

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.203 of 2011

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Praveen Kumar son of Late Sachindra Prasad Gupta resident of Mohalla Postal Park
Road no. 2 P.O. Postal Park P.S. Kankarbagh District Patna

.... Appellant/s

Versus

Navin Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhishek

For the Respondent/s : Mr. Ranjan Kumar Dubey

Mr. Satyabir Bharti

Mr. Din Bandhu Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 11-07-2018

1. Plaintiff-appellant, (hereinafter referred to as 'plaintiff') being aggrieved with the judgment and decree dated 16.09.2011 and 24.09.2011 respectively passed by the learned Sub Judge IV, Patna in Title Partition suit no. 158/2008, has preferred this first appeal. The learned Sub Judge IV, Patna dismissed the aforesaid Title Partition suit no. 158/2008 passing the impugned judgment and decree.

2. The plaintiff brought Title Partition suit no. 158/2008 against the defendants- respondents (hereinafter referred to as 'defendants') for partition of property mentioned in Schedule II and Schedule III of the plaint claiming his 1/7th share in the aforesaid property.



3. The case of the plaintiff is that property mentioned in Schedule II and Schedule III of the plaint was ancestral property and his father, namely, Sachin Prasad Gupta had four sons, namely, Navin Kumar (defendant no.1), Sunil Kumar (defendant no.3), Tarun Kumar (defendant no.5), Praveen Kumar (plaintiff) and three daughters, namely, Smt. Pushpa Gupta (defendant no.2), Smt. Ranjani Gupta (defendant no.4), Aabha Rani (defendant no.6) and all legal heirs of Sachindra Prasad Gupta inherited the aforesaid disputed property as joint family members and they are still joint. The aforesaid Sachin Prasad Gupta died on 27.02.1990 and after his death his widow, namely, Malti Devi became head of the family whereas defendant no.1 became Karta of the family. After death of Sachindra Prasad Gupta, plaintiff got compassionate appointment in electricity department and he spent huge money to maintain the dependants of Sachindra Prasad Gupta and also in the treatment of Malti Devi. The utensils and ornaments of the family were kept by defendant no.1 in his possession. He, further, averred in the plaint that due to misconduct and rude behaviour of defendant no.6, he asked the defendants for partition but



they did not pay any heed and thereafter, he gave legal notices for partition but the defendants made attempt to assault him for which he lodged Sanha no. 884/2008 in the court of the CJM, Patna and also filed the above stated suit for partition.

4. Defendant nos.1, 2, 3, 5 and 6 appeared and filed their power. Defendant nos.1, 2, 5 and 6 filed joint written statement whereas defendant no.3 filed separate written statement. Defendant no.4 did not appear nor filed any written statement despite of service of notice and accordingly, learned trial court proceeded ex parte against defendant no.4.

5. The case of the defendant nos.1, 2, 3, 5 and 6 is that property mentioned in Schedule II and Schedule III of the plaint had already been partitioned between the parties on 22.07.2007 and in the aforesaid partition, defendant no. 2 and defendant no. 4 relinquished their right and a memorandum of partition dated 22.07.2007 was prepared in presence of the witnesses and all the parties of the aforesaid partition except defendant nos. 2 and 4 put their respective signatures on the memorandum of partition and came in possession of their respective



allotted shares but the plaintiff with permission of defendant no. 6 started residing in a portion of the house, which was allotted to defendant no. 6 but when defendant no. 6 asked him to vacate the aforesaid portion of the house plaintiff became furious and, thereafter, defendant no. 6 made complain to the Bihar State Women Commission as well as higher authorities of the electricity department. Defendants also claimed that plaintiff got compassionate appointment after death of Sachindra Prasad Gupta with condition that he would maintain the dependents of late Sachindra Prasad Gupta, and also spend money at the time of marriage of defendant no. 6 but failed to maintain dependants of late Sachindra Prasad Gupta and also failed to make arrangement of the marriage of defendant no. 6 who is still unmarried. Defendants further claimed that in the aforesaid partition dated 22.07.2007 utensils and ornaments were given to defendant no. 6 as she was unmarried. Defendants denied uniformity of title and possession of the parties in respect of suit property.

