under guardianship of natural guardian father Radhey Shyam Kashyap who has no adverse interest against minor son R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
8. Bholi Kumar @ Chhotey Lal minor son of Radhey Shyam Kashyap and is under guardianship of natural guardian father radhey shyam kashyap who has no adverse interest against minor son R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
9. Kakaiya Kumari @ Mintu Kumari Minor D/O Nawal Kishore Kashyap and minor is under guardianship of natural guardian father Nawal Kishore Kashyap who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
10. Tuna Kumar Minor S/O Nawal Kishore Kashyap and minor is under guardianship of their natural guardianship of their natural guardian father Nawal Kishore Kashyap who has no adverse interest against minor son R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura



11. Gauri Kumari Minor D/O Nawal Kishore Kashyap and minor is under guardianship of natural guardian father Nawal Kishore Kashyap who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
12. Padma Kumari Minor D/O Nawal Kishore Kashyap and minor is under guardianship of their natural guardian father Nawal Kishore Kashyap who has no adverse interest against minor daughter R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
13. (i) Manju Devi @ Meera Devi, wife of Ishwar Dayal Kashyap,
14. Chantu Kumar Minor S/O Ishwar Dayal Kashyap, under guardianship of his Natural Guardian Father Ishwar Dayal Kashyap who has no adverse interest against minor son, R/O Vill.- Aifani, P.S.- Ariari, Distt.- Sheikhpura
15. Smt. Rajo Devi W/O Ramshwarup Prasad Sinha R/O Village / Mauza- Barh, P.S.- Barh, Distt.-Patna, At Present R/O Vill.- Aifeni, P.S.- Ariari, Distt.- Sheikhpura
16. Smt. Lalita Devi @ Lilawati Devi W/O Shri Bachchu Prasad R/O Bauri, P.S.- Kashichak, Distt.- Nawadah
17. Smt. Permila Devi W/O Madan Prasad R/O Vill.- Jagdishpur, P.S.- Barbigha, Distt.- Sheikhpura

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. T.N.Maitin, Sr. Advocate
Mr. Anil Kuamr Sinha
Mr. Ashok Kumar, Advocates

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Date: 24-04-2017

Heard Mr. T.N.Maitin, learned senior counsel for the appellant.

The plaintiffs in the suit are the appellants in this appeal against the judgment and decree of the appellate court below reversing the decree of the trial court with regard to the part of the suit property.

A genealogical table has been given in the impugned judgment of the appellate Court below and there is no dispute



between the parties regarding the same.

It transpires from the said genealogical table that Janki Mahto was common ancestor and one of his sons was Giridhari Mahto. The said Giridhari Mahto had two sons, namely, Ramrup Singh and Kishun Singh. The plaintiffs are descendents of Nandlal Sinha, who was one of the sons of Ramrup Singh and the defendants are the descendents of his another son, Narendra Kumar Sinha. The sole daughter of Ramrup Singh was impleaded as defendant No. 17 in the suit.

The plaintiffs filed the suit for partition of the properties described in Schedule-II of the plaint. It was the case of the plaintiffs that there was no partition of the property which included the ancestral properties as well as the properties acquired by Ramrup Singh during the period of service, in the name of his eldest son, Narendra Kumar Sinha and other persons. The defendants filed a contesting written statement asserting previous partition between Narendra Kumar Sinha and Nandlal Sinha. It was also asserted that the property standing in the name of Narendra Kumar Sinha was his self acquired property. The defendants further had incorporated three Schedules in the written statement out of which the Schedule-III contained the details of the properties in the name of their predecessor-in-interest Narendra Kumar Sinha.



The trial Court returned the findings on the issues against the plaintiffs and dismissed the suit. In appeal by the plaintiffs the appellate court below on reappraisal of evidence has reversed the findings of the trial Court with regard to the ancestral properties in the names of Narendra Kumar Sinha and Nandlal Sinha and has granted the decree for partition to the plaintiffs only to that extent. The appellate Court however, has confirmed the findings of the trial court with regard to the remaining properties which were claimed to be the self acquired properties of Narendra Kumar Sinha by the defendants. The present second appeal has been filed against the decree of part refusal of the relief for partition by the appellate court below aforementioned.

