

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.52 of 1987

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Kodai Sah & Anr

.... Appellant/s

Versus

Ram Autar Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Miss. Vagisha Pragya Vacaknavi, Advocate
Mr. S.N.Singh
Mr. Ravi Ranjan
Mr. Ratan Kumar
Mr. Binod Kumar Singh

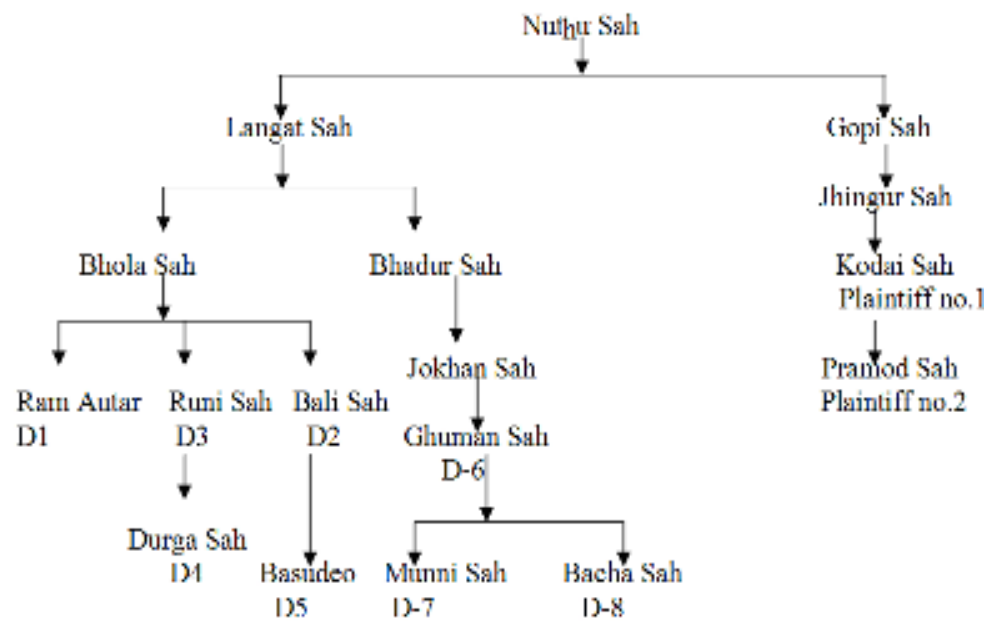
For the Respondent/s : Mr. Raghib Ahsan, Sr. Advocate
Mr. Wasi Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV JUDGMENT
Date: 23 - 01-2018

This is an appeal filed by plaintiffs against the judgment and decree dated 29th November, 1986, passed by 4th Additional Sub Judge, East Champaran, Motihari in Partition Suit No.12 of 1981 whereby and whereunder the suit filed by plaintiffs was dismissed. The appellants were the plaintiffs before the court below. They had filed the suit for partition claiming half share in the suit properties mentioned in schedule-2 of the plaint. The following genealogy as set out at the foot of the plaint of Partition Suit No.12 of 1981 explains the relationship between the plaintiffs and defendants Ist set.





2. The above genealogical table shows that Nathu Sah was the common ancestor of both the parties. The plaintiffs are grand-son and great grand son of the younger son of Nathu Sah. The defendants Ist set are heirs of Langat Sah the, elder son of Nathu Sah. The case of appellants/plaintiffs is that the ancestor of both the parties, namely, Nathu Sah died leaving the ancestral property mentioned in schedule 2 of the plaint. The said land was in joint cultivation of ancestors both the parties. The parties as per convenience were cultivating the land and during the survey operation, the same were recorded under joint khata. The name of ancestor of both the parties have been mentioned in the remark column of khatian. The father of plaintiff no.1 had acquired some land from his personal earning with which the ancestor of defendants had no concern. The land mentioned in schedule 3 of the plaint were exclusively acquired by Jhingur Sah and accordingly



the same were recorded in the name of Jhingur Sah and so, the plaintiffs being his heirs have exclusive right and tile over the same. The defendants in collusion with each other started creating trouble in peaceful possession of the plaintiffs and so it became necessary to get the land partitioned.

3. The defendant nos.6 and 7 of defendant first set jointly filed written statement. The defendants have denied the correctness of genealogical table. According to these defendants, the branch of Langat Sah and Gopi Sah do not hold any property in jointness. The entire properties had been partitioned between the branches by metes and bounds before the revisional survey operation. The land was divided keeping in view of convenience of both the parties and also the nature of land. During the survey operation, the land allotted in the share of two branches have been shown in remark column of khatian as per their respective possession. The survey khatian was prepared as per their share and possession. Their further case is that the land of plot no.1091 could not be partitioned as the same was under water and so it was recorded in the joint name of both the parties. After survey, both the parties divided the said land in equal share. Their further case is that the land of plot no.1388 was in possession of a mortgager and so it was allotted in the share of Langat Sah who in due course came in possession over the same. So far as the land of schedule 3 is concerned, the case of these defendants is that the said land belong to



the plaintiff and they have no concern with the same.