6. Defendant no. 3 filed separate written statement but his case is also almost similar to the case of



other defendants and defendant no. 3 also claimed that the partition of disputed property had taken place on 22.07.2007 and a document in respect of the aforesaid partition was prepared. Defendant no. 3 also claimed that defendant nos. 2 and 4 were married at the time of aforesaid partition and, therefore, they did not take part in the aforesaid partition as they were not interested to take share in the property of their parents.

7. On the basis of the pleadings of the parties, learned trial court framed following issues :-

(ka) Is the present suit, as framed, maintainable?

(kha) Has plaintiff any cause of action?

(ga) Is the suit barred by limitation, waiver and estoppel?

(gha) Is the suit barred by section 34 of the Specific Relief Act?

(enga) Is the plaintiff entitled to get decree of his share?

(ch) Have parties uniformity of title and possession over the disputed property?

(cha) Has partition of disputed property already taken place?

(ja) Is the plaintiff entitled to get any relief or reliefs?

8. The plaintiff examined, altogether, 6 witnesses



and also got exhibited legal notices as exhibit 1 series, rent receipt as exhibit 2, postal receipts as exhibit 3 series, acknowledgements as exhibit 4 series and receipt under postal service as exhibit 5.

9. Defendant nos. 1, 2, 5 and 6 examined 5 witnesses and also got exhibited partition deed dated 22.07.2007 as exhibit A, certified copy of informatory petition no. 884 of 2008 as exhibit B, legal notice as exhibit C, certified copy of sale deed as exhibit D, certified copy of letter no. 268 dated 21.10.2008 as exhibit E, photostate copy of the mark sheet as exhibit F, original gift deed as exhibit G, prescription of the doctor as exhibit H, medical prescriptions issued by Tata Memorial Center as exhibit I series, certified copy of the supplementary affidavit filed in CWJC no. 1037 of 2009 as exhibit J and receipts issued by Patna Nagar Nigam as exhibit K series.

10. Defendant no. 3 got examined, himself, and also got exhibited letters of the Bihar State Women Commission, Patna as exhibit A series.

11. Learned court below, after analyzing and scrutinizing the evidences available on record, came to



the conclusion that partition of the disputed property between the parties had already taken place on 22.07.2007 and the plaintiff failed to prove uniformity of title and possession over suit property and, accordingly, learned trial court dismissed the above stated partition suit passing the impugned judgment and decree which has been challenged before this court under this appeal.

12. Learned counsel appearing for the appellant challenged the impugned judgment and decree arguing that the learned court below failed to appreciate the evidences in right perspective. He submitted that admittedly, defendant no. 2 and defendant no. 4 were not party to the so-called partition dated 22.07.2007 and, therefore, the learned court below failed to take notice of this fact that there was no valid partition between the parties. He further submitted that the learned court below also failed to take notice of this fact that there was nothing on the record that defendant nos. 2 and 4 had relinquished their right. He, further, submitted that admittedly, partition deed dated 22.07.2007 is not a registered document and, therefore, aforesaid partition deed is not admissible in evidence. He, further, submitted



that admittedly, Schedule II property belonged to Rohini Devi, maternal grand mother of the parties who gifted the aforesaid property to Malti Devi, mother of the parties. He further submitted that after death of Malti Devi, plaintiff and defendants inherited the aforesaid property as tenant in common and plaintiff and defendants have equal right in the aforesaid property and, therefore, non-participation of defendant no. 2 and defendant no. 4 in so-called partition dated 22.07.2007 makes the above stated so-called partition illegal. He, further, submitted that moreover, the above stated partition dated 22.07.2007 was never acted upon and the aforesaid fact was also admitted by defendants' witnesses. He further submitted that signature of the plaintiff was taken on partition deed dated 22.07.2007 under coercion and, therefore, the aforesaid partition deed dated 22.07.2007 (exhibit A) is not a genuine document and moreover, recital of exhibit A goes to show that the aforesaid deed is not a memorandum of partition rather the aforesaid deed is a partition deed which requires registration under the Registration Act. Learned counsel relied upon decisions reported in AIR 1988 SC 881 and AIR 1976 SC 807.



