

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.309 of 2019

Hansh Lal Mahto Son of Late Faujdar Mahto, Resident of Village Rupwara
P.S. Tariyani At present P.S. Hiramma District Sheohar.

... .. Appellant/s

Versus

1. Ram Chandra Mahto Son of late Faujdar Mahto, Resident of Village Rupwara P.S. Tariyani at present P.S. Hiramma District Sheohar.
2. Deovati Devi, Wife of Ram Chandra Mahtgo, Resident of Village Rupwara P.S. Tariyani at present P.S. Hiramma District Sheohar.
3. Ramdeo Mahto, Son of Late Faujdar Mahto, Resident of Village Rupwara P.S. Tariyani at present P.S. Hiramma District Sheohar.
4. Ramnath Mahto, Son of Late Faujdar Mahto, Resident of Village Rupwara P.S. Tariyani at present P.S. Hiramma District Sheohar.
5. Nirmala Devi, Wife of Ram Nath Mahto, Resident of Village Rupwara P.S. Tariyani at present P.S. Hiramma District Sheohar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.K. Das, Advocate
For the Respondent/s	:	Mr. Ajay Kr. Singh, Advocate
	:	Mr. Sanjeev Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 19-01-2023 Heard Mr. S.K. Das, learned counsel for the appellant and Mr. Ajay Kr. Singh and Mr. Sanjeev Kumar Singh, learned counsel for the respondents.

This Second Appeal has been filed by the defendant-appellant against the judgment and decree of affirmation by the District Judge, Sheohar in Title Appeal No. 04 of 2018 on 17.05.2019 whereby, the judgment and decree dated 01.05.2018 passed in Title Suit No. 75 of 2016 by the learned Sub-Judge, Sheohar has been affirmed. The Title Suit No. 75



of 2016 was filed for title and recovery of possession and further sought relief that defendant 1st set be directed to vacate the suit land and hand-over the possession of the same within a stipulated time and in event of failure to do so, possession of the suit land be delivered to him through process of the court and also for the cost of the suit and mesne profit be awarded to the plaintiff.

The plaintiff case in short is that deceased Faujdar Mahto had four sons namely, Hansh Lal Mahto (defendant no. 1), Ram Chandra Mahto (Plaintiff no. 1), Ramdeo Mahto (defendant No. 2) and Ram Nath Mahto (defendant no. 3). Devanti Devi (plaintiff no. 4) is the wife of Ram Chandra Mahto and Nirmala Devi (defendant no. 4) is the wife of Ram Nath Mahto. The landed property as described in 'Schedule I' of the plaint, of which suit property as described in 'Schedule II' is a part of the 'Schedule I' property, was purchased in the name of Hansh Lal Mahto (defendant no. 1) on 27.04.1977 in jointness by joint family funds as he was *karta* of the family. The land purchased was 23 decimal as shown in *Khatiyān* but by map, it was 30 decimal and the land with all its attachments in totality came under the possession of the family of the plaintiff and defendant. By mistake of deed-



writer, Khata no. 233 was written instead of Khata No. 223 and the possession was handed over to them in accordance to the plot no. and boundaries by the earlier land owner namely Rajdeo Singh. Partition took place in the family in 1992 in the month of '*Baisakh*' and the property detailed in 'Schedule I' was distributed among the brothers. Each got 7.5 decimal land in it. Ram Nath Mahto got in the north, to his south got Ramdeo Mahto, to his south got Ram Chandra Mahto and in extreme south got Hansh Lal Mahto. Accordingly, they came in possession and used the same as per their wishes. Defendant no. 1 Hansh Lal Mahto started claiming that he had sold only 17 $\frac{1}{4}$ decimal land to his brother whatever else remaining in property given in 'Schedule I' belonged to him. On 28.07.2016, Hansh Lal Mahto in the landed property of plaintiff as given in 'Schedule II' from southern side over 5 decimal land started constructing boundary wall measuring 20 feet long in east-west direction and dispossessed the plaintiff from the suit property and giving rise to cause of action for filing this suit.