4. The defendant nos.9, 10 and 11 of defendant second set have jointly filed a separate written statement. Their case is that the plaintiffs have not given correct genealogical table. These defendants have annexed a genealogical table at the foot of their written statement wherein they have disclosed that ancestor of plaintiff, namely, Gopi Sah had two sons, namely, Jhingur Sah and Tapeswar Sah. The said Tapeswar Sah had a son, namely Prasad. They have supported the case of defendants Ist set as regards partition between the plaintiffs and defendant as pleaded by defendant first party in their written statement. These defendants have further asserted that the descriptions of land mentioned in schedule 3 of the plaint are vague and not correct. These defendants claim that they had purchased the land from the ancestor of plaintiffs and defendant first set and are coming in possession over the same since the time of purchase. According to them partition had already taken place between Jhingur Sah and Tapeswar Sah. The ancestor of these defendants had purchased the land from the sons of Gopi Sah which was their khatiyani land as well as acquired by virtue of several sale deeds. The defendants have further claimed to have purchased the land of khata no.8 from the heirs of Nathu Sah. The defendants have mentioned the details of their land in schedule 2 of their written statement. On the above grounds, these defendants had prayed to dismiss the suit.



5. On the basis of pleadings of both the parties, the court below framed following issues:-

- (i) Is the suit as framed maintainable ?
- (ii) Have the plaintiffs got valid cause of action or right to sue ?
- (iii) As there been unity of title and possession between the plaintiffs and defendant first set in respect of the properties detailed in schedule - II of the plaint ?
- (iv) Have the plaintiffs succeeded in proving the properties detailed in schedule-3 of the plaint to be the self acquired properties of their ancestors over which they have subsisting right and title ?
- (v) Are the plaintiffs entitled to the decree as claimed for ?
- (vi) To what relief or reliefs if any are the plaintiffs entitle in the present suit ?

6. So far evidence is concerned, the appellants(plaintiffs) have examined altogether five witness who are PW-1 Kodai Sah (plaintiff no.1), PW-2 Gauri Shankar Prasad Sinha, PW-3 Sukhdeo Sah, PW-4 Satahu Sah and PW-5 Jay Narain Singh. They have filed documents also which are Ext-1 certified copy of Revisional Survey Khatiyani, Ext-2 and 2/a rent receipts and Ext-3 sale deed dated 30.01.1917 executed by Abilakh Raut in favour of Gopi Sah.

7. As against this the defendant Ist set has examined DW-1 Dhuman Sah, DW-2 Yugal Thakur, DW-3 Brijnandan Sah, DW-4 Harak Sah, DW-5 Sakaldeo Giri, DW-6 Jagdish Pandit, DW-7 Gandhi Sah, DW-8 Ram Tahal Bhagat and DW-9 Chintaman Baitha. The documents filed on behalf of these defendants are Ext-A sale deed dated 15.09.1980 executed by Biranchi Rai and others in favour



of Sukhdeo Sah, Ext-B deed of exchange dated 26.05.1976 executed by Soman Rai in favour of Rijhan Sah, Ext-C certified copy of Khatiyani of Khata no.94 in the name of Langat Teli and Nathu Teli and Khata no.95 in the name of Langat Teli.

8. The defendant nos.9 to 11 have examined only one witness DW-10 Sarjug Ram. The defendant second set has produced documents also which are Ext-A/1, sale deed dated 24.11.1934 executed by Jhingur Sah in favour of Suba Raut, Ext-1/1 sale deed dated 27.02.1960 executed by Methur Raut in favour of Sakal Rai, Ext-A-1/3 sale deed dated 21.10.1930 executed by Tapeswar Sah in favour of Sukhdeo Raut, Ext-A-1/5 sale deed dated 31.10.1930 executed by Jhingur Sah in favour of Suba Raut, Ext-A-1/6 certified copy of sale deed dated 30.01.1917 executed by Abhilakh Raut in favour of Gopi Sah and Ext-B-1, certified copy of Khatiyani with respect of Khatna no.8 in the name of Abhilakh Kurmi.

9. The court below after considering the evidence of both the parties decided all the issues against the plaintiff and dismissed the suit.

10. Now, the point arises for consideration is as to whether the plaintiffs have succeeded in improving their case of jointness with the defendants Ist set with respect to the land mentioned in schedule-2, of the plaint and their exclusive possession over the land mentioned in schedule-3 of the plaint.



11. The plaintiffs' witnesses have supported the case of plaintiff as regards jointness of parties over schedule-2 land and exclusive possession of plaintiffs over schedule-3 land. The defendants witnesses on the other hand have supported the case of partition among both the parties. The witnesses have stated that partition between both the parties had taken between the ancestors of both the parties and they also dealt with their properties after partition. The plaintiffs assert that the land of schedule-2 of the plaint was the joint family property and these plots were recorded in the name of Langat Sah and Gopi Sah, who were ancestors of both the parties. They further assert that the family of both branches severed among themselves and started cultivating land as per their convenience without getting the land partitioned by metes and bounds. After segregation and severance from the branch of defendants, the grand father of plaintiff no.1 and great grand father of plaintiff no.2, i.e., Gopi Sah acquired some lands out of his exclusive earning. The said land has been mentioned in schedule-3 of the plaint. The total area of land mentioned in schedule-3 of plaint is 3 Bigha, 1 Katha 6 Dhurs which are claimed to be the exclusive lands of the plaintiffs and area of schedule-2 of the plaint is 5 Bigaha 2 Katha which was subject matter of partition before the court below. The plaintiffs have not disclosed the details of manner of their acquisition. They have filed only one document in support of their exclusive acquisition which is



