

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.505 of 1993

RAMESH PRASAD & ORS Appellant/s
Versus
Jitender Kumar Respondent/s

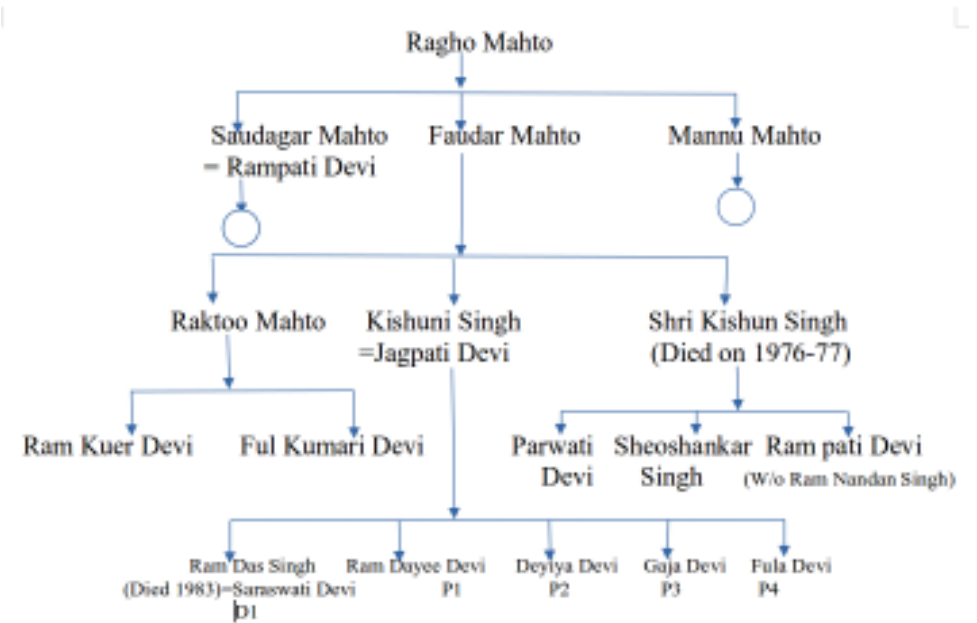
Appearance :
For the Appellant/s : Mr. Krishna Prasad, Advocate
Mr. Shabbir Ahmad & Others. Advocate
For the Respondent/s : Mr. R.Griyaghey, Advocate
Mr. Anil Kumar Saxena & Others.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV JUDGMENT

20-12-2018 The plaintiffs in Title (Partition) Suit No.635 of 1987/39 of 1987 on the file of Subordinate Judge-II, Patna have preferred this appeal challenging the judgment and decree dated 31.03.1993 and 17.04.1993 respectively dismissing the suit.

2. For the sake of convenience, the parties are referred with respect to their position in the suit throughout the discussion.

3. The genealogical table appended at the foot of the plaint is reproduced to appreciate the facts.



4. The aforesaid genealogical table as per case of



plaintiffs shows that Ragho Mahto had three sons. Out of them, two sons namely, Saudagar Mahto and Mannu Mahto died issueless in jointness leaving behind their brother Faudar Mahto. The said Faudar Mahto died leaving behind three sons namely, Raktu Singh, Kushuni Singh and Shri Kishun Singh. The said Raktu Singh and his two brothers amicably partitioned the property left by their father and accordingly schedule-1 property came in possession of Kishuni Singh. Subsequently Kishuni Singh also died in or about 1957. After the death of Kishuni Singh his widow Jagpato Devi and his son Ramdas Singh along with plaintiffs inherited the land mentioned in schedule-1 of the plaint. The plaintiffs have further stated that the Jagpato Devi died in or about the year 1962-63 leaving behind her son Ramdas Singh and daughters (plaintiffs). Subsequently Ramdas Singh also died in the year 1983. After the death of Ramdas Singh, the plaintiffs and defendant Sarswati Devi came in possession over the land mentioned in schedule-1 of the plaint. It has been further submitted that defendant no.1 and her husband had disposed off some joint family land and deposited the sale proceeds in the bank in the name of the defendant and the same is still lying in the bank. The details of deposits have been mentioned in schedule-2 of the plaint. The plaintiffs have



claimed 1/8th share each total being 1/2 in both the schedules. After the death of Ramdas Singh, the defendant became dishonest and she was not giving due share to the plaintiffs in the property and so they demanded for partition and on refusal to partition the said property amicably, the plaintiffs filed the aforesaid suit.