13. On the other hand, learned counsel appearing for defendants except defendant no. 2 supported the impugned judgment and decree arguing that execution of exhibit A is admitted by plaintiff and, therefore, plaintiff can not say that exhibit A had not been executed. He further submitted that recital of exhibit A goes to show that after partition, memorandum of partition was prepared between the parties and it is well-settled principle of law that memorandum of partition does not require any registration and moreover, even if it assumed for the sake of argument that exhibit A is not a memorandum of partition, then also, plaintiff is stopped challenging the previous partition by rule of estoppel. He further submitted that defendant no. 2 jointly filed written statement along with remaining defendants except defendant no. 4 who did not appear before the trial court nor filed any written statement and defendant no 2 accepted factum of previous partition and now, she can not resile from her previous statement. He, further, submitted that plaintiff's witnesses themselves admitted previous partition and the learned trial court rightly passed the impugned judgment and decree.



14. Learned counsel for defendants except defendant no. 2 relied upon decisions reported in AIR 1966 SC 323, AIR 1992, Patna 128, AIR 1975 SC 1119 and AIR 1933 Patna 708(2).

15. Learned counsel appearing for defendant no. 2 challenged the impugned judgment and decree arguing that defendant no 2 never signed written statement before the learned trial court and, as a matter of fact, her signature was fraudently made by remaining defendants. He, further, submitted that there is no recital in exhibit A that defendant no 2 and defendant no 4 had relinquished their share and moreover, learned court below did not frame any issue in respect of the above stated fact nor gave any finding regarding so-called relinquishment of defendant no 2 and defendant no. 4. He, further, submitted that admittedly, defendant no 4 had not appeared before the learned trial court and, therefore, it was the duty of the court below to protect her interest and moreover, so-called previous partition was never acted upon as the defendant no 1 himself admitted in his evidence that he is still residing in a portion of the house which was allotted to defendant no 6.



16. Certain facts are admitted. It is an admitted position that both parties are descendants of late Sachindra Prasad Gupta and property in question is ancestral property. Furthermore, it is admitted position that property mentioned in Schedule II of the plaint, originally, belonged to Rohini Devi who gifted the said property to said Malti Devi and after death of Malti Devi plaintiff and defendants inherited the said property in accordance with law. The claim of the plaintiff is that the property in question is still joint family property whereas defendants except defendant no 2 claimed that property in question had already been partitioned on 22.07.2007 and a memorandum of partition dated 22.07.2007 was prepared. Further case of the defendants is that parties came in possession of their respective allotted shares and the plaintiff is residing in the share of defendant no. 6 with her permission. It has been argued on behalf of the plaintiff that exhibit A, so-called memorandum of partition, is a partition deed which is not registered and hence, is not admissible in evidence whereas the claim of the defendants is that exhibit A is a memorandum of partition which does not require registration. Therefore,



the question arises as to whether exhibit A is a partition deed or a memorandum of partition and as to whether the aforesaid exhibit A is admissible in evidence or not. Furthermore, question arises as to whether the parties had already partitioned the property in question on 22.07.2007 and after partition, they came in possession of their respective share or not.

17. In AIR 1975 SC 1119, it has been held by the Apex Court of this country that the memorandum of partition is not required to be registered and if conduct of the parties subsequent to the partition shows that arrangement effected under the guidance of the Panch was mutually accepted, then even in absence of defendants' signature on the memorandum of partition will not invalidate the partition effected by the Panch.

18. In AIR 1976 SC 807, it has been held that if the memorandum itself, does not create or extinguish any right in immovable property, said memorandum of partition does not require registration.

19. Similar view has been expressed in AIR 1992 Patna 128 in which it has been held that the memorandum after family arrangement for the purpose of



record or future use does not require registration.

20. Therefore, it is obvious from the above stated decisions that the law on this point is very clear and if the member of a family descending from a common ancestor or a near relation seeks to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family and document is prepared by way of memorandum after family arrangement has already been made for the purpose of record and future use, the said document does not require registration.

21. In the present case at para 29 of his cross-examination, plaintiff has admitted execution of exhibit A. He also admitted his signature on exhibit A but he stated that his signature was forcibly taken on exhibit A and he had given an informatory petition before the CJM, Patna. The aforesaid informatory petition no. 884 of 2008 has been brought on record as exhibit B but in aforesaid petition, he has, nowhere, mentioned that his signature on exhibit A was taken forcibly by the defendants. At para 33 of his cross-examination, this witness stated that



