

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No. 140 of 2013

1. Smt. Leela Devi (deceased)
2. Smt. Bimla Kumari @ Bimla Chaudhary, D/o Late Prabhu Singh and wife of Sri Dadan Chaudhary, Resident of Village- Dhelwan, P.S.- Phulwari Sharif, Dist.- Patna at present residing at Mohalla- Hinapur, Tellipara, P.S.- Dhanbad Town, Distt.- Dhanbad.

... .. Appellant/s

Versus

1. Lal Bahadur Singh S/o Late Sita Ram Singh, resident of Village- Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
2. Krishna Singh, son of Lal Bahadur Singh resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
3. Binod Singh, son of Lal Bahadur Singh resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
4. Anil Kumar @ Phantus, son of Lal Bahadur Singh resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
5. Saket Kumar @ Mantu, son of Lal Bahadur Singh, resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
6. Munna Kumar @ Sudhakar Kumar, son of Lal Bahadur Singh resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
7. Ajay Kumar @ Chhote, son of Lal Bahadur Singh resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
8. Raju Kumar, son of Sri Krishna Singh, minor under the guardianship of their father Sri Krishna Singh, resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
9. Sunny Kumar, son of Sri Krishna Singh, minor under the guardianship of their father Sri Krishna Singh, resident of Village Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
10. Smt. Sunita Devi D/o Late Butta Prasad W/o Sri Gyan Prasad Resident of Vill- Tarari, P.S. Daud Nagar, Distt- Aurangabad.
11. Smt. Anita Devi, D/o Late Butta Prasad and W/o Sri Binod Prasad Resident of Budhan Bigha, P.S.- Daud Nagar, Distt.- Aurangabad.
12. Arbind Kumar, S/o Late Butta Prasad Mothers name Dhanvanti Devi resident of Village- Amaraut, P.S.- Dhobhi, Distt.- Gaya.
13. Smt. Leela Devi, W/o Sri Sudarshan Prasad, D/o Late Sita Ram Singh resident of Village- Kusma, P.S.- Udvant Nagar, District- Bhojpur.
14. Smt. Pratima Devi, W/o Sri Sheo Kumar Prasad and D/o Late Sita Ram Singh resident of Balapar Jagdishpur, P.S.- Jagdishpur, Distt- Bhojpur.
15. Most. Bageshwari Devi (deleted)
16. Sri Suresh Singh (deleted)



17. Sri Ram Naresh Singh, Son of Late Kishori Singh resident of Village- Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
18. Sri Ramesh Singh, Son of Late Kishori Singh resident of Village- Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
19. Kunti Devi, W/o Krishna Singh resident of Village- Dhelwan, P.S.- Phulwarisharif, Distt.- Patna.
20. Smt. Indrani Devi, W/o Late Vinod Kumar Singh R/o Vill.- Ekama, P.S.- Dhanrua, Patna.
21. Sri Udai Chand Kumar Singh, S/o Late Vinod Kumar Singh R/o Vill.- Ekama, P.S.- Dhanrua, Dist.- Patna.
22. Nilam Sinha, D/o Brahamdeo Prasad Singh R/o Vill.- Mahatma Gandhi Nagar, P.S.- Patrakar Nagar, Dist.- Patna.
23. Kumar Sanjay, S/o Sri Brahamdeo Pd. Singh R/o Vill.- Mahatma Gandhi Nagar, P.S.- Patrakar Nagar, Dist.- Patna.
24. Sri Rajnish Kumar, S/o Rajendra Prasad R/o Vill.- Amardip Nagar, Jyotish Road, New Dhelwa, P.S.- Ram Krishna Nagar, Dist.- Patna.
25. Paniya Devi, W/o Raja Das R/o- Vill.- Bande, P.S.- Tajpur, Samastipur.
26. Jamanti Devi W/o Late Ramlagan Das Resident of Vill.- Malpur, P.O.- 1. Jarpura, P.S.- Tajpur, Dist.- Samastipur- 848504.
26. Lal Babu Paswan S/o Late Ramlagan Das Resident of Vill.- Malpur, P.O.- 2. Jarpura, P.S.- Tajpur, Dist.- Samastipur- 848504.
26. Ashok Paswan S/o Late Ramlagan Das Resident of Vill.- Malpur, P.O.- 3. Jarpura, P.S.- Tajpur, Dist.- Samastipur- 848504.
27. Shail Devi, W/o Dasrath Sao R/o Vill.- Dariyapur, Chainpur, P.S.- Naubatpur, Dist.- Patna.
28. Jitendra Kumar, S/o Upendra Kumar R/o Shiv Nagar, Station Road, Hilsa, Dist.- Nalanda.
29. Suman Singh, W/o Jitendra Kumar R/o Shiv Nagar, Station Road, Hilsa, Dist.- Nalanda.
30. Manish Kumar, Son of Kamlesh Sah R/o Vill.- Amardip Nagar, South Dhelwa, Fulwari, Dist.- Patna.
31. Jitendra Kumar, Son of Kamlesh Sah R/o Vill.- Amardip Nagar, South Dhelwa, Fulwari, Dist.- Patna.
32. Sanjit Kumar, S/o Ramlakhan Singh R/o Vill.- Chipura Kalan, Chipura Khurd, Gaurichak, Dist.- Patna.
33. Archana Kumari, W/o Dunjay Kumar R/o Vill. and Post- Ranipur, P.S.- Islampur, Dist.- Nalanda.
34. Sarla Sagar, S/o Shiyam Prakash Bramchari R/o- Hospital Road, Hilsa, Dist.- Nalanda.
35. Rubi Devi, W/o Pramod Kumar R/o Vill.- Sanvad, Post- Amba, P.S.- Rahui, Dist.- Nalanda.
36. Dharmsheela Devi, W/o Yogendra Prasad R/o- Vill.- Karauta, Post- Tima, P.S.- Salimpur, Dist.- Patna.



... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate
For the Respondent No. 1	:	Mr. T.N. Maitin, Sr. Advocate with Mr. Rajeev Kumar Sinha, Advocate
For the Respondent Nos. 2, 8 & 13 :		Mr. Ganpati Trivedi, Sr. Advocate Mr. Subroteshwr De, Advocate Mr. Bishwanath Choudhary, Advocate Mr. Ritik Shah, Advocate
For the Intervenor-Respondent	:	Mr. Surendra Kishore Thakur, Advocate Mr. Y. Madhavi, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 16-05-2024

Heard Mr. Ranjan Kumar Dubey, learned counsel for the appellant, Mr. T. N. Matin, learned senior advocate assisted by Rajeev Kumar Sinha for respondent no. 1 and Mr. Ganpati Trivedi, learned senior advocate assisted by Subroteshwar De for respondent nos. 2, 8 and 13.

2. The present appeal has been preferred against the judgment and decree dated 08.04.2013 passed by learned Sub Judge-VIII, Patna in Title Partition Suit No. 213 of 2001 whereby the learned trial court has dismissed the suit on contest against the plaintiffs and *ex parte* against the non-appearing defendants.

3. Plaintiff nos. 1 and 2 are the original (plaintiff no. 1-appellant no. 1 died) appellants and original defendant nos. 1 to 17 are the respondents. Rest are substituted heirs of the defendants and newly added respondents during the pendency of the appeal.



4. The plaintiffs/appellant filed the aforesaid Title Partition Suit for preliminary decree for partition of half share of the plaintiffs in the suit properties detailed in Schedule-2 of the plaint in favour of the plaintiffs and against the principle defendants and by appointment of a Survey Knowing Pleader Commissioner, a separate Takhta of the plaintiffs' share be carved out and on preparation of the final decree, the plaintiffs be put in possession over the allotted separate Takhta through the process of court, and also for temporary injunction against the principle defendants and cost of the suit.

