

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.446 of 1986

2. Vijay Narain Singh Son of Ram Briksh Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
3. Uday Narain Singh son of Ram Briksh Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
4. Amarendra Narain Singh Minor son of Ram Briksh Singh Minor under the guardianship of their father , Ram Briksh Singh, Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
5. Bameshwar Singh Son of Ramautar Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
6. Daroga Singh Son of Ramautar Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
7. Chandramani Devi Wife of Late Chandradeo Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
8. Shrimati Shanti Devi Daughter of late Chandradeo Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
9. Balram Singh Son of Chandradeo Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.
10. Shanti Devi Widow of Umesh Singh
10. Shrikant Singh Minor son of Late Umesh Singh Under the guardianship of his mother Shanti Devi
10. Rubia Devi Wife of Satyendra Singh
- 3.
11. Naresh Singh Son of Chandradeo Singh Resident of Village Mausea Bigha, Pergana Sherghati, District- Gaya.

... .. Appellant/s

Versus

- 1.1. Gauri Singh
- 1.2. Ram Pravesh Singh
- 1.3. Nandu Singh
2. Shrimati Sahodra Devi Daughter of Keshu Singh Resident of Village Kochaya, P.S. Imamganj, District- Gaya.
3. Shrimati Rani Devi Daughter of late Mathura Singh and Wife of Devi Singh Resident of Vilalge Divam, P.S. Sherghati, District- Gaya.
4. Sidheshar Singh Son of Charitar Singh Resident of Village Godawar, P.S. Hunterganj, District- Hazaribagh.
5. Bachu Singh Son of Sidheswar Singh Resident of Village Godawar, P.S. Hunterganj, District- Hazaribagh.
6. Tapo Devi Daughter of Basudeo Singh and Wife of Nathu Singh Resident of Village Godawar, P.S. Hunterganj, District- Hazaribagh.



7. Ghutan Devi Daughter of Basudeo Singh and wife of Banarsi Singh Resident of Village Bhurkunda, P.S. Sherghati, District- Gaya.
8. Lalita Devi daughter of Basudeo Singh and wife of Ugrah Singh Resident of Village Datan, P.S. Hunterganj, District- Hazaribagh.
9. Sahdeo Singh Son of Padarath Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
10. Manita Devi D/o Mahadeo Singh wife of Mageshwar Singh Resident of Village Gouri Sigha Dist Gaya.
10. Mani Devi D/o Mahadeo Singh wife of Sital Singh Resident of Village Mareh P.S Fatepur, Distt- Gaya.
10. Shakuntala Devi D/o Mahadeo Singh Wife of Sali Singh Resident of Village Jalwar P.S. Imamganj Distt- Gaya.
10. Bachhi Devi D/o Mahadeo Singh wife of Raj Vallabh Singh Resident of Village Bagahi, P.S Pahariya Distt.- Gaya.
10. Parti Devi D/o Mahadeo Singh Wife of Tanik Singh Resident of village Bagahi, P.S.- Paraiya Dist- Gaya.
10. Ajoy Singh S/o Ramphal Singh R/v Jalwar PS Imamganj Dist- Gaya.
10. Binoy Singh S/o Ramphal Singh R/v Jalwar PS Imamganj Dist- Gaya.
11. Mahavir Singh Son of Padarath Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
12. Kapildeo Singh Son of Basudeo Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
13. Munshi Singh Son of Karan Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
14. Surendra Singh alias Satendra Singh Son of Munshi Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
15. Nageshwar Singh Son of Bhajan Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
16. Kameshwar Singh Son of Bhajan Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
17. Mosaheb Singh Son of Nageshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
18. Janardan Singh Son of Kameshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
19. Prasidh Singh Son of Dhaneshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
20. Ramashish Singh Son of Dhaneshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
21. Jadunandan Sharma Son of Dhaneshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
22. Rambriksh Singh Son of Dhaneshwar Singh Resident of village Mansa



Bigha, P.S. Sherghati, District Gaya

23. Shrimati Mohan Devi Wife of Sidheshwar Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya
24. Shrimati Shanti Devi Wife of Jayant Singh alias Bachu Singh Resident of village Mansa Bigha, P.S. Sherghati, District Gaya

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pravashankar Mishra
For the Respondent/s : Mr. Ramesh Kumar Choudhary

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : -19.01-2024

I have already heard the counsel for the parties.