exhibit A was scribed by his cousin brother, namely, Deepak Kumar. This witness also admitted that in the aforesaid petition that he got some **Parti** land and it was assured that some cash would be given to him for construction of the house. Plaintiff also admitted at para 33 of his cross-examination that presently, he is residing in a portion of the house which was allotted to defendant no. 6. Furthermore, this witness admitted that it has not been mentioned in exhibit A that he would get cash for construction of the house. He also admitted in his cross-examination that exhibit A was witnessed by Ram Nath Prasad, his cousin brother-in-law, Ram Shankar Prasad, his younger uncle and Deepak Kumar, his cousin brother. Therefore, the aforesaid statement of plaintiff (PW1) goes to show that entire terms and conditions of partition had not been mentioned in exhibit A. Furthermore, exhibit A does not disclose the area which was allotted to the parties. The aforesaid fact goes to show that partition between the parties had not taken place through exhibit A rather exhibit A was prepared after partition and, therefore, it can not be said that exhibit A is a partition deed rather exhibit A is a memorandum of partition



which does not require registration.

22. Plaintiff (PW1) admitted that defendant no.6 had made complaint against him before his higher officials as well as before Bihar State Women Commission and he had filed his show cause before his higher officials. Exhibit E has been brought on record to show that the plaintiff had replied to letter no. 268 dated 21.10.2008 and in the aforesaid reply, he admitted that his brothers and sisters separated on 22.07.2007. Therefore, the aforesaid fact goes to show that partition dated 22.07.2007 had already been effected. Moreover, plaintiff (PW1), again, admitted at para 48 of his cross-examination that document of partition was prepared on 22.07.2007 and he as well as his brothers and sisters separated and he got copy of the deed dated 22.07.2007. Plaintiff further admitted at para 54 of his cross-examination that electric meter stood in his name for the house which was allotted to defendant no.6 and furthermore, he admitted at para 58 of his cross-examination that he had not lodged any sanha or made any complain against the defendants for taking his signature forcibly on exhibit A.



23. PW2, namely, Prakash Chandra Gupta is brother-in-law of the plaintiff. This witness supported the plaintiff's case but admitted at para 17 of his cross-examination that a memorandum of partition in respect of partition of disputed property was executed between the parties.

24. PW3 is the wife of the plaintiff. She also supported the plaintiff's case but admitted at para 11 of her cross-examination that before institution of the suit, Panch had prepared document in respect of partition. She, further, admitted that parties are residing separately and only defendant no.6 resides with defendant no.1. She, further, admitted that panchnama in respect of partition between the plaintiff and defendants had been executed.

25. PW4 is a neighbour of the parties and this witness also admitted at para 12 of his cross-examination that he had heard about partition of the property of the parties but subsequently, he came to know that the aforesaid partition was not proper.

26. The above stated evidences adduced on behalf of the plaintiff goes to show that not only the plaintiff but almost all his witnesses admitted partition



dated 22.07.2007 and they also admitted that a memorandum of partition was executed between the parties.

27. On the other hand, DW 1 Ramnath Prasad who is cousin brother-in-law of the plaintiff and defendants and happens to be witness of exhibit A stated that partition deed was executed in his presence on 22.07.2007. The aforesaid partition deed was scribed by Deepak Kumar at the direction of the parties and all the parties as well as witnesses to the aforesaid partition deed put their respective signatures on exhibit A.

28. DW 2 is a neighbour of the parties and this witness stated that in the year 2007, mutual partition in the family of the parties had taken place and parties of the aforesaid partition came in possession of their respective shares.

29. DW3 (defendant no.5) stated that disputed property was partitioned between the parties on 22.07.2007 and parties came in possession of their respective shares after the above stated partition but the plaintiff is forcibly residing in the share allotted to defendant no.6. This witness stated that above stated



partition took place with the consent of all the parties and a deed was also prepared and on the aforesaid deed all parties put their respective signatures. This witness at para 20 of his cross-examination stated that a deed in respect of partition was prepared on 22.07.2007 and the aforesaid deed was scribed by Deepak Kumar with consent of all parties in presence of panch Rama Shankar Gupta, Ramnath Prasad, Deepak Kumar and all parties put their respective signatures on the aforesaid deed. This witness also admitted that the plaintiff got land in the aforesaid partition and after the aforesaid partition the plaintiff purchased some land in the name of his wife. This witness, specifically, stated at para 26 of his cross-examination that his both sisters Puspa Devi and Rani Gupta did not want to take share in the property and he also admitted that his both sisters had not signed exhibit A.

