

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.719 of 2016

1. Sri Shiv Prasad Singh
2. Sri Ramadhar Singh
3. Sri Deo Prasad Singh All Sons of Late Nand Lal Singh
4. Sri Ram Niwas Singh
5. Swi Niwas Singh Both Sons of Late Raghunandan Singh
6. Most. Shivnandi Devi Widow of Late Sant Prasad Singh
7. Sri Ajit Kumar Singh
8. Sri Anil Kumar Singh
9. Sri Pravin Kumar Singh All Sons of Shiv Prasad Singh
10. Sri Vinit Kumar Son of Sri Ajit Kumar Singh
11. Sri Chandra Bhushan Son of Sri Ram Niwas Singh All resident of village - Bihta, Police Station Bihta, District - Patna

... .. Appellant/s

Versus

1. Nageshwar Kumar
2. Mahesh Singh Both Sons of Late Ram Pravesh Singh Resident of village - Ekbari, Police Station Sahar, District Bhojpur At Present residing at Mahadeo Road, Bihta, Police Station Bihta, District - Patna
3. Sri Anant
4. Sri Vishal Both Sons of Anil Kumar Singh
5. Sri Pratik
6. Sri Tushar Both Sons of Sri Pravin Kumar
7. Sri Saurabh Son of Late Sanjay Singh
8. Sri Manish Kumar Son of Sri Ramadhir Singh
9. Sri Subham minor son of Sri Manish Kumar, under Guardianship of father and natural guardian Sri Manish Kumar
10. Smt. Gita Devi
11. Smt. Smita Devi Both Daughters of Late Sant Prasad Singh and Most. Shivanandi Devi
12. Smt. Rina Devi
13. Smt. Manjusha Devi
14. Smt. Rinku Devi All Daughter of Sri Dev Prasad Singh
15. Smt. Ranjana Devi
16. Smt. Pushpanjali Devi Both Daughters of Shri Niwas Singh All residents of village - Bihta, Police Station Bihta, District - Patna

... .. Respondent/s



Appearance :

For the Appellant/s : Mr. J.S. Arora, Sr. Adv & Mr. Manoj Kumar, Adv
For the Respondent/s : Mr. Raghieb Ahsan, Sr. Adv, Mr. S. Khalil, Adv &
Mr. Wasi Akhtar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-05-2020

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed against the judgment and order dated 08.06.2016 passed by learned sub-Judge-I, Danapur, Patna, in Title Partition Suit No. 1117 of 2015, by which learned trial court has rejected the petition filed by defendant-appellants to vacate the order of status quo.

3. Plaintiffs case as stated in the plaint is that Babu Ratan Singh had 3 sons namely Kapil Deo Singh, Nand Lal Singh and Raghunandan Singh. 1st son Kapil Deo Singh was married to Ram Sakhi Devi and from said wedlock one daughter Ram Jyoti Devi was born who was married to Ram pravesh Singh and plaintiffs are sons from said Ram Jyoti Devi and Ram Pravesh Singh. Mother of plaintiffs Ram Jyoti Devi died in the year 1967 and Kapil Deo Singh died in the year 1975 and his widow Ram Sakhi Devi died in the year 1994 leaving behind plaintiffs as their successors.

4. 2nd son Nand Lal Singh died leaving behind 4 sons namely, Shiv Prasad Singh, Sant Prasad Singh, Ramadhar Singh



and Deo Prasad Singh. Sant Prasad Singh died leaving behind his widow Sheo Nandani Devi, all of whom are defendants in the suit.

5. 3rd Son Raghunandan Singh died leaving behind his 2 sons namely Ram Niwash Singh and Shree Niwash Singh who are defendants in the suit.

6. It is further stated in the plaint that there was no partition of ancestral properties detailed in Schedule-I of the plaint among three sons of late Babu Ratan Singh and properties are still joint. Lands were mutated in the name of Babu Kapil Deo Singh who was karta of the family till his death in 1975 and thereafter his surviving two brothers looked after the joint property. Ram Sakhi Devi widow of late Kapil Deo Singh executed several sale deeds and gift deed in favour of defendants in which plaintiff no. 1 is witness and said transactions were made only to save the joint family property from ceiling proceedings.