2. Being aggrieved and dissatisfied with the judgment and decree dated 10.04.1986 passed in Partition Appeal No. 80 of 1978/22 of 1984, whereby the learned First Additional District Judge, Gaya affirmed the judgment and decree dated 31.03.1978 passed by the Sub-Judge-III, Gaya in Partition Suit No. 46/66, the appellants preferred this second appeal.

3. The two following substantial questions of law were framed for adjudication in this second appeal on 31.07.1986 which are as under:-

“1. Whether the court of appeal below erred in law in dismissing the suit as not maintainable on account of non-inclusion of Shibu Singh or his heirs or transferee as a party defendant to the suit?

2. Whether the court below erred in holding



that the suit is bad for partial partition?”

4. The brief facts of the case is that the appellants and the respondents 11 to 17 instituted Partition Suit No.46/66 in the court of Sub-Judge, Gaya for partition of the land situated in village *Manasbigha*, appertaining to khata nos.44 and 45, area 80 acres. After amending the plaint, some more properties were added by the plaintiffs for partition, particularly the land situated in village *Dhab*, claiming that property to be joint property of the plaintiffs and the defendants. After institution of the suit, plaintiff nos. 8 to 14 pleaded that they had not instituted the suit. Thereafter, they were transposed as defendant nos. 11 to 17.

5. Defendant nos.6 to 10 took a plea that the land of village *Dhab* (subsequently added in the plaint) was actually belonged to one Shibu Singh, resident of village *Nazirbigha*. The said Shibu Singh was not impleaded in the suit, therefore, that property could not be included in that suit for partition. The Subordinate Judge in paragraph-44 of the judgment held that the properties belonging to Shibu Singh are settled properties and have been included in the suit without impleading him. Due to this reasons, the suit could not proceed, unless the plaintiffs implead him as a party to the suit. In paragraph-45, the learned



Subordinate Judge held that the suit was not maintainable in respect of subsequently added properties without paying the court fee in that respect and without impleading Shibu Singh.

6. There is a rival contention between the parties on the point whether the land situated in village *Dhab* actually belonged to Shibu Singh or not. The plaintiffs claimed that those properties were purchased in the name of Shibu Singh as *Benamidar* and Shibu Singh had no right or title, but this fact was not mentioned in the plaint.

7. So far as other properties, except the properties situated in village *Dhab* are concerned, the learned courts below, after scrutinizing the evidences adduced on behalf of the parties, came to the concurrent conclusion that those properties were already partitioned, as such, there was no question of partition of those properties.

8. The learned counsel for the appellants submitted that the learned courts below committed illegality in holding that Shibu Singh was a necessary party and without his impleadment, the suit could not proceed. As a matter of fact, the said Shibu Singh was not a necessary party. Though, it is true that the land situated in village *Dhab* which was subsequently added in the plaint, was existing in the name of Shibu Singh in



the revenue records, but he held that property as *Benamidar* of the parties to the suit and he had no title over that land.

9. On the other hand, the learned counsel for the respondents submitted that the learned court below did not commit illegality, irregularity or impropriety in refusing the partition of the property and dismissing the partition suit as well as the appeal preferred by the appellants. The land of village *Dhab* was standing in the name of Shibu Singh, who was a stranger to the family of the parties to the suit and without his impleadment, the suit could not proceed. He also submitted that said Shibu Singh was not a *Benamidar*, but he is the real owner of the property in question and admittedly he sold some portion of the land to some of the defendants of this case.

10. It is an admitted fact that the land situated in village *Dhab* was recorded in the name of Shibu Singh. As per the plaintiffs, he was holding that land as *Benamidar* of the parties to the suit and he had no right and title over that land, but the plaintiffs did not mention this fact that Shibu Singh was *Benamidar* of the parties to the suit, in their plaint.

11. This is undisputed fact that said Shibu Singh is a recorded *Raiyat*. Some of the defendants contend that Shibu Singh was the real owner of the property in question. As such,



Shibu Singh was a necessary party to the suit and in his absence, the suit could not be adjudicated upon. The learned courts below rightly held that due to non-impleadment of necessary party, the suit was not maintainable.

12. So far as other properties are concerned, the learned first appellate court, after considering the materials on record, held that there was partition in the joint family of the parties between 1930 and 1935. The lower appellate court, in my view, rightly affirmed the judgment and decree of the trial court and dismissed the appeal filed by the plaintiffs. This is a finding of fact decided by the courts below concurrently.

13. In my view, I do not find any illegality in the impugned judgment and decree of the learned courts below.

14. The second appeal is accordingly dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	04. 01.2024
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Transmission Date	

