

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.166 of 2009

=====

Against the judgment and decree dated 19-01-2009 passed by Additional District Judge 1st, Buxar in Title Appeal No. 33/89 confirming the judgment and decree dated 29-07-1989 passed by 1st Additional Munsif Buxar in Title Suit No. 21 of 1983/8 of 1988.

1. Arjun Singh Son of Late Ram Narain Singh Resident of Village- Koeri Purwa (Buxar) (Koeripurwa), P.S.- Buxar, District- Bhojpur (Present Buxar).
2. Rama Shray Singh, Son of Late Ram Narain Singh Resident of Village- Koeri Purwa (Buxar) (Koeripurwa), P.S.- Buxar, District- Bhojpur (Present Buxar).
3. Rama Shankar Singh, Son of Late Ram Narain Singh Resident of Village- Koeri Purwa (Buxar) (Koeripurwa), P.S.- Buxar, District- Bhojpur (Present Buxar).
- 4.1. Ramawati Devi D/o Late Ram Narain Singh, W/o- Deorajit Singh R/o- Village- Hukaha, P.S.- Buxar, Dist.- Buxar.
- 4.2. Rameshwari Devi D/o Late Ram Narain Singh, W/o Lal Babu Singh R/o- Village- Babube, Jagdishpur, P.S.- Jagdishpur, Dist.- Bhojpur.
- 4.3. Mina Devi D/o Late Ram Narain Singh, W/o- Ram Sharan Singh R/o- Village Konwali, P.S.- Rajpur, Dist.- Buxar.
- 4.4. Anandi Devi D/o Late Ram Narain Singh, W/o- Late Atal Bihari Singh R/o- Village- Chakarhasi, P.S. and Dist.- Buxar.
- 4.5. Taramuni Devi D/o Late Ram Narain Singh, W/o- Hipendra Kumar Mukul R/o- Village- Shivpur, P.S.- Nawandar, Dist.- Buxar at present Village- Koeripurwa (Buxar), P.S. and Dist.- Buxar.

... .. Appellant/s

Versus

- 1.1. Most. Panna Devi W/o Late Bhim Singh Resident of Village- Koeripurwa, P.O. and P.S.- Buxar Dist.- Buxar.
- 1.2. Rajendra Singh Son of Late Bhim Singh Resident of Village- Koeripurwa, P.O. and P.S.- Buxar Dist.- Buxar.
- 1.3. Sugendra Singh Son of Late Bhim Singh Resident of Village- Koeripurwa, P.O. and P.S.- Buxar Dist.- Buxar.
- 1.4. Usha Devi D/o Late Bhim Singh, W/o- Manju Singh R/o- Vill.- Bhachakiya, P.O.- Unwas, P.S.- Itaris, Dist.- Buxar.
- 1.5. Sonamati Devi D/o- Late Bhim Singh, W/o- Shashi Bhusan Singh R/o- Vill.- Bhachakiya, P.O.- Unwas, P.S.- Itaris, Dist.- Buxar.
2. Banshi Dhar Singh, Son of Late Rajrup Singh Resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).
3. Murli Dhar Singh, Son of Late Rajrup Singh Resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).



4. Bhaiya Lal Singh, Son of Late Rajrup Singh Resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).
5. Lal Babu Singh, Son of Late Rajrup Singh Resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).
6. Ramji Singh (Minor), Son of Late Rajrup Singh Leaving under the guardianship of Bhim Singh, brother and natural guardian, resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).
- 7.1. Radhika Devi Resident of Village- Koeripurwa (Buxar) Koeripurwa, P.S.- Buxar, District- Bhojpur (Present Buxar).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi Sr. Adv. With Mr. Ashok Kumar Mishra, Adv.
For the Respondent/s	:	Mr. Jitendra Kumar, Adv. With Mr. Anil Kumar Roy, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 03-01-2023

Heard learned counsel for the appellants and learned counsel for the respondents.

2. This Second Appeal has been filed against the judgment of affirmance by the defendants-appellants. In the instant Second Appeal, the following substantial question of law has been formulated for determination:-

(i) Whether the judgment of Lower Appellate Court is vitiated because of the fact that at paragraph 16 of the judgment, the Lower Appellate Court held that the plaintiffs being the descendant of Rajrup and Bartani had no title on the land comprised in khata no. 422 and at the same time, decreed the suit of the plaintiff for the partition with regard to two plots of



khata no. 422 being plot no. 915 and plot no. 708?

3. The respondents herein were the plaintiffs before the learned Trial Court. The appellants herein were defendant Nos. 1 to 3 and original appellant No.4.

4. The learned Trial Court partly decreed the suit. The plaintiffs and defendants preferred separate appeals bearing Title Appeal No. 30 of 1989 and Title Appeal No. 33 of 1989 respectively. Both these appeals were dismissed by a common judgment.

5. Being aggrieved by judgment dated 19-01-2009 passed in Title Suit No. 33 of 1989, the defendants-appellants filed the present Second Appeal. It is pertinent to mention here that no Second Appeal has been filed by the plaintiffs-respondents against the judgment and decree dated 19-01-2009 passed in Title Appeal No. 30 of 1989.