After summons, only defendant no. 1 Hansh Lal Mahto filed written statement in which, his averments is that partition took place in family in 1975 and he has purchased



the 'Schedule I' property from his exclusive income in the year 1977. It is also submitted that to meet legal necessity he sold $17 \frac{1}{4}$ decimals land from north to plaintiff no. 2, defendant no. 2 and defendant no. 4 by sale-deed dated 26.06.1989 and the $12 \frac{3}{4}$ decimals was in possession of defendant no. 1 for which, plaintiff and other defendants have no concern. It is also submitted that no any partition schedule was ever made or signed by this defendant on 09.05.1993. Prior to the partition, there was some dispute relating to 'Schedule I' land between the brothers and with the intervention of the father and well-wisher, it was decided that defendant no. 1, Hansh Lal Mahto will execute sale-deed to the extent of $\frac{3}{4}$ th of the land of the total land in favour of his other three brothers. So the sale-deed of $17 \frac{1}{4}$ decimal land out of 23 decimal was executed in favour of wives of Ram Chandra Mahto and Ram Nath Mahto and in favour of Ramdeo Mahto by Hansh Lal Mahto on 26.06.1989 and it was written in sale-deed that everybody would be in possession of the land equally according to map. Later on 09.05.1993, all four brothers prepared their schedule of land according to partition which also included the land given in 'Schedule I' of the plaint, according to the sale-deed executed by Hansh Lal



Mahto and put their signature on it in presence of witness Avadh Bihari Mahto and accordingly mutation of land in the name of all the four brothers took place and they are paying their rent to the Government of Bihar.

After analyzing the oral evidences as well as documentary the learned trial court held that the story of partition as stated by the plaintiff is correct. The 'Schedule II' property which is 7 ½ decimal in area clearly belongs to the plaintiff and defendant no. 1 and defendant no. 1 has dispossessed the plaintiffs from his share of the land which is a part of 'Schedule I' property as given in plaint. The lower trial court held that exhibit 1(D) i.e. exhibit B clearly shows that since in the *Khatiyan* only 23 decimals is mentioned as per area of the plot, defendant no. 1 has executed sale-deed in the name of his three brothers or their wives for 17 ¼ decimal land and expressly mentioned in the body of the sale-deed that land would be shared equally according to the map. From exhibit 1A, it is evident that defendant no. 1 has sold portion of property of his mother, she purchased on 25.01.1983, which he inherited through *Jamabandi Batwara* of 1993. It is also evident from 'Exhibit 1' (sale deed executed by defendant No. 1), defendant no. 1 himself admits the factum of



Jamabandi Batwara taking place and he inherits the property then how can he deny the fact of partition in 1993 and claimed the *Jamabandi Batwara* false and fabricated. 'Exhibit 5/b, 5/c 5/d and 5/e i.e. *Jamabandi* in the name of all the four brothers so that the 'Schedule I' property of the plaint has been equally distributed among all the four brothers according to the area given in the map and all have received 7 ½ decimal land.

In the aforesaid findings, the learned trial court decreed the suit in favour of the plaintiffs-respondent 1st set and directed to defendant to give peaceful possession of the suit land to the plaintiffs within three months.

It is manifest from a plain reading of judgments of both the courts below that it has been concurrently found that the plaintiffs had the title to the property in question and *jamabandi* was created in their favour according to *jamabandi batwara* of 1993 and further held that *Khata* No. 223, Plot no. 1119 Area 23 decimals on spot is 30 decimals according to map was purchased in the name of defendant No. 1 as *karta* of the Joint Family, which was partitioned through *jamabandi batwara* amongst four brothers equally in the year 1993.

The learned lower appellate court after perusing the records and evidences adduced by the parties affirmed the



finding of the learned trial court on each issue and held that in the year, 1993 the *Jamabandi* was created on the basis of *Jamabandi Batwara* and story of partition has been upheld. The lower appellate court appreciated the 'Exhibit 1/d' and 'Exhibit B' i.e. sale-deed dated 26.06.1989 wherein, the defendant-appellant admitted that all four brothers have equal share as per the map measuring 30 decimal.

In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned judgments and decree of the learned Courts below nor does it has any substantial question of law in the instant Second Appeal, which is accordingly, dismissed at the stage of hearing under Order XLI Rule II of the Code of Civil Procedure.

(Khatim Reza, J)

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