

03.01.2023
SL No.7
Court No.8
(gc)

SAT 1360 of 2005

**Balaram Mahato & Ors.
Vs.
Khitish Chandra Mahato & Ors.**

None appears on behalf of the appellants.

The appeal is of the year 2005. In view of our earlier order dated 14th December, 2022, we propose to consider whether the second appeal involves any substantial questions of law.

The appellate decree dated 12.10.2004 affirming the judgment and decree of the Trial Court dated 21.11.2003 in a suit for declaration of title and injunction is a subject matter of challenge in this second appeal. The suit was decreed on contest. The First Appellate Court upheld the order. The plaintiff claims to be the owner of C.S. Plot No.135 measuring 30 decimals of land including other plots mentioned in 'Kha' Schedule belonged to Fakir Mahata and Ajodhya Mahata in equal share. It is stated that an amicable settlement was arrived at in the year 1929 in between the two brothers in respect of 'Kha' Schedule under C.S. Khatian No.36. Both the brothers died much before the initiation of R.S. operation. Upon the death of Fakir his sons Kailash and Baburam inherited the property. Similarly, Chunaram and Sarat inherited the property of Ajodhya. In view of amicable partition in the year 1929, Kailash and Baburam got

possession of their respective lands and since then they were enjoying the respective demarcated portion of their land for their own use and enjoyment. After the death of the aforesaid persons their legal heirs were brought on record. R.S.R.O.R were accordingly revised.

According to the plaintiff Sabek C.S. Plot No. 135 measuring about 37 decimals including other plot of land under the said C.S. Khatian is mentioned in Scheduled 'Kha' of the plaint appertaining to C.S. Khatian No.36 and the land of other Moujas previously belonged to Fakir and Ajodhya in equal shares and subsequently both the brothers by an amicable partition in the year 1929 separated the properties in metes and bounds in respect of 'Kha' Scheduled Property under C.S. Khatian No.36 and other properties amongst the two brothers. R.S. have been prepared according to the partition that had taken place in the year 1929 in the name of Kailash and Baburam sons of Fakir in respect of some plot of land and some other plots of land have also been recorded separately in the name of Chunaram and Balaram. C.S. Plot No.135 measuring 37 decimal has been build up as R.S. Plot No.135 measuring 32 decimal in the name of Kailash and his brother Baburam and Plot No.135/48 measuring 5 decimal in the name of Kailash and his brother Baburam and other C.S. Plot have been recorded in the name of Baburam and Chunaram in terms of the earlier partition effected in the year 1929. Accordingly R.S. Plot No.135, Khatian No.36/1 measuring about 32 decimal was

recorded in the name of Kailash and Baburam exclusively during the R.S. operation. Out of the aforesaid area $6\frac{1}{4}$ th decimal of land had been transferred by Kailash and Baburam in favour of defendant No.4, 5 and 6 and remaining $25\frac{3}{4}$ th decimal of land is the suit property mentioned in scheduled 'Ka' for which declaration of title and injunction has been prayed for by the legal heirs of Kailash and Baburam against legal heirs of Sarat and Chunaram.

The defendant contested the suit disputing the partition. The plaintiffs filed the R.S.R.O.R and C.S.R.O.R that were marked as Ext. 1 and the defendants/appellants have filed the L.R.R.O.R. that were marked as Ext. A to A(5) in order to ascertain whether R.S.R.O.R. or L.R.R.O.R. finally published is correct. The parties were examined and cross-examined extensively. D.W.1 in his cross-examination stated that during C.S. Operation, the names of Fakir and Ajodhya were recorded in equal share. They are the original owner/possessor in respect of the suit plot with other plots. Since after C.S. Operation, the said two brothers namely Fakir and Ajodhya mutually separated and partitioned their property in equal share. In Cross-examination dated 29.01.2003, the D.W.1 has stated that they did not raise any complaint or objection before any authority in respect of R.S.R.O.R. regarding the suit property. This witness, D.W. 1 virtually supports the case of the plaintiffs and they did not raise any objection regarding R.S.R.O.R.

Before the First Appellate Court it was argued that the L.R.R.O.R. which has been finally published should be taken to be correct and L.R.R.O.R. shall prevail over the R.S.R.O.R.

On the other hand, the plaintiffs submitted that R.S.R.O.R should prevail over L.R.R.O.R. It was also argued that the oral partition was valid in law before 7th June, 1965. In the instant case, the partition having taken place in the year 1929, the factum of oral partition cannot be denied. It appears that this fact of oral partition has also been supported by D.W.1 in cross-examination. R.S.R.O.R. and L.R.R.O.R. are not document of title but a document of possession and when there is a recognition and acceptance of an oral partition before 1st July, 1965, there cannot be any reason to disbelieve the C.S.R.O.R and R.S.R.O.R. In view thereof the entry in L.R.R.O.R. cannot be said to be in conformity with the entry made in R.S.R.O.R. Accordingly, the entry in L.R.R.O.R. does not create any title in favour of the defendants. Both the Courts have found that from the R.S.R.O.R. that there has been early partition amongst the co-sharers before R.S. Operation and as per partition, R.S.R.O.R. has been prepared separately and from that very document, it can be safely presumed that there was a partition. After considering all the aspects of possession and documentary evidence, the learned Trial Court decreed the suit rightly on sound reasoning.

Both the Courts have found that the plaintiffs are in possession having good title over the suit property. In view of Section 51(A) W.B.L.R. Act, the L.R.R.O.R. has less evidentiary value, if it is made erroneously or baselessly. Thus, it appears that the plaintiffs have good title and possession in respect of the suit property.

On the basis of such concurrent findings of facts based on proper appreciation of evidence and the relevant statutes, we do not find any substantial questions of law on which the second appeal can be admitted.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)