5. As per the case of the plaintiffs, the suit land is the ancestral property of the plaintiffs and principle defendants. It is pleaded that one Matukdhari Mahto had a son, namely, Chhaterdhari Singh, who had two sons, namely, Kishun Singh and Ratul Singh. Kishun Singh had a son Bhattu Singh. Bhattu Singh had two sons, namely, Hira Singh and Moti Singh. Moti Singh died issueless in jointness of the family. Hira Singh had two sons, namely, Sita Ram Singh and Prabhu Singh. The said Prabhu Singh died on 20.09.2000 leaving behind his widow Leela Devi and a daughter, namely, Bimla Kumari, who are plaintiff nos. 1 and 2 / appellant nos. 1 and 2 respectively.



6. It is further pleaded that Sita Ram Singh died in the years 1997 leaving behind his two sons, namely, Lal Bahadur Singh and Krishna Singh, defendant nos. 1 and 2, and three daughters, namely, Dhanwanti Devi, Lila Devi and Pratima Devi, who are defendant nos. 10, 11 and 12. Defendant nos. 3 to 7 are the sons of defendant no. 1, namely, Lal Bahadur Singh and defendant no. 8 and 9 are the sons of defendant no. 2, namely, Krishna Singh. It is further contended that Kishun Singh and Ratul Singh, the two sons of Chhaterdhari Singh, constituted a joint hindu Mitakshra family of which Ratul Singh was Karta and manager of the family. During cadestral survey operation, Ratul Singh died issueless leaving behind his widow Punia Devi. Though Ratul Singh had died in jointness with Sri Kishun Singh but in order to console Punia Devi, the widow of Ratul Singh and also to get her feel secured got her name separately recorded over some lands of the joint family in the cadestral survey khatian. The land recorded in her name appertains to the land of Khata No. 11 and 47 are measuring 4.71 acres. The name of Kishun Singh was recorded over rest land of the joint family appertaining to Khata No. 3, 10 and 14. The name of Kishun Singh and Most. Punia Devi were separately recorded in survey khatian but the cultivation and management of all the lands were done jointly



under the supervision and management of said Kishun Singh and his descendants. Punia Devi lived with her *Devar* Kishun Singh. The entire land of Khata No. 3, 10, 11, 14 and 47 after the death of Ratul Singh, remained in cultivating possession of Kishun Singh.

7. It is further case of the plaintiffs that Kishun Singh survived by his only son, namely, Bhattu Singh, who was survived by his two sons, namely, Hira Singh and Moti Singh. Moti Singh died issueless in jointness. On the principle of survivorship, Hira Singh came in possession of the entire estate i.e. the property of the Khata No. 11 and 47 recorded in survey khatian in the name of Most. Punia Devi and the land of Khata No. 3, 10 and 14 was recorded in the name of Kishun Singh. Sita Ram Singh and Prabhu Singh, the sons of Hira Singh were members of coparcenary. Prabhu Singh, the husband of the plaintiff no. 1 and the father of plaintiff no. 2 was very simple man and was imbecile. He was wholly dependent on his brother, namely, Sita Ram Singh and his nephew defendant nos. 1 and 2. The said Sita Ram Singh was very clever and cunning man and so was his sons defendant nos. 1 and 2. The said Prabhu Singh reposed great faith and confidence in his brother and nephews. Prabhu Singh had no son. He had an illiterate, simple and pardanashi wife, plaintiff no. 1/appellant no. 1 and a daughter, plaintiff no. 2/ appellant no. 2. Plaintiff no. 1



having no son also reposed much confidence in defendant nos. 1 and 2. Her daughter plaintiff no. 2, after marriage began living with her husband in her *sasural* (Dhanbad).

8. It is further pleaded that after the death of Punia Devi, Most. Sumariya and Bindiya started claiming themselves the daughters of Ratual Singh and Punia Devi and both of them executed a deed of gift dated 12.07.1967 in favour of one Kishori Singh with respect to the land of Khata No. 11 and 47 claiming themselves to be the aunt (phuphu) of the said Kishori Singh, which was quite illegal, null and void as well as inoperative document. The said Kishori Singh did not acquire any right, title and interest in the said gifted land on the basis of said deed of gift nor he ever came in possession over the said land and descendants of Hira Singh always opposed the said deed of gift. The said Kishori Singh had filed Title Suit No. 211 of 1972 in the court of Sub Judge-2, Patna against the descendants of Hira Singh for declaration of his right, title over the gifted land and also for recovery of possession. The said suit was decreed. Against the said judgment and decree, descendants of Hira Singh had filed First Appeal No. 339 of 1977 before this Court. The said first appeal was disposed of on 05.07.1983 on the basis of a compromise arrived at between the parties. According to the said compromise



out of the gifted land of Khata no. 11 and 47, the said Kishori Singh was given 2.38 acres of land and rest 2.19 acres land were left for the descendants of Hira Singh. The details of the land given in Schedule-1 of the plaint was allotted to Kishori Singh in the compromise decree. In the said Title Suit no. 211 of 1972 and First Appeal No. 339 of 1977, the said Prabhu Singh was also a party along with Sita Ram Singh and his two sons defendant nos. 1 and 2. The pairvi of the First Appeal No. 339 of 1977 was being done by the said Sita Ram Singh. It is vehemently pleaded that after the compromise decree dated 05.07.1983 of First Appeal No. 339 of 1977, 2.19 acres land of Khata No. 11 and 47 was given to the sons of Hira Singh and the lands recorded in survey khatian in the name of Kishun Singh of Khata no. 3, 14 and 10 came in joint possession of Sita Ram Singh and Prabhu Singh, and continued as such under the management and supervision of Sita Ram Singh and his sons. Sita Ram Singh died in the year 1997 in jointness with his brother Prabhu Singh. The said Sita Ram Singh and his sons were very clever person and having dishonest intention to grab the land of the share of Prabhu Singh, got Title Suit No. 160 of 1983 filed in the court of of Sub Judge, Patna in the name of the plaintiffs, namely Leela Devi and Bimla Kumari against the said Kishori Singh and others with the reliefs that compromise decree



dated 05.07.1983 passed in First Appeal No. 339 of 1977 was not binding upon them. In the said suit, Krishna Singh was the defendant no. 2 and he joined as plaintiff along with plaintiffs Leela Devi and Bimla Kumari. Defendant no. 1 and their father had apprehension that as soon as the plaintiffs Leela Devi and Bimla Kumari would come to know of the fraud on the part of them in filing that suit, they might withdrew that suit and that is why the said defendant no. 2, Krishna Singh also joined as one of the plaintiffs in that suit. The said suit was filed as alleged that at the instance of said defendant nos. 1 and 2 and their father that there had already been partition of the joint family property in the year 1966 i.e. prior to the said deed of gift dated 12.07.1967, and a memorandum of partition of 1966 was prepared and according to partition, they are coming in possession though, the entire holding is joint and ground rent is being paid jointly to the State of Bihar, Title Suit No. 160 of 1983 was dismissed on 18.10.1985 and subsequently, the same was challenged before this Court by way of First Appeal No. 746 of 1985 by Krishna Singh, Leela Devi and Bimla Kumari. During the pendency of said First Appeal, Leela Devi and Bimla Kumari filed the present suit bearing Title Suit No. 213 of 2001 on 30.05.2001 for carving out of their half share in the Schedule-2 property and alleged that deed of partition dated



01.12.1966 of the joint family property never took place and same was false document created at the instance of Prabhu Singh and Krishna Singh.