7. Defendants in their written statement have stated that there was partition among three sons of late Babu Ratan Singh in the year 1969 and same was reduced in writing on 22.05.1969. After death of Kapil Deo Singh his widow Ram Sakhi Devi came in possession over his property as full owner



and she sold her properties owned and possessed by her late husband to different persons including defendants by registered sale deeds after receiving the consideration amount and in those sale deeds defendant no. 1 is witness as well as beneficiary. She also executed gift deeds in favour of family member of defendant out of love, affection and service rendered to her.

8. It has been further stated that Kapil Deo Singh had a daughter namely, Ram Jyoti Devi who pre-deceased her father in the year 1967 and she had 2 sons namely, Nageshwar Kumar and Mahesh Singh (plaintiffs) Ram Sakhi Devi widow of Kapil Deo Singh had sold her entire property after death of her husband to different persons including defendants on payment of consideration amount and purchaser came in possession over their purchased property. Properties as detailed in Schedule-I of the plaint consists of already sold properties by Ram Sakhi Devi as well as properties of defendants. Plaintiffs have not included in Schedule-I of the plaint properties which were sold to other persons by Ram Sakhi Devi.

9. After partition, the names of Nand Lal Singh and Raghunandan Singh were separately recorded in the year 1975-76 in the record of rights and separate jamabandi was opened and thereafter in the year 1992-93 separate Jamabandi were



opened in the name of Nand Lal Singh and Raghunandan Singh. Thereafter there has been further separation between the family of Nand Lal Singh and Raghunandan Singh and properties have been partitioned.

10. It is submitted on behalf of appellant that most of the Schedule-I property of which partition is sought were transferred by Grandmother of plaintiffs by registered sale deeds in favour of members of defendants family as well as other co-villagers in which defendant no. 1 is a witness and registered sale deeds are valid and legal documents of title and are presumed to be correct and binding upon the parties unless set aside by court of competent jurisdiction. Plaintiff has not prayed for setting aside of those sale deeds and he cannot do so as same are barred by limitation.

11. It is further submitted that plaintiffs cannot claim to be a member of joint hindu family of defendants as they can constitute joint family with their father, grandfather and others and at best can claim to be tenants in common.

12. It is further submitted that in the recital of sale deed itself grand-mother of plaintiffs Ram Sakhi Devi has stated that her husband got the properties in a family partition and after his death she being his widow has acquired right title and interest



over the property as such the claim of the plaintiffs that properties are joint cannot be accepted.

13. Appellants have brought on record, 2 FIR lodged by plaintiff against defendant in which they have accepted partition among 3 brothers as such they admitted partition while instituting criminal case and denying partition in title suit as per their convenience and choice.

14. Mother of the plaintiffs died in the year 1967 and thereafter their maternal grandfather died in 1975 and lastly their maternal grandmother died in the year 1994 and before her death she has alienated all her properties through registered sale deeds and gift deeds and in most of the sale deeds plaintiff no. 1 himself is a witness and plaintiff no. 1 himself has purchased the residential house from his maternal grandmother by a registered sale deed which is indicative of separation in the joint family.

15. After hearing the parties and considering the materials available on record, this Court is of the considered view that plaintiffs have failed to prove *prima facie* case of jointness whereas defendants have brought several documents which are indicative of partition among the 3 brothers and there is nothing joint between the plaintiff and defendants.

16. Accordingly, the petition filed by the defendants for



vacating the status quo order is allowed and the order dated 08.06.2016 passed by learned sub-Judge-I, Danapur, Patna, in Title Partition Suit No. 1117 of 2015, is set aside.

17. The miscellaneous appeal stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	13.08.2019
Uploading Date	13.05.2020
Transmission Date	NA