6. In order to determine the matter in its correct perspective, it is necessary to briefly restate the case of the plaintiffs. The plaintiffs filed Title Suit No. 21 of 1983/8 of 1988 for partition of the Schedule-II lands mentioned in the plaint and also for declaration that plaintiffs are entitled for half share of the Schedule-II lands. It is contended that the plaintiffs and defendants are Joint Hindu Family and they are governed by



the Mitakshra School of law. Defendant no.1 is the “*Karta*” of the Joint Hindu Family and their entire land and property is joint. It is further pleaded that in the state of jointness, Rajrup Singh and Ram Narayan Singh died. Both are sons of Ram Swaroop Singh. Plaintiffs are heirs of Rajrup Singh and defendants are heirs of Ram Narayan Singh. There was partial partition between the father of the plaintiffs and father of the defendants on 28.06.1960 by registered partition deed for the property of Mauza- Deoaria and Mauza- Koirpurwa. Mostt. Koeri Devi, who was the grandmother of the plaintiffs-defendants, got some land in village- Koirpurwa through gift at the time of partition. After the death of their grandmother, the lands were recorded in the name of Ram Narayan Singh as he was the “*Karta*” of the joint family. It is further contended that some of the lands were partially partitioned between the parties and rest of the land remained in jointness details of which is given in Schedule-II of the plaint. Hence, the suit was filed for partition of the land mentioned in Schedule-II of the plaint and for half share in the aforesaid properties. The details of Schedule-II property, which is situated at Mauza- Koirpurwa, Thana -Buxar, Buxar, Thana No. 332 Tauzi No. 1297, Dist. Bhojpur is as follows:-



(रेवेन्यू सर्वे नं० ४६०)

पु० खाता न०	खेसरा न०	एराजी
४२२	३८८ सोनबरसा	४४५ कड़ी
	७०० नारा पर	१२० कड़ी
	७०२ नारा पर	१२५ कड़ी
	७०६ नारा पर	३५५ कड़ी
	९२७ ताल	१५० कड़ी
	९२९ ताल	१३० कड़ी
	९३३ ताल	११० कड़ी
२२३	३९१	३४९ कड़ी वो १४ $\frac{३}{४}$ डी
२२७	३६७	१२२ $\frac{१}{२}$ कड़ी
	३७५	४२ $\frac{१}{२}$ कड़ी

7. On summon, the defendants appeared and filed their written statement and contested the suit. The case of the defendants, in short, is that the parties are descendants of Jhingur koeri and are separated much before and they are not joint. There was no unity of title and possession between the plaintiffs and defendants over the suit land. The genealogy given by the plaintiffs is not correct. The plaintiffs have no share in schedule-II land. Hence, the suit may be dismissed.

8. After analyzing the case of the parties, materials on record and evidence adduced by the parties, the learned Trial



Court decreed the suit in part and declared that the plaintiffs are entitled to half share of land mentioned in Khata No. 227 of Plot Nos. 367 and 375. Aggrieved thereof, the defendants-respondents filed Title Appeal No. 33 of 1989.

9. After considering the rival submissions, the learned Lower Appellate Court affirmed the judgment and decree of the learned Trial Court dated 29-07-1989 passed by learned 1st Additional Munsif, Buxar and, accordingly, dismissed the appeal by observing that till the annulment of deed by any competent Court, the partition deed dated 28.06.1960 will be treated as valid document. It is also observed that 2 katha 11 dhur with regard to Khata No. 422, Plot No. 915 area 2 Katha 11 Dhur and Plot No. 708, 12 biswa land was allotted in the name of Rajrup Singh, who was father of plaintiffs, in partition deed dated 29-06-1960. It is also mentioned that the plaintiffs have not claimed the said land and the same was not mentioned in the Schedule-II of the plaint. It is also held that the defendants have also not filed any counter claim against the said land and there is no case by either of the parties with respect to the said land.

10. From bare perusal of the impugned judgments and Lower Court Records, it is apparent that the plaintiffs have not



claimed share in Khata No. 422 appertaining to Plot Nos. 915 and 708. Both the learned Courts below have rejected the claim of the lands with respect to Khata nos. 422 and 223.

11. Mr. Ganpati Trivedi, learned Senior counsel representing the appellants submits that the learned Lower Appellate Court has misdirected itself that the partition deed 29-06-1960 is a valid document till it is not cancelled by any competent court of law. It is further submitted by the learned senior counsel that the finding over a Partition deed dated 29-06-1960, was not challenged by either of the parties. Moreover, there was no relief sought for in the plaint in this regard and no issue was framed. The learned Lower Appellate Court made out a third case.

12. On the other hand, learned counsel for the plaintiffs-respondents accedes the submissions of the learned senior counsel for the appellants.

13. The learned counsel for the respondents has vehemently submitted that the plaintiffs have not challenged the finding with regard to Khata Nos. 422 and 223. He has fairly submitted that the plaintiffs have no claim with regard to Khata No. 422, bearing Plot nos. 915 and 708.

14. Accordingly, as discussed above, the observation



made by the learned Lower Appellate Court with regard to Partition deed dated 29-06-1960 is unwarranted.

15. In the facts and circumstances of the case, the substantial question of law formulated is, therefore, answered against the appellants.

16. Thus, this Second Appeal has no merit and, accordingly, it is dismissed.

17. Pending Interlocutory Applications, if any, shall stand disposed of.

(Khatim Reza, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	22-12-2023
Uploading Date	06-01-2024
Transmission Date	N/A