9. On summons, defendant nos. 1, 3 and 4, defendant nos. 2 and 8, defendant nos. 7 and 9 and defendant no. 17 filed their written statement separately in four sets and contested the suit. All the defendants supported the case of partition in the year 1966 and the ancestral property was divided in seven share in between Sita Ram Singh, Smt. Nago Devi (wife of Sita Ram Singh), Lal Bahadur Singh (Son of Sita Ram Singh), Krishna Singh (son of Sita Ram Singh), Prabhu Singh, Leela Devi (wife of Prabhu Singh) and Bimla Kumari (daughter of Prabhu Singh) through a Yadastha dated 01.12.1966. It is contended that as per the partition deed (Yadastha), all the sharers have come in separate possession over the partition property. Further case of the defendants is that the plaintiffs have also stated in the plaint that Somaria and Bindiya were not the daughters of Ratul Singh. Kishori Singh had manufactured a forged deed of gift executed by the Somaria and Bindiya on 12.07.1967 in favour of Kishori Singh in respect of property described in Schedule-1 of the plaint. Kishori Singh having failed to come in possession over the said gifted land to him filed a Title Suit on 17.07.1972 bearing Title



Suit No. 211 of 1972 against Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh and Krishna Singh (minor) seeking for declaration that the property in Schedule-1 and 2 of that suit which are in possession of defendants is illegal. He further sought for delivery of possession of the gifted properties mentioned in schedule-1 and 2 of that suit to him through process of court by dispossessing the defendants. He also sought meanse profit and other reliefs. The said suit was decreed (Ext. 10/A) *vide* judgment and decree dated 02.03.1977 (Ext. 13/A) whereby, the learned Trial Court has held that Somaria and Bindiya were daughters of Punia Devi (widow of Ratul Singh), Kishori Singh has been able to establish his title on the basis of deed of gift. Defendants i.e. Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh and Krishna Singh have not acquired title over the disputed property by adverse possession and further held that Kishori Singh (plaintiff of Title Suit No. 211 of 1972) is entitled to recovery of possession of the suit land from the defendants. Against the said judgment and decree dated 02.03.1977, Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh and Krishna Singh had filed F.A. No. 339 of 1977 which was ultimately disposed of on the basis of compromise between the appellant and respondent no. 1 on 05.07.1983 and dismissed against respondent no. 2, who was a mortgagee and had not joined



the compromise (Ext. 9/G i.e. Order of compromise) wherein, Kishori Singh got 2.38 acres of land and Sita Ram and others (appellant) got 2.19 acres of land in terms of compromise have been set out in paragraph nos. I to XI of the compromise petition (Ext. 10/B). Lands allotted to and falling to the exclusive share of defendants-appellants is in Schedule-1 of the compromise petition and lands falling to the exclusive share of plaintiff-respondent no. 1 is in Schedule-2 in the aforesaid compromise petition.

10. Further case of the defendants is that Krishna Singh, Leela Devi (wife of Prabhu Singh) and Bimla Kumari (daughter of Prabhu Singh) had filed Title Suit No. 160 of 1983 against Kishori Singh, Sita Ram Singh, Prabhu Singh and Lal Bahadur Singh as defendants challenging the judgment and decree passed in Title Suit No. 211 of 1972 and also challenging the compromise decree dated 05.07.1983 passed in First Appeal No. 339 of 1977 by this Court, on the basis that they were not party to the said compromise decree and as such the compromise decree is not binding upon them and the defendants have no right over the same and alternatively for recovery of possession, if the plaintiffs are found dispossessed. The said suit was dismissed on 18.10.1985.

11. Being aggrieved by these, the said plaintiffs-appellant filed F.A. No. 746 of 1985 against the judgment and



decree dated 18.10.1985 passed in Title Suit No. 160 of 1983. During the pendency of the Title Suit No. 213 of 2001, appellant no. 2, Leela Devi and appellant no. 3, Bimla Kumari filed I.A. No. 2657 of 2001 in F.A. No. 746 of 1985 for withdrawal of their names from the appeal on the ground that the said appeal has been filed by them under wrong advise without knowing the complications in future so that they may not face any difficulty in pursuing Title Suit No. 213 of 2001. The said I.A. No. 2657 of 2001 in F.A. No. 746 of 1985 was allowed despite of the opposition by the respondents. Accordingly name of Leela Devi (appellant no. 2) and Bimla Kumari (appellant no. 3) was expunged vide order dated 07.11.2001 (Ext. 9/E).

12. Further case of the defendants-respondents is that Leela Devi and Bimla Kumari filed the present suit bearing Title Suit No. 213 of 2001 for carving out their 1 ½ share in Schedule-2 of the plaint and preparing separate Takhta by appointing Survey knowing Pleader Commissioner. The said suit was dismissed by the learned Trial Court holding that there is no unity of title and possession among the parties and the suit brought by the plaintiffs is not fit to be decreed on 08.04.2013 (date of impugned judgment and decree). Against aforesaid judgment and decree dated



08.04.2013, the appellant has filed the present appeal bearing F.A. No. 140 of 2013.

13. Further case of the defendants is that the said Leela Devi and Bimla Kumari again filed an application bearing I.A. No. 4975 of 2014 in F.A. No. 746 of 1985 for recalling of the order dated 07.11.2001 in I.A. No. 2657 of 2001 in F.A. No. 746 of 1985 on the ground that these two appellant under the wrong advise, withdrawn their names from the First Appeal (F.A. No. 746 of 1985) without knowing the complication in future. They have learnt now that the remaining parties of the First Appeal are compromising therefore, if the order dated 07.11.2001 is not modified or recalled and if the petitioners are not added as appellant nos. 2 and 3 as earlier, they shall suffer serious loss and irreparable injury.

14. After considering the submissions of the parties, this Court had observed that in the present case, at one time while filing earlier I.A., they gave impression to the Court that in fact, they had not filed the present appeal therefore, their names may be expunged. At their instance, their names were expunged as stated above and at that time, they had already filed Title Suit No. 213 of 2001 and to pursue that title suit they got their names withdrawn from this first appeal and when the appellant no. 1 stated that they



may be transposed as respondents, they did not agree as such their names were expunged from cause title of memorandum of appeal. This order was obtained by them on their statements made in the interlocutory application for the purpose of obtaining advantages to pursue the suit filed by them. Now, after disposal of the title suit, they have filed this application for recall of the order dated 07.11.2001 alleging that it was their mistake. Now, therefore, subsequently for their ulterior motives again for securing another advantage, this application has been filed. The Co-ordinate Bench of this Court further held that it will not be out of place to mention that their main case in Title Suit no. 213 of 2001 is for partition. If F.A. No. 140 of 2013 will be allowed then they will get their shares in a suit property. So far F.A. No. 746 of 1985 is concerned, it is not a case for partition, the suit was filed for declaration that the decree passed in Title Suit as well as compromise decree in first appeal is not binding on the plaintiffs. Accordingly, the said I.A. No. 4975 of 2014 was dismissed on 12.08.2014. It is pleaded that F.A. No. 746 of 1985 ended in compromise between Krishna Singh and other respondents on the basis of I.A. No. 4849 of 2014 in F.A. No. 746 of 1985. From the above pleadings, the defendants-respondents contended that the partition of the joint family property which had already been taken place in the year



1966 was based on memorandum of family settlement dated 01.12.1966. All the parties are coming in possession of their respective lands dealing with their properties and enjoying the usufruct thereof.

15. The learned Trial Court on the basis of pleadings of the parties framed the following issues:-

(I). Is the case so framed maintainable?

(II). Whether plaintiffs have valid cause of action of the suit?

(III). Whether the suit barred by the principle of Res Judicata?

(IV). Whether the suit is barred by waiver estoppel and acquiescence?

(v). Whether the suit suffers from mis-joinder and non-joinder of the parties?

(VI). Whether the plaintiffs has unity of title and possession?

(VII). Is the memorandum of partition dated 01.12.1966 valid?

(VIII). Is the claim of plaintiffs fit for decree?

(IX). Whether the plaintiffs entitled for seeking any other relief/reliefs?



16. Learned Sub-Judge took up the issues and came to the conclusion that there is no unity of title and possession and the memorandum of partition dated 01.12.1966 is valid. It is further held that when the parties are dealing with the share of the properties on the basis of memorandum of partition dated 01.12.1966 (Ext. D/1), hence, the suit is not maintainable and has no valid cause of action and further held that the suit also suffers from the non-joinder of necessary parties i.e., the parties who have sold whatsoever property, all of the purchasers may be made party in the suit but the plaintiff failed to do so. The exhibits A/1 to A/11 and B are the documents of registered sale executed in the year 1999 by Prabhu Singh and it bear the signature of plaintiff no. 2 namely Bimla Kumari (appellant) and her husband, Dadan Chaudhary in the capacity of attesting witness and the documents bear the notes of receiving money on various dates by them. The plaintiffs could not prove that the said property has been purchased from the income of the joint family. Therefore, there is no unity of title and possession. Accordingly, the suit was dismissed.