registered sale deed dated 30.01.1970 (Ext-3) executed by Abhilakh Raut in favour of Gopi Sah. The plaintiffs have not produced any other document. The suit was filed in the month of January, 1981, however, the said sale deed was executed for about 64 years ago. The plaintiff no.1 has disclosed his age as 45 years on the date of his evidence, i.e., on 06.08.1986. As per his age, the said land was acquired for about 24 years earlier to his birth. Neither the plaintiff nor any of his witness have stated about the exclusive acquisition of schedule-3 property by Gopi Sah. The plaintiff no.2 (as PW-1) has stated that the land of schedule-3 was acquired after severance in the family. So in face of Ext-3 (sale deed dated 30.01.1917) the family of both the parties would have definitely severed much earlier to 30.01.1917. This evidence is quite contrary to the pleadings as made at para-6 of the plaint wherein they have stated that they separated from the defendants just few days ago and started cultivating the ancestral land as per their convenience. The case of plaintiffs as regards separation and exclusive cultivation for sake of convenience stands contradicted by their own witnesses PWs-2, 3, 4 and 5. Out of them PW-2 has said that the ancestral land of both the parties are joint. PWs-2, 3 and 4 have stated that the properties belonging the parties have not been partitioned and same are being jointly cultivated.

12. As against this the defendants have denied the case of



plaintiffs as regards severance among the parties and exclusive acquisition of schedule-3 properties by the ancestors of plaintiffs out of their own earning. They have asserted that partition between the two braches took place much before survey proceeding. Both the branches were allotted land by the panches and during survey proceeding the land allotted to the parties were recorded and their names were mentioned in column no.7 of Khatian.

13. The defendants second set at para-16 of their written statement have stated that the ancestor of plaintiff and defendant first set partitioned their land much before the survey proceeding and they sold several land to different persons. The defendants second set have filed six sale deeds which have been marked as Ext-A/1 to A1/6. Out of those documents, Ext-A 1/4 is executed by Tapeswar Sah son of Gopi Sah in favour of Suka Rai. These defendants in their written statement have asserted that Gopi Sah had two sons, namely, Jhingur Sah (father of plaintiff no.1 Kodai Sah). The father of plaintiff no.1 had executed sale deed on 24.11.1934(Ext-A/1) in favour of Tunna Raut father of the defendant no.9.

14. The plaintiffs had initially sought partition of plot under Khata no.94 which stands recorded in the name of Langat Teli and Gopi Teli. The land of Khata no.95 stands recorded in the name of Langat Teli only. The defendants have pleaded that the land of Khata no.95 was acquired by their ancestors after partition and so



those lands were exclusive recorded in the name of their ancestor Langat Teli. The plaintiff added these plots in schedule-2 of the plaint by filing amendment petition. In evidence, the defendant DW-1 Dhaman Sah has stated that the ancestral land was divided by their ancestor much prior to survey proceeding. The land measuring 3 Khata 19 Dhurs only remained joint as the same was under water but subsequently it was also partitioned. The defendant further asserts allotment of 9 Khata 16 Dhurs of plot no.1388 in the share of Langat Sah. The learned court below has discussed the oral and document evidence of both the parties and observed that there is absolutely no cross-examination of defendants evidence on the point of allotment of aforesaid plots in the share of Langat Sah.

15. The ancestors of both the parties have executed several sale deed and also acquired land by virtue of registered sale deed. They asserted exclusive right and title over their respective land. The defendant second set also claimed title by virtue of several registered sale deeds which were executed by the ancestors of both the parties. The plaintiffs have not explained either in their plaint or in evidence as to how their ancestors acquired the land mentioned in schedule-3 of the plaint and came in possession thereof. The father of plaintiff had executed sale deed Ext-A-1 and Ext-A-1/5 in favour of Suba Raut on 24.11.1934 and 31.10.1930. The full brother of Jhingur Sah also executed sale deed Ext-A-1/4 in favour of Sukhdeo Raut on



21.10.1930. The father of plaintiff no.1 had purchased land from Abhilakh Raut on 30.01.1917. The plaintiffs are silent on these documents which indicate that partition had already taken place among the ancestors of both the parties. The plaintiffs have failed to prove unity of title and possession over the land mentioned in schedule-2 of the plaint. The evidence on record shows that partition had already taken place between the two branches during the life time of their ancestors and they had acquired and also sold land to different persons who are holding possession thereon. The court below considering the oral and documentary evidence of both the parties has rightly held that there is no unity of title and possession between the plaintiffs and defendants Ist set in respect of the properties of schedule-2 of the plaint.

16. In view of the above discussions, I do not find any merit in this appeal.

17. Appeal is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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Transmission Date	