5. The defendants have denied the case of the plaintiffs as regards genealogical table to this extent that the plaintiffs are daughters of Kushuni Singh. It has been stated that the plaintiffs are impostor and have been set up by Sheo Shankar Singh son of Shri Kishun Singh to grab the property of the defendants. It has been stated that the plaintiffs are own sisters of Sheo Shankar Singh. The defendants have further denied the death of Kushuni Singh and Jagpato Devi in the year 1957 and 1962-63 respectively as asserted by the plaintiffs in the plaint. According to the defendants, the said Kushuni Singh died in the year 1942 and his widow Jagpato Devi died in the year 1949. According to defendants, the property of Kushuni Singh devolved upon his son Ramdas Singh and accordingly Ramdas Singh became owner of entire property left by Kushuni Singh and after the death of Ramdas Singh in the year 1983, the defendant no.1 and his daughter Manju Devi remained in the



family. The name of defendant no. 1 was mutated in place of late Ramdas Singh and accordingly she paid rent to the State of Bihar. The daughter of defendant no.1 namely, Manju Devi expired and therefore, defendant no.1 adopted one Jitendra Kumar and executed a registered deed of adoption. The said Jitendra Kumar was living with defendant no.1 as his son. The defendant no.1 executed a deed of gift with respect to 34½ decimals land in favour of said Jitendra Kumar (defendant no. 2) The defendants have further stated that the plaintiffs never inherited the property mentioned in Schedule I and II of the plaint. The defendants have denied the assertion of the plaintiffs that some of the land was acquired by the sale proceeds of any ancestral property. The defendants further denied the unity of title and possession and prayed for dismissal of the suit.

6. On the basis of pleadings of both the parties, the learned court below framed the following issues.

- (i) Is the suit, as framed, maintainable?
- (ii) Have the plaintiffs got valid cause of action for the suit?
- (iii) Is the suit barred by the law of limitation?
- (iv) Is the suit barred by the principles of waiver, estoppel and acquiescence?
- (v) Is the suit barred by the provisions of section 34 of the Specific Relief Act?
- (vi) Whether Kishuni Singh died in 1957 or in 1942?
- (vii) Whether the plaintiffs are daughters of Kishuni Singh or Shri Kishun Singh?
- (viii) Whether Jagpato Devi wife of Kishuni Singh died



in 1962 or 1952?

(ix) Whether Schedule-II properties of W/S are self acquired properties of Ram Das Singh?

(x) Whether the plaintiffs are entitled for partition as claimed?

(xi) To what other relief or reliefs, if any, the plaintiffs are entitled for?

7. The plaintiffs in support of their case have examined seven witnesses. Out of them PW-1 Tijia Devi is widow of Raktu Singh PW-2 Sitaram Singh, PW-3 Ram Deo Mistry, PW-4 Baij Nath Prasad, PW-5 Indra Deo Singh, PW-6 Kashi Rai and PW-7 Chunni Lal are villagers and they have been examined on the point of death of Kishuni Singh and his widow Jagpato Devi. The plaintiffs have proved some documents which are Ext-1 certificate of Mukhiya, Ext-2 series are negatives of photographs of admitted and disputed thumb impression, Ext-3 series are in enlarged photographs, Ext-4 is death certificate of Ramdas Singh issued by Patna Municipal Corporation on 29.02.1988, Ext-5 is death certificate of Ramdas Singh, Ext-5/a is certified copy of cremation register to show the death of Manju Devi and Ext-6 copy of deed no. 3347/1988.