Mr. T.N.Maitin, learned senior counsel appearing for the appellants has firstly submitted that both the courts below have erred in law in not considering the aspect that the defendants have not brought any evidence on record to establish the identification of the properties which they have claimed to have been acquired in the name of Narendra Kumar Sinha as his exclusive property. It has further been contended that there is also no evidence on behalf of the defendants to establish the case of self acquisition by Narendra Kumar Sinha in his own name. It has been propounded that onus was squarely upon the defendants to prove the fact that the property



in the name of Narendra Kumar Sinha was his self acquired property. It has been next contended that the learned appellate court below has passed a vague decree without identifying the properties which have been excluded from partition. It has therefore, been submitted that substantial questions of law arises for consideration in this appeal.

After considering the submissions and perusal of the judgment of both the courts below, it is manifest that the plaintiffs have claimed partition of the properties described in Schedule-II of the plaint. The contesting defendants, however, have resisted the relief as prayed for by the plaintiffs on the ground of previous partition and further on the ground that besides the ancestral properties, the other properties mentioned in Schedule-III of the plaint, are self acquired properties of their predecessor-in-interest, Narendra Kumar Sinha. The defendants have also attached two schedules of the properties, specifying the properties, allotted to their ancestor Narendra Kumar Sinha and Nandlal Sinha respectively. As this appeal is confined to the refusal of part of the reliefs of the plaintiffs with regard to the properties standing in the name of Narendra Kumar Sinha, who was admittedly the predecessor-in-interest of defendants, no discussion with regard to other properties is required. It is well settled that in the Mitakshra



School of Hindu Law, a member of a joint family can acquire separate property even during jointness, and presumption would be that it is his own property unless rebutted by the other side who claims it to be joint family acquisition by establishing nucleus in the joint family out of which the said property could have been acquired. It is only in that circumstance that the member of a family, in whose name the property stands and who claims the same to be self acquired property, is required to establish by adducing cogent evidence that the said property was acquired out of his own funds. In the present case, it is the case of the plaintiffs that the father of Narendra Kumar Sinha, namely, Ramrup Singh was in service and during that period he acquired properties in the name of his eldest son, Narendra Kumar Sinha and other persons. It is also the case of the plaintiffs that all those properties were the exclusive property of Ramrup Singh. There is absence of evidence to show and establish that the acquisition of the property have been done by Ramrup Singh in the name of his eldest son, Narendra Kumar Sinha, and was in fact, acquired out of the joint family income. It has also not been pleaded that the joint family has sufficient income out of which the properties could have been acquired in the name of one or the other member of the family. The appellate court below has come to the conclusion that the plaintiffs have failed to bring on record cogent



evidence to establish the nucleus in the joint family to raise a presumption that the property standing in the name of Narendra Kumar Sinha was, in fact, joint family property. During the course of submission, learned senior counsel for the appellants has also not been able to point out any evidence on behalf of the plaintiffs to establish the said fact. Transparently the findings by the court below have been recorded on the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find perversity or unreasonableness in the findings by the appellate court with regard to the property standing in the name of Narendra Kumar Sinha, who was predecessor-in-interest of the defendants.

So far as the next submission regarding the vagueness of the decree is concerned, it is manifest from the judgments of both the courts below that the defendants have specifically mentioned in Schedule-III of the written statement the details of the properties standing in the name of Narendra Kumar Sinha. The appellate court below has manifestly granted the decree to the plaintiffs with regard to the ancestral properties and has excluded the properties standing in the name of Narendra Kumar Sinha from partition and as such this Court is not persuaded to hold that there is any vagueness in the impugned judgment and decree.



In result this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal which is, accordingly, dismissed.

(V. Nath, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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