17. The appellant aggrieved by and dissatisfied with the impugned judgment and decree preferred the instant appeal and challenging the same.



18. The learned counsel for the appellant submits that the learned Trial Court failed to consider that in paragraph 9 and 10, there is a specific pleading with regard to fraud. The case of the plaintiffs is that the Title Suit No. 160 of 1983 was filed at the instance of the defendants wherein, it was pleaded by the plaintiffs at the instance of the defendants that there had been partition on 01.12.1966 between the parties in seven shares i.e. Leela Devi, Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh, Krishna Singh and Nago Devi. Each of them got equal share. The settlement made in the plaint of Title Suit No. 160 of 1983 is in fact wrong and no such partition took place on 01.12.1966 and the memorandum of partition dated 01.12.1966 (Ext. D/1) is fabricated document. It is further contended that in the year 1966, Bimla Kumari was only aged about one year as she was born in the year 1965 and her mother Leela Devi was illiterate lady. Prabhu Singh was alive, therefore, neither Bimla Kumari nor her mother Leela Devi were entitled to any separate share in the joint family property but was given share separately. Bimla Kumari was minor at that time but she was not represented through legal guardian. The above fact is established in Title Suit No. 211 of 1972 which was filed by Kishori Singh against Prabhu Singh, Sita Ram Singh and his sons. The aforesaid suit was decreed and in



appeal, the party compromised wherein Kishori Singh was given 2.38 acres of land whereas, Prabhu Singh and Sita Ram Singh and his sons were given 2.19 acres of land. Compromise was made in F.A. No. 339 of 1977. In the aforesaid suit, the defendants of that suit never disclosed about alleged memorandum of partition dated 01.12.1966. The property given in the share of Leela Devi as alleged in memorandum of partition dated 01.12.1966. (Ext. D/1) is allotted in favour of Kishori Singh which shows that there had been no partition in the year 1966 as claimed by the defendants. It is further contended that the alleged memorandum of partition (Ext. D/1) was signed by the witnesses and the parties on 01.12.1966 whereas, the said document was scribed on 25.11.1966. It is further submitted that wife of Sita Ram Singh namely Nago Devi was also entitled to the share in the property but she was given separate share. Son of Sita Ram Singh namely, Krishna Singh was minor at the time of partition but he was also given separate share and was not represented by anyone. It is admitted fact that the share given to Leela Devi in the memorandum of partition (Ext. D/1) has been given to Kishori Singh entirely in compromise decree passed in F.A. No. 339 of 1977. However, neither Leela Devi nor Bimla Kumari was party in Title Suit No. 211 of 1972 nor they were party in F.A. No. 339 of



1977. If there had already been partition in the year 1966 (Ext. D/1) as alleged by the defendants then how the property of Leela Devi was given to Kishori Singh in the compromise decree passed by the Court in F.A. No. 339 of 1977.

19. Learned counsel for the appellant further submitted that the learned Trial court did not consider it and overlooked the judgment of Title Suit No. 160 of 1983 (Ext. 13). The learned Trial Court has held that Krishna Singh, Leela Devi and Bimla Kumari pleaded in the plaint of Title Suit No. 160 of 1983 which was not relied upon and it has clearly been held by the Trial court that the alleged memorandum of partition dated 01.12.1966 cannot be relied upon for the following reasons:-

“The wife and daughter of Prabhu Singh and wife of Sita Ram Singh were not entitled to any share but share has been given, therefore, the alleged memorandum of partition is shrouded with serious doubts.”

20. Reliance has been placed upon the judgment in the case of ***Rameshwar Mistry and Anr vs. Bebulal Mistry*** reported in ***AIR 1991 PAT 53***. This court in the said case, has held in paragraph 17 as follows:-

“Under the Hindu family, a female cannot be a member of coparcenary governed under the Mitakshra School of Hindu Law.”



21. The document has been scribed on 25.11.1966 but it was signed on 01.12.1966. However, there is no explanation which again creates doubt about genuineness and execution of the memorandum of partition. It is also established that there is no disclosure of the alleged memorandum of partition in Title Suit No. 211 of 1972. Therefore, also the document is doubtful. Both the parties had adduced evidence in Title Suit No. 160 of 1983. The plaintiffs including Bimla Kumari were examined as witness alleging that there had been partition as pleaded in the plaint. On the contrary, the defendants also adduced evidence in that case in support of their case but the learned Trial court specifically recorded finding that in view of the discussion made alleged memorandum of partition is not reliable and is a suspicious one. This finding of Trial court is still there. It is neither varied nor set aside nor it is modified. Therefore, when the matter in present suit was directly in issue in earlier suit between the same party, it will operate as res-judicata in the present case but the learned trial court did not examine this aspect of the matter.

22. Learned counsel for the appellant further submitted that from perusal of the judgment of the present Partition Suit no. 213 of 2001, it appears that the trial court mainly proceeded to decide the aforesaid suit on the basis of admission made by Bimla



Kumari in Title Suit No. 160 of 1983. The evidence of defendants Bimla Kumari has been marked as exhibit A/1. The trial court disbelieved the evidence of Bimla Kumari in Title Suit No. 213 of 2001 on the ground that she has admitted in the earlier suit that there had been partition. No doubt admission is the best evidence unless it is explained by the person to the satisfaction of the court because admission is not conclusive proof of the matters. The explanation have been given by the plaintiffs about how and why they admitted alleged memorandum of partition dated 01.12.1966 is acceptable. The trial court failed to consider that the plaintiffs have been able to explain her admission.

23. Learned Trial court failed to record the finding as to whether the explanation regarding admission of partition can be accepted or not. There is no reason as to why the explanation is not accepted in view of the fact pleaded by the plaintiffs. Reliance has been placed in the case of ***Panchdeo Narain Srivastava vs. Km. Jyoti Sahay and Anr*** reported in ***AIR 1983 SC 462*** wherein, the Hon'ble Supreme court has held that "*An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn.*" In the case of ***Banarsi Das and Ors. vs. Kanshi Ram and Ors*** reported in ***AIR 1963 SC 1165***, as the Hon'ble Supreme



court has held that “*The admission, however, would bind him only insofar as facts are concerned but not insofar as it relates to a question of law.*”

24. Learned counsel for the appellant further placed reliance upon the decision reported in ***AIR 2002 SC 2004, Rakesh Wadhawan and others vs. M/s Jagdamba Industrial Corporation and others***. Similarly in the case of ***Geo-Group Communication INC vs. IOL Broadband Ltd*** reported in ***2010 AIR SCW 209*** and in the case of ***Fertilizer Corporation of India Limited vs. Indian Explosive Private Limited and Anr*** reported in ***2016 AIR CC 1857 (CAL)***. The Hon’ble Supreme Court in the case of ***Rakesh Wadhawan (supra)*** has held as follows:-

“Admission is only a piece of evidence and can be explained; it does not conclusively bind a party unless it amounts to an estoppel. Value of an admission has to be determined by keeping in view the circumstances in which it was made and to whom.”

25. Therefore, the pleading will not operate as res-judicata in Title Suit no. 160 of 1983. The learned trial Court clearly recorded finding that the case of previous partition cannot be relied upon and there was no partition between the parties.

26. It is further submitted that the trial court has not examined the facts that Prabhu Singh has no male issue, therefore,



the defendants were trying to grab the property and they got the suit filed bearing Title Suit No. 160 of 1983. Therefore, whatever stated in previous suit will not affect the share of Prabhu Singh. Prabhu Singh have $\frac{1}{2}$ share in the suit property. It is submitted that Sita Ram Singh was examined as witness in Title Suit No. 211 of 1972 on behalf of the defendants in that suit but never alleged about previous partition between the parties. If in fact there had been partition in the year 1966 and in fact Leela Devi was given any such property or share then how in absence of Leela Devi, her property could have been allotted in favour of Kishori Singh in the compromise decree prepared in F.A. No. 339 of 1977. This clearly gives a fatal blow to the defendant's case that there had been partition between the parties in the year 1966.

27. Learned counsel for the appellant further submitted that several sale deeds have been executed by Sita Ram Singh prior to his death which have been produced by the plaintiffs in the present case marked as exhibits 2, 2A, 6A, 6C and 6D etc., wherein, Sita Ram Singh stated that the properties which he is selling is ijmaili (joint) property or ancestral property. He never alleged that he got these properties in the year 1966 in family partition. It is further contended that the plaintiffs have been able to fully explain the admission made in the plaint and evidences of



Title Suit No. 160 of 1983. The collusion between defendants ie. Sita Ram Singh and his heirs is evident from the fact that when the plaintiffs got their names deleted from F.A. No. 746 of 1985, they compromised amongst themselves. The said compromise decree passed in F.A. No. 746 of 1985 will never bind the plaintiffs. It is admitted fact that plaintiffs were not party in Title Suit No. 211 of 1972 nor they were party in F.A. No. 339 of 1977. Since the plaintiffs have been able to prove fraud played by the defendants by ante dating the alleged memorandum of partition and have been able to explain the admission which was made by them at the instigation of defendants including Krishna Singh, the finding of the court below is contrary to the fact recorded in Ext. 13. The memorandum of partition Ext. D/1 is not a registered document. The share in ancestral property of Sita Ram Singh and Prabhu Singh were given to Nago Devi and Leela Devi. Both are wives of co-parceners, who were not legally entitled in the Mitakshara School of Hindu Law, any share in ancestral property as they themselves were not co-parceners which resulted in extinguishment of rights of $\frac{1}{2}$ and $\frac{1}{2}$ share of Sita Ram Singh and Prabhu Singh and create new right in favour of Nago Devi and Leela Devi. Moreover, memorandum of partition would further go to show that Lal Bahadur Singh and Krishna Singh, both sons of



Sita Ram Singh and Bimla Kumari (daughter of Prabhu Singh) were also made parties through alleged memorandum of partition and were given share in the ancestral property and seven schedule was prepared which is as follows:-

Seven Schedule As Per Deed Of Partition Dated 01.12.1966

Schedule No. 1 allotted to Sita Ram Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	3	84	0.20
2	3	229	0.24
3	3	230	0.24
4	14	264	0.16
5	10	177	0.51
Total			1.35

Schedule No. 2 allotted to Prabhu Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	3	78	0.10
2	3	85	0.28
3	3	235	0.22
4	3	273	0.12
5	3	276	0.12
6	10	177	0.51
Total			1.35

Schedule No. 3 allotted to Nago Devi w/o Sita Ram Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	3	29	0.09
2	3	30	0.15
3	3	40	0.08
4	3	93	0.53
5	3	102	0.14



6	3	125	0.21
7	3	126	0.08
8	3	214	0.11
9	3	267	0.16
Total			1.55

Schedule No. 4 allotted to Leela Devi w/o Prabhu Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	47	82	0.32
2	11	92	0.17
3	11	110	0.04
4	11	138	0.07
5	11	185	0.25
6	11	227	0.16
7	11	255	0.56
Total			1.57

Schedule No. 5 allotted to Lal Bahadur Singh s/o Sita Ram Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	3	256	1.18
2	3	257	0.07
3	3	295	0.30
Total			1.55

Schedule No. 6 allotted to Krishna singh s/o Sita Ram Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	11	124	0.22
2	11	215	0.14
3	11	234	0.26
4	11	253	0.23
5	11	254	0.23
6	11	296	0.51
Total			1.59



Schedule No. 7 allotted to Bimla Kumari (minor daughter) d/o Prabhu Singh			
Sr. No.	Khata No.	Plot No.	Area (Acre-Dismil)
1	11	28	0.18
2	11	34	0.08
3	11	83	0.32
4	11	94	0.12
5	11	95	0.10
6	11	127	0.23
7	11	277	0.13
8	11	278	0.17
Total			1.33

28. Learned counsel for the appellant further submitted that it appears that more than ½ share being allotted to the branch of Sita Ram Singh which resulted in creation of new rights in favour of sons of Sita Ram Singh and extinguishment of rights of Prabhu Singh which resulted in aforesaid deed being hit by Section 17 (1)(B) of the Registration Act, as such, the alleged deed is not a memorandum of partition rather the aforesaid deed is a partition deed which requires registration under the Registration Act.

29. On the other hand, Mr. T. N. Matin, learned senior counsel arguing on behalf of respondent no. 1, submitted that the plaintiffs/appellant, namely, Bimla Kumari and her deceased mother, namely, Leela Devi filed partition suit claiming their share as heirs of Prabhu Singh. In the present case, there is no



presumption of any joint family, as such, onus of the joint family is upon the plaintiffs. It is submitted that plaintiffs have miserably failed to prove jointness of the family in view of admission of Prabhu Singh, father of Bimla Kumari to the effect that there was already partition of the joint family way back in the year 1966. Since father has already admitted partition of joint family property, plaintiffs cannot claim any partition as their claim is based on inheritance. Prabhu Singh executed sale deed Exhibit A2 to Exhibit A11 in the year 1999 in which he categorically stated that he has separated from his brother and he is in possession of subject matter of sale on the basis of what was allotted to him in partition. It is further contended that in Exhibit A, Exhibit A2, Exhibit A3, Exhibit A4 and Exhibit A5, are sale deeds executed by Prabhu Singh, in which appellant Bimla Kumari is witness. Exhibit B is agreement for sale executed by Prabhu Singh in which it has been stated that on 01.12.1966, there was already partition in the family and subject matter of agreement was allotted to him in partition. It is relevant to submit that Dadan Chaudhary (P.W. 15), husband of appellant Bimla Kumari also received consideration money of Rs. 20,000/- and his signature on the deed is marked as Exhibit C. In the Memorandum of partition Exhibit-D1 names of four punches, namely, Sita Singh, Ram Lakhan Singh, Ram Swarup Singh and



name of Pancham Chaudhary, brother-in-law of Prabhu Singh were mentioned. In sale deeds Exhibit A7 – A11, executed by Prabhu Singh, names of these punches have been mentioned. In view of admission of Prabhu Singh that there was already partitioned in 1966, plaintiffs have no case at all because his admission is binding upon his heirs. It is vehemently submitted that admission of Prabhu Singh has not at all been explained by the plaintiffs. It is submitted that not only Prabhu Singh but plaintiff/appellant Bimla Kumari has also admitted in plaint of Title Suit No. 160 of 1983 (Exhibit B1) and also her evidence in that suit (Exhibit A1) that there was already partition between Sita Ram Singh and Prabhu Singh and their family members in 1966 and property was divided in seven parts. Oral partition was produced in writing on 01.12.1966 and also stated names of punches mentioned in the memorandum of partition. Bimla Kumari has miserably failed to explain her admission about partition. P.W. 15 Dadan Chaudhary, who is the husband of plaintiff Bimla Kumari, in paragraph 164 of his evidence has stated that upto 2001, Prabhu Singh, Sita Ram Singh and Lal Bahadur Singh used to do pairvi in the case and so long as Prabhu Singh was alive, they all jointly contested cases of the family. It is submitted that in Title Suit No. 160 of 1983, Prabhu Singh was



also one of the defendant. So, the allegation that Sita Ram Singh and Lal Bahadur Singh got Title Suit No. 160 of 1983 filed is false.

30. Learned senior counsel further submitted that Bimla Kumari (P.W. 6) has stated in her evidence that defendant no. 1 and 2 had put pressure upon plaintiffs to file Title Suit No. 160 of 1983 to take back the land which were given to Kishori Singh in Title Suit No. 211 of 1972. In Title Suit No. 211 of 1972, Krishna Singh (defendant no. 2) was given 82 decimal of land in compromise. So Title Suit No. 160 of 1983 was filed to take back the properties of Krishna Singh and Leela Devi from Kishori Singh. No question of putting any pressure on plaintiffs to file Title Suit No. 160 of 1983 arose because property which was allotted to Leela Devi and Krishna Singh was to be taken back by filing the suit. Likewise Prabhu Singh, Sita Ram Singh also executed a sale deed on 29.09.1981 (Exhibit-6D) in which he has stated that executant and his brother have already partitioned their joint family properties. At that time, there was no compromise in First Appeal No. 339 of 1977 arising out of Title Suit No. 211 of 1972. Exhibit 1 – 1A is the deposition of punch, namely, Sita Singh in Title Suit No.160 of 1983, he has stated that a memorandum of partition was prepared on 01.12.1966 and there



was a partition between Sita Ram Singh and Prabhu Singh. It is further contended that D.W. 3, Harihar Singh, who is own *Bahnoi* (brother-in-law) of Prabhu Singh and Sita Ram Singh has stated that Prabhu Singh and Sita Ram Singh separated in the year 1966. D.W.4, Jainath Singh has also supported this story of partition. It is submitted that plaintiffs have made a complete false allegation that Exhibit-D1 (memorandum of partition) is forged document. Exhibit -D1 was signed by not only family members but also by four punches. One of punches, namely, Pancham Chaudhary was none else than *Bahnoi* of Prabhu Singh and Sita Ram Singh. P.W. 5, Leela Devi has admitted that Pancham Chaudhary was *Bahnoi* of her husband. Other three witnesses are Sita Singh, Ram Lakhan Singh and Ram Swarup, who are co-villagers of the parties. Sita Ram Singh was examined in Title Suit No. 160 of 1983 and he has supported execution of Exhibit-D1.

31. Learned senior counsel for the respondent submitted that joint family property of Sita Ram Singh and Prabhu Singh had been partitioned and their land measuring 10.29 acres was divided in seven parts. It is submitted that branch of Sita Ram Singh got 6.04 acres and branch of Prabhu Singh got 2.5 acres. In compromise in Title Suit No. 211 of 1972, 2.38 acres land was given to one Kishori Singh, plaintiff no. 1 of that suit which



consisted of 1.56 acres allotted to Leela Devi and 62 decimal of Krishna Singh, defendant no. 2 which was allotted in family partition. Since First Appeal No. 746 of 1985 was withdrawn by the plaintiffs so they missed the opportunity to take back their land given to Kishori Singh in partition. Learned senior counsel further submitted that it was argued by appellant's counsel that in partition of 1966, minors were not represented. In family arrangement, no such representation is required. It is also argued that no right was created in favour of family members so Exhibit-D1 did not require registration. It is settled principle that Exhibit-D1 is memorandum of partition, so it did not require registration. Moreover, wives of Prabhu Singh and Sita Ram Singh are not estrangers. It is also argued by the appellant that in Title Suit No. 211 of 1972, no reference of family partition was given by Sita Ram Singh and Prabhu Singh. This shows that there was no partition in 1966. It is submitted that, in fact, Title Suit No. 211 of 1972 was filed by Kishori Singh, so there was no need to state about partition of 1966.

32. Learned senior counsel further submitted that Exhibit-13 (judgment of trial court passed in T. S. No. 160 of 1983) was referred by counsel for the appellant to show that in that case, Exhibit-D1 was found as a suspicious document. It is



apparent from proceeding of Title Suit no. 160 of 1983, plaintiffs namely, Krishna Singh, Leela Devi and Bimla Kumari filed memorandum of partition dated 01.12.1966 and admitted the factum of partition so they are stopped from relying upon any finding given against them in that suit. Whatever finding was given on the basis of evidence in that case was challenged in appeal bearing First Appeal No. 746 of 1985 and that appeal was decreed in terms of compromise and in compromise petition, it has been admitted by the respondents of that case that there was partition in the family of Sita Ram Singh and Prabhu Singh in 1966. Therefore, the judgment of trial court merged into the decree of appellate court. Reliance in this regard has been placed upon a Full Bench decision in the case of *Jokhan Rai vs. Baikunth Singh* reported in *AIR 1987 Pat 133*. Therefore Exhibit 13 cannot be relied upon. Learned counsel for the respondents further submitted that the appellant relied upon sale deeds Exhibit 2, Exhibit 2A, Exhibit 6, Exhibit 6A and Exhibit 6C. Some of them was jointly executed by Sita Ram Singh and Prabhu Singh to show the family was joint. Learned counsel for the respondent further submitted that none of the sale deeds recited that joint family property are being sold. In all those sale deeds, word Maurasi has been used which means ancestral. Exhibit 6D sale deed dated 26.09.1981



executed by Sita Ram Singh clearly shows that there was partition in the family. The sale deed was executed between 1972 to 1983 when litigation was going on with Kishori Singh. So, the sale deeds were executed on the terms of buyers. Especially buyers wanted execution of sale deed by Sita Ram Singh due to name of said Sita Ram recorded in the Khatiyan. Prabhu Singh became witness to the sale deeds. Plaintiffs/appellant are claiming partition through Prabhu Singh and he has admitted that there was already partition in 1966. Therefore, plaintiffs cannot challenge that they are not bound by admission of Prabhu Singh. Reliance has been placed on the judgment in the case of ***Thiru John Vs. Returning Officer & Ors.*** reported in ***AIR 1977 SC 1724***. The Hon'ble Supreme Court has held that '*what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established*'. Therefore, the judgment and decree of the trial court may not be interfered with and appeal is fit to be dismissed.

33. Mr. Ganpati Trivedi, learned senior counsel for the respondent nos. 2, 8 and 13 has also adopted the arguments advanced by the learned senior counsel for respondent no. 1 and in addition, submitted that from the recital of memorandum of partition, it is evident that oral partition has taken place on



25.11.1966 amicably and subsequently, the respective plots and shares were enumerated in the memorandum of family settlement on 01.12.1966 (Exhibit D1). The said family arrangement was accepted by the members of the family and they started dealing with the property and enjoying the usufruct thereof and hence, it cannot be questioned that there had been no partition in the family. Prabhu Singh, husband of plaintiff no. 1 and father of plaintiff no. 2 (appellant) had executed several sale deeds with respect to the properties which has been allotted in his share during partition of 1966. In those sale deeds, it has been specifically recited that partition had taken place in the year 1966. Exhibit A, Exhibit A1, Exhibit A2, Exhibit A3, Exhibit A4, Exhibit A5, Exhibit A6, Exhibit A7 and Exhibit A11 are sale deeds executed by Prabhu Singh with respect to the properties which had been allotted in his share through memorandum of partition in 1966 wherein it has been specifically recited that the vended land belonged to joint family property which has been allotted in his share in the amicable partition held between Sita Ram Singh and Prabhu Singh in the year 1966. Several sale deeds executed by Prabhu Singh has been witnessed by Bimla Kumari, daughter of Prabhu Singh and Dadan Chaudhary, husband of Bimla Kumari. In the suit bearing Title Suit No. 160 of 1983, the plaint of the said title suit was



marked as Exhibit B1. The said suit was filed by Bimla Kumari, Leela Devi and Krishna Singh for declaring their title and possession over the suit property allotted to them in family settlement held in the year 1966 which was divided among seven shares as detailed in Schedule-2 of the plaint of the aforesaid suit. This shows that the appellant had admitted the factum of partition. In the deposition of Bimla Kumari (appellant) (Exhibit A1) in Title Suit No. 160 of 1983, she has admitted the story of partition in the manner as alleged. Leela Devi, Plaintiff no. 1, has been examined in the present suit as P.W. 5. She has specifically stated that after the death of her husband, her son-in-law started looking after the management of his property. Learned senior counsel further submitted that Prabhu Singh was solely dependant upon his daughter Bimla Kumari. Each and every step in dealing with the property of Prabhu Singh was done with the aid and advice of his daughter Bimla Kumari and son-in-law Dadan Chaudhary. The factum of being a witness to the transaction of sale deed by Prabhu Singh at least in the year 1999 (Exhibit A series) was well within the knowledge of his wife Leela Devi, daughter Bimla Kumari and son-in-law Dadan Chaudhary. Exhibit C goes to prove that the part consideration money of agreement to sale (Exhibit B) was in fact received by Dadan Chaudhary which contain specific



recitals of partition of 1966. Learned senior counsel for the respondents nos. 2, 8 & 13 submitted that the sale deeds Exhibit A series were executed by Prabhu Singh in which Dadan Chaudhary and Bimla Kumari have put their signatures as witness on all the sale deeds due to which a question shall arise before this Court that whether attesting witness will be deemed to have knowledge about the recitals of the deed. As a common principle of law, mere attesting of the document does not imply that the attesting witnesses have knowledge of the contents of the documents. However, any person having a tangible interest in the property affected by the deed, if attests the deed, his or her attestation will tantamount to proof of consent and would imply that he/she had the knowledge of the recital of the document. In the case of ***Kanakavalli Ammal Vs. Ulaganatha Pillai*** reported in **1977 TNLJ 174**, a Division Bench of the Madras High Court has held that-

“if in a given case, the attestation by a person interested in the property which is dealt with under the challenged document attests it under circumstances and events which would impute knowledge of the recitals therein, then the said attestor having approbated the document and the transaction by such an active participation and



involvement, cannot reprobate later to suit her or his convenience”.

34. Learned senior counsel further submits that so far the registration of memorandum of family settlement is concerned, from the recital of the said family settlement, it does not transpire that the memorandum was not a document. Memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act. The Hon’ble Apex Court in the case of ***Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others*** reported in ***(2020) 9 SCC 706*** has considered the effect of such family arrangement and held a family arrangement being binding on the party clearly operates as an estoppels, so as to preclude any of the party who have taken advantage under the agreement for revoking or challenging the same. The Hon’ble Apex Court has further considered the scope of antecedent title which has been explained in paragraph 35 & 36 of the ***Kale and Others Vs. Deputy Director of Consolidation and Others*** reported in ***AIR 1976 SC 807*** which is being quoted hereunder:-

“35. We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the



family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title.

36. Yet having regard to the near relationship which the brother and the son-in-law bore to the widow the Privy Council held that the family settlement by which the properties were divided between these three parties was a valid one. In the instant case also putting the case of respondents 4 & 5 at the highest, the position is that Lachman died leaving a grandson and two daughters. Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family, it would be sustained as a valid and binding family settlement.”

35. The factum of partition of 1966 and the date of memorandum of family settlement prepared on 01.12.1966 has been admitted by the plaintiffs in several documents i.e. plaint of Title Suit No. 160 of 1983 (Exhibit B-1), deposition of Bimla Kumari in Title Suit No. 160 of 1983 (Exhibit A-1) and sale deed executed by Prabhu Singh wherein the plaintiffs Bimla Kumari, Leela Devi and Dadan Chaudhary (husband of Bimla Kumari) put their signatures as attesting witnesses (Exhibit A series). Learned senior counsel further submitted that the right of minor to assail the partition made by way of family settlement is concerned, it is



the family settlement arrived at in the year 1966 and the interest of the minor plaintiffs had been protected by their father more so when they being non-coparcener had no interest in the joint family property. Original plaintiff no. 2, namely, Bimla Kumari attained the majority in the year 1983 and thereafter she would have assailed the memorandum of settlement of 1966, but she waived off her right to assail the same and filed Title Suit No. 160 of 1983 relying upon the said partition of 1966 with an intention to gain benefit thereof. Therefore, they are stopped from challenging the same. Most importantly, when they failed to succeed in Title Suit No. 160 of 1983. Moreover, the father of Bimla Kumari, namely, Prabhu Singh had put his signature on the memorandum of family settlement. Even mother of Bimla Kumari, namely, Leela Devi put her thumb impression on the said memorandum of family settlement and the contents of the said family settlement has been explained to the signatories by the punches to the allottees who being aware of the contents thereof had put their signatures or the thumb impression accordingly. It reveals from the deposition of Bimla Kumari in Title Suit No. 160 of 1983, as stated in paragraph 6, copy of the family settlement was handed over to her from her mother and she assumed that she was being represented through her mother as well as her father because Sita Ram Singh, one of



the punches, in his deposition in para 7 has given detailed description about partition among seven members in presence of punches. The paper prepared (family settlement) for Bimla Kumari was handed over to her mother, who was her legal guardian as she was below 5 years of age in terms of Section 5 of the Adoption and Maintenance Act. Therefore, the minor was properly represented during the course of family settlement of 1966.

36. Learned senior counsel further submitted that the judgment and decree passed in Title Suit No. 160 of 1983 on 18.10.1985 was assailed in First Appeal No. 746 of 1985 on the ground that the property had been allotted to them in the family settlement arrived among the members of the joint family in the year 1966. The plea of the plaintiffs i.e. Bimla Kumari and Leela Devi in the said Title Suit No. 160 of 1983 is that the judgment and decree passed in Title Suit No. 211 of 1972 and the compromise decree passed in First Appeal No. 339 of 1977 dated 05.07.1983 (Exhibit 10-B) were not binding upon them as they were not party in those suits which could not be accepted in view of the judgment and decree passed in Title Suit No. 160 of 1983 holding in paragraph 23 that since their guardians had entered into a compromise, those decrees are binding on them. Plaintiff no. 1 enjoining her husband and plaintiff no. 2 enjoining her father in



selling the properties on the basis of partition in the year 1999 vide Exhibit-A series also goes to show that the plaintiffs had accepted the partition of 1966 as they were witnesses to those sale deeds executed by Prabhu Singh acknowledging the partition of the 1966. It is also apparent that the present partition suit has been filed at the instance of Dadan Chaudhary, the husband of the Bimla Kumari. The plaint of Title Suit No. 213 of 2001, which has been filed on 30.05.2001, was sworn by Dadan Chaudhary (husband of Bimla Kumari) as Pairvikar of the plaintiffs. The conduct of the plaintiffs shows that on one hand, they accepted the claim of partition and on the other hand, they had filed First Appeal No. 746 of 1985 on the ground that there had been no family settlement of joint family property in the year 1966. In the present appeal, which apparently had been filed at the instance of Dadan Chaudhary, the plaintiffs filed an application on 19.06.2001 (I.A. No. 2657 of 2001) in First Appeal No. 746 of 1985 for withdrawal of their appeal on their behalf on the ground that the same had been filed on the wrong advice without knowing the complication in future, and also because they were facing difficulty in pursuing Title Suit No. 213 of 2001. Ultimately by order dated 07.11.2001, passed in First Appeal No. 746 of 1985, I.A. No. 2657 of 2001 was allowed and their names were expunged from First Appeal No.



746 of 1985 (Exhibit 9-E). The unconditional withdrawal of the First Appeal No. 746 of 1985 by the plaintiffs which had been preferred against the judgment and decree dated 18.10.1995 passed in Title Suit No. 160 of 1983 affirmed that the finding given in Title Suit No. 160 of 1983 became final against them. Therefore, the plaintiffs have no right to seek partition with respect to those properties.

37. Learned senior counsel further submitted that during the pendency of the present appeal, the plaintiffs filed I.A. No. 4975 of 2014 in First Appeal No. 746 of 1985 for recalling the order dated 07.11.2001 (Exhibit 9-E) on the basis of which they had withdrawn the appeal on their behalf meaning thereby they wanted to get himself impleaded in First Appeal No. 746 of 1985 again. The said I.A. was dismissed by this Court quoting the dictum of the Hon'ble Apex Court in the case of **R. N. Gosain v. Yashpal Dhir** reported in **AIR 1993 SC 352**, observing that-

“Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is



valid, and then turn round and say that it is void for the purpose of securing some other advantage.”

38. Learned senior counsel has relied upon Exhibit- 2B i.e. sale deed dated 22.11.2000 executed by Lal Bahadur Singh with respect to plot nos. 267 & 268. From bare perusal of the recital of the sale deed, it is apparent that there had been amicable partition in the family and the vended land had been allotted in the share of their mother Nago Devi and father Sita Ram Singh which they acquired after their death. This recital amply proved that there had been amicable partition between Sita Ram Singh and Prabhu Singh and others and from the memorandum of family settlement dated 01.12.1966, it is apparent that plot nos. 267 and 268 had been allotted in the share of Sita Ram Singh and his wife Nago Devi.

39. On the basis of above pleadings as well as based on the principle of preponderance of probabilities, it is evident that the partition of the joint family property had already been taken place in the year 1966 and on the basis of memorandum of family settlement dated 01.12.1966, all the parties are coming in possession of their respective lands dealing with their properties and enjoying the usufruct thereof. The lower court had rightly dismissed the suit filed by the plaintiffs.



40. On the basis of rival contentions of the parties, following points are formulated for consideration:-

(i) Whether there is unity of title and possession over the suit land between the parties?

(ii) Whether memorandum of partition dated 01.12.1966 is a valid document?

(iii) Whether the decree passed in Title Suit No. 211 of 1972 and compromise decree passed in First Appeal No. 339 of 1977 are binding upon the plaintiffs/appellant?

(iv) Whether appellant is entitled to get share on the basis of memorandum of partition dated 01.12.1966?

FINDINGS

41. The Title Partition Suit was filed by the original plaintiff nos. 1 and 2 for preliminary decree for partition of half share of the plaintiffs in the suit properties detailed in Schedule-2 of the plaint in favour of the plaintiffs and against the principle defendants and by appointment of a Survey Knowing Pleader Commissioner, a separate Takhta of the plaintiffs' share be carved out and on preparation of the final decree, the plaintiffs be put in possession over the allotted separate Takhta through the process of court, and also for grant of temporary injunction against the principle defendants as well as cost of the suit.



Point nos. (i), (ii), (iii) & (iv)

42. The case of the plaintiffs is that, the suit land is the ancestral property of the plaintiffs and principle defendants. Matukdhari Mahto is the common ancestor of the plaintiffs and principle defendants. Matukdhari Mahto had a son, namely, Chhaterdhari Singh, who had two sons, namely, Kishun Singh and Ratul Singh. Kishun Singh had a son Bhattu Singh. Bhattu Singh had two sons, namely, Hira Singh and Moti Singh. Moti Singh died issueless in jointness of the family. Hira Singh had two sons, namely, Sita Ram Singh and Prabhu Singh. The said Prabhu Singh died on 20.09.2000 leaving behind his widow Leela Devi (now dead) and a daughter, namely, Bimla Kumari, who are plaintiff nos. 1 and 2 / appellant nos. 1 and 2 respectively. Leela Devi died on 19.01.2018 during the pendency of this First Appeal leaving behind her heir and legal representative who is already on record as appellant no. 2. The name of Leela Devi has been deleted from the memo of appeal *vide* order dated 03.02.2020.

43. Sita Ram Singh died in the year 1997 leaving behind his two sons, namely, Lal Bahadur Singh and Krishna Singh, defendant nos. 1 and 2 and three daughters, namely, Dhanwanti Devi, Lila Devi and Pratima Devi, who are defendant nos. 10, 11 and 12 respectively. Ratul Singh son of Chhaterdhari Singh died



issueless leaving behind his widow Punia Devi. Though Ratul Singh died in jointness but some of the lands of the joint family is recorded in Cadestral Survey Khatiyan in the name of Punia Devi. The, lands appertain to Khata No. 11 and 47 with an area of 4.71 acres. The name of Kishun Singh was recorded in Cadestral Survey Khatiyan bearing Khata No. 3, 10 and 14. Punia Devi had no separate possession over the land recorded in her name. One son of Bhattu Singh namely, Moti Singh died issueless in jointness. The entire joint family property was inherited by Hira Singh and after his death, the same devolved upon Sita Ram Singh and Prabhu Singh.

44. After death of Ratul Singh, son of Chhaterdhari Singh, Most. Somaria Devi and Bindiya Devi claimed themselves to be the daughters of Ratul Singh and executed a deed of gift on 12.07.1967 in favour of one Kishori Singh. The said Kishori Singh filed Title Suit No. 211 of 1972 against Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh, Krishna Singh and also sought relief for delivery of possession of the gifted properties mentioned in Schedule-1 and 2 of that suit.

45. The said Title Suit was decreed on 02.03.1977 (Ext. 13/A). The learned Trial Court had held that Somariya Devi and Bindiya Devi are the daughters of Punia Devi, who is widow of



Ratul Singh. Sita Ram Singh, Prabhu Singh and others had not acquired title over the disputed properties by adverse possession. Kishori Singh (plaintiff) is entitled for recovery of possession of said suit lands of defendants.

46. Against the said judgment and decree, Sita Ram Singh and Prabhu Singh filed F.A. No. 339 of 1977 before this Court. The said First Appeal was disposed of on 05.07.1983 in terms of compromise wherein Kishori Singh got 2.38 acres of land and Sita Ram Singh and Prabhu Singh got 2.19 acres of land.

47. One son of Sita Ram Singh namely, Krishna Singh, Leela Devi and Bimla Kumari filed Title Suit No. 160 of 1983 against Kishori Singh, Sita Ram Singh, Prabhu Singh and Lal Bahadur Singh as defendants, challenging the judgment and decree passed in Title Suit No. 211 of 1972. Further relief was sought for that the decree passed in Title Suit No. 211 of 1972 and compromise decree dated 05.07.1983 passed in F.A. No. 339 of 1977 by this Court were not binding upon the plaintiffs and that defendants have no right over the same and alternatively also prayed for recovery of possession, if the plaintiffs are found to be dispossessed.

48. After hearing the parties, the said Title Suit No. 160 of 1983 was dismissed on 18.10.1985 (Ext. 13) holding that the



suit is hit by the provisions of Order 23 Rule 3A of the Civil Procedure Code and also on factual aspects. First Appeal No. 746 of 1985 was preferred against the judgment and decree dated 18.10.1985 before this Court. In the said First Appeal, plaintiffs-present appellant, by filing a petition for withdrawal of their names from appeal, stated that by misrepresentation their signatures were taken in the Suit and in Appeal. Now, in Title Suit No. 160 of 1983, the plaintiffs, namely, Krishna Singh, Leela Devi and Bimla Kumari, for the first time, had taken a plea that there was an amicable settlement between the heirs of Mutukdhari Singh and there was a memorandum of partition to that effect dated 01.12.1966 and on the basis of that earlier compromise decree was passed in F.A. No. 339 of 1977, which was challenged in Title Suit No. 160 of 1983, but the learned Trial Court disbelieved such amicable partition of the year 1966. Krishna Singh, Leela Devi and Bimla Kumari (Appellant Nos. 1, 2 and 3) have preferred First Appeal No. 746 of 1985 challenging the judgment and decree dated 18-10-1985, passed in Title Suit No. 160 of 1983. I.A. No. 2657 of 2001 in F. A. No. 746 of 1985 filed by the plaintiffs-appellant, namely, Leela Devi and Bimla Kumari, was allowed *vide* order dated 07.11.2001 and the names of Smt. Leela Devi and Smt. Bimla Kumari were expunged from the cause title of



memo of appeal. After lapse of about 13 years Smt. Leela Devi and Smt. Bimla Kumari had filed I.A. No. 4975 of 2014 in F.A. No. 746 of 1985, for recall of the order dated 07.11.2001 passed in F.A. No. 746 of 1985 stating therein that these two appellants, under wrong advise, withdrew their names from the First Appeal without knowing the complication in future. They have learnt now that the remaining parties of the F.A. are compromising, therefore, if the order dated 07.11.2001 is not modified or recalled and if the petitioners are not added as appellant Nos. 2 and 3 as earlier, they shall suffer serious loss and irreparable injury.

49. After considering the submissions of the parties, the said Interlocutory Application i.e., I.A. No. 4975 of 2014 was dismissed.

50. Before withdrawing the name of