30. DW4 (defendant no.1) also stated that disputed property was partitioned on 22.07.2007 and the parties came in possession of their respective share after the aforesaid partition. This witness further stated that a memorandum of partition was prepared. This witness also



stated that the plaintiff is forcibly residing in the share of defendant no.6. On being cross-examined, this witness stated that the above stated partition had taken place with consent of all parties including defendant nos. 2 and 4 who were not intended to take share in the above stated property. This witness very fairly stated at para 35 of his cross-examination that the aforesaid partition had taken place due to mediation of the witnesses and not to the panch. He also admitted that in exhibit A, khata number, plot number, boundary and area have not been mentioned. He also admitted that in exhibit A, share of defendant nos.2 and 4 had not been mentioned nor it has been mentioned that defendant nos.2 and 4 had given consent for the aforesaid partition.

31. Almost similar statement has been made by DW6 (defendant no.3) in his deposition. This witness at para 11 of his cross-examination, admitted that ornaments, cash and utensils etc were given to him as well as his other brothers but subsequently, they gave the above stated ornaments, cash and utensils to defendant no.6. This witness stated that it has not been mentioned in exhibit A as to whom ornaments, cash and utensil were



given.

32. After scrutinizing entire evidences available on record, it is explicit clear that all terms and conditions of the partition dated 22.07.2007 had not been mentioned in exhibit A and it is also obvious that exhibit A was prepared as a memorandum of partition and that is the reason entire terms and conditions of the partition were mentioned in exhibit A and, therefore, in my view, exhibit A does not come under the mischief of section 17 of the Registration Act. Moreover, partition dated 22.07.2007 as well as execution of exhibit A is not in dispute rather the plaintiff admitted the partition dated 22.07.2007 as well as execution of exhibit A and, therefore, in my view, the plaintiff has no right to claim re-partition of the property which had already been portioned between the parties. Furthermore, I am of the opinion that learned trial court rightly decided the issue nos. Enga, Ch and Cha.

33. It is admitted position that defendant no.2 filed joint written statement along with defendant nos.1, 5 and 6 and furthermore, it is also admitted position that defendant no.4 did not file any written statement nor



appeared before the court below, though notice was properly served upon her. Defendant no.2 never challenged exhibit A before the court below rather she accepted the execution of exhibit A and also accepted the stand of remaining defendants that she had relinquished her share in the property in question but in the present appeal, she appeared and challenged the impugned judgment and decree on the ground that written statement before the court below was filed on her behalf by forging her signature and, as a matter of fact, she had never signed the written statement.

34. Under Order 41 rule 22 of the CPC, respondent may object to a decree in respect of finding against him and Order 41 rule 24 of the CPC gives power to the appellate court to pronounce judgment upon an issue, if the evidence upon the record is sufficient to enable the appellate court to finally determine the aforesaid issue of the suit. Here, I would like to say that defendant no.2 claims that remaining defendants forged her signature on written statement filed before the court below but it is pertinent to note here that defendant no.2 filed I.A. no. 3433/2013 in this appeal on 07.05.2013 and



at para 6 of the aforesaid I.A. no. 3433/2013, she accepted this fact that she had filed joint written statement along with defendant nos.1 and 5 before the court below, though she claims that facts were not properly placed before her by defendant nos.1 and 5. However, in the aforesaid interlocutory application defendant no.2 has, nowhere, pleaded that remaining defendants forged her signature on written statement filed on her behalf in the court below. Therefore, it appears that the defendant no.2 developed story of forgery during the pendency of this appeal and, in my view, she can not retreat back from her previous stand which was taken by her before the court below.

35. So far as defendant no.4 is concerned, she never appeared before the court nor challenged the genuineness of exhibit A. No doubt, the learned court below had not framed any issue in respect of relinquishment of right by defendant nos.2 and 4 but there was no occasion to frame the said issue because the relinquishment of right by defendant nos.2 and 4 was never disputed before the court below.

36. On the basis of the aforesaid discussions, I



am of the opinion that the learned court below decided the issues involved in accordance with law and there is no ground to interfere into the impugned judgment and decree and this appeal is liable to be dismissed. Accordingly, this appeal stands dismissed and the impugned judgment and decree is, hereby, confirmed.

Shahid

(Hemant Kumar Srivastava, J)

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