8. As against this, the defendants have examined 18 witnesses, namely, DW-1 Barhu Gope, DW-2 Sarjug Singh, DW-3 Bhondu Choudhary, DW-4 Ram Surat Rai, DW-5 Sarswati Devi (defendant no.1), DW-6 Ayodhya Singh, DW-7



Munshi Prasad Singh, DW-8 Bachhu Narayan Lal, DW-9 Nirmal Chandra, DW-10 Rameshwar Singh, DW-11 Deep Narain Singh, DW-12 Ram Janam Singh. Out of them DW-9 to DW-12 are formal witnesses and they have proved some documents. DW-13 is handwriting and finger print expert and he has proved his report as Ext-L. The defendants have produced documentary evidence which are Ext-A hand note dated 20.10.1952 executed by Ramdas Singh, ExtA/1 hand note dated 16.06.1950 executed by Ramdas Singh, Ext-B to B/3 are mortgage deeds executed by Jagpatiya Devi in favour of different persons, Ext-C to C/3 are thumb impression of Ramdas Singh, Ext-D deed of adoption dated 16.12.1987, Ext-E to E/6 rent receipts, Ext-F and F/1 negatives, Ext-G mortgage deed dated 28.04.1972 executed by Ramdas Singh in favour of Ramashraya Singh, Ext-H and H/1 are receipts of Vikash Bricks Company, Ext-I Municipal receipt, Ext-J sale deed dated 27.04.1972 executed by Sri Kishun Singh, Faujdar Singh and Sheoshanker Singh in favour of Ramdas Singh Ext-K Municipal receipt, Ext-L report of hand writing expert, Ext-M mortgage deed dated 10.06.1943 executed by Jaspato Devi Ext-N admit card in the name of Jitendra Kumar and Ext-O is certified copy of the order.



9. The learned court below after appreciating the oral and documentary evidence of both sides decided all the relevant issues against the plaintiffs and dismissed the suit.

10. The issue no. 6 and 8 relate to period of death of Kishuni Singh had his widow Jagpato Devi who according to plaintiffs died in 1952 and 1962 respectively. The learned court below disbelieved the case of plaintiffs in view of evidence of defendants, which show that both of them died before 1956 i.e. prior to enforcement of Hindu Succession Act, 1956. The other two relevant issues i.e. issue no. 2 and 9 have also been decided against the plaintiffs. The court below however decided issue no. VII in favour of plaintiffs and held that plaintiffs are daughters of Kishuni Singh.

11. At the time of argument, the learned counsel for the appellants concentrated his submission mainly on adoption of defendant Jeetendra Kumar by Late Sarswati Devi. It was submitted that the defendant was not competent to be adopted by defendant no. 1 on account of being major as well as a married person. This issue has been raised for the first time before this Court at the time of argument. It was neither raised before the court below nor any issue was framed. So in view of grounds taken in memo of appeal as well as submissions of both



parties, this Court is required to see as to whether the findings with respect to issue no. 6 and 8 are based on evidence on record or these require any interference. These two issues actually decide the fate of appeal as to whether the plaintiffs are entitled to share in the suit property as claimed?

12. The learned court below has decided issue no. VII in favour of the plaintiffs and has held that the plaintiffs (original plaintiffs) are daughters of Kishuni Singh. The defendants have not assailed this finding by filing cross appeal and so this issue has become final and requires no interference.

13. In view of above facts, the solitary point arises for consideration to decide the fate of appeal is as to whether the father and mother of original plaintiffs died before or after commencement of Hindu Succession Act 1956?

14. The defendants in order to demolish the case of plaintiffs on the point of year of death of Kishuni Singh and his widow in the year 1957 and 1962-63 respectively has filed some documents. The document Ext. A is hand note dated 20.10.1952 executed by Ram Das Singh S/o Kishuni Singh to show that he had taken loan in the year 1952 for performing the Sharadh ceremony of his mother Jagpato Devi. The plaintiffs have alleged this document to be forged and fabricated



document. In order to prove its genuineness, the defendants got the L.T.I. of Ram Das Singh given on handnote compared with the L.T.I. of Ext. G by a handwriting and finger print expert DW. 13 Srikant Chowdhary. The report of expert has been marked as Ext. L. In evidence DW 13 has stated that the L.T.Is of disputed and admitted documents are of the same person. This document Ext-A has been filed to show that Ram Das Singh had taken loan from his villager for performing Saradh ceremony of his mother who died on or before 20.10.1952. The defendants have filed registered mortgage deeds executed in the year 1944, 1945, 1948 and 1943 which have been marked as Ext-B series and Ext-M. These documents were executed by the widow of Kishuni Singh and in all the documents, she has described her husband Kishuni Singh as dead. These registered documents which genuineness is beyond doubt show that Kishuni singh died before 1943 and not in the year 1957 as asserted by the plaintiffs.

15. So far oral evidence is concerned, the witnesses DW. 4 and DW. 5 are sons of Gaja Devi and Deyiya Devi. The learned court below considering the age of these two witnesses has observed that they were minor boys at the time of death of their grand mother. Besides that the plaintiffs have not



examined any independent witness on the point of year of death of Kishuni Singh and his widow Jagpato Devi. The plaintiffs no. 2 and 4 were daughters of Jagpato Devi. They were alive at the time of trial but they did not appear to depose in support of their case. They being daughters of Kishuni Singh and Jagrup Devi were most competent witnesses on the point of year of death of their parents. As against this the defendants have adduced oral and documentary evidence. The defendant no. 1 Sarswati Devi has been examined as DW. 5. She is widow of Ram Das Singh and has stated that at the time of marriage she was aged about ten years and Jagpato Devi died after two years of her marriage. At the time of evidence she was aged about 50 years and so on calculation the year of death of Jagpato Devi comes to 1954. The learned court below after assessing the evidence of both the parties concluded that Kishuni Singh and his wife died in the year 1942 and 1954 respectively.

16. Admittedly the land mentioned in Schedule I of the plaint came in the share of Kishuni Singh on partition from his brother. The evidence shows that the said Kishuni Singh died in the year 1942 leaving behind his widow Jagpato Devi, one son Ram Das Mahto and four daughters (plaintiffs) The widow Jagpato Devi also died in the year 1954 i.e. before enactment of Hindu Succession Act 1956. After the death of Kishuni Singh and his widow Jagpato Devi, their son Ram Das



Singh being sole male successor became absolute owner of the entire property left by them excluding all the four daughters. Ram Das Singh died in the year 1983 leaving behind his widow Sarswati Devi (defendant no.1) and a daughter Manju Devi as surviving members of the family. The daughter of Sarswati Devi was married to Jeetendra Kumar S/o Shiv Balak Singh. After the death of Manju Devi, the defendant no. 1 Sarswati Devi adopted her son-in-law Jeetendra Kumar who was then minor. A deed of adoption was also executed in the year 1987 vide Ext. D. She further executed a registered deed of gift in favour of Jitendra Kumar on 10.03.1988 with respect to 34 ½ decimal land vide Ext. 6.

17. The learned counsel for the appellants have assailed both these two documents on the ground that Jeetendra Kumar was major and married person and so the adoption was legally not valid. According to appellants the deed of gift is also illegal and void as it was executed and registered at a place which had no jurisdiction to register the document with respect to the land situating at Patna. *In contra*, the learned counsel for the defendant (respondent) referred Ext. N (admit card) to show that Jeetendra Kumar was minor on the relevant date. These controversies were neither raised before the learned court below nor in the memo of appeal. The documents deed of adoption Ext. D and deed of gift Ext-6 are admitted documents as the execution of these two documents by defendant no. 1 Sarswati Devi (since dead) has not been challenged. The plaintiffs in spite of knowledge of these two documents have not sought reliefs or taken any step for cancellation under section 31 of Specific Relief Act as the documents in question are evidence of rights and obligation of defendant no. 2 and are binding on the



parties.

18. On perusal of the judgment of the lower court, I find that it considered all the aspects in details and came to a conclusion that the father and mother of the plaintiffs died in the year 1942 and 1952 respectively and so their daughters (plaintiffs) did not inherit any interest in the property under Hindu Succession Act, 1956. The court below has rightly held that the plaintiffs are not entitled to partition the suit properties. Accordingly, I find no reason to interfere with the finding of the learned court below. Therefore, the finding of the learned court is hereby confirmed.

19. In the result, I find no merit in this First Appeal and accordingly, this appeal is dismissed. In the facts and circumstances of the case, the parties shall bear their own costs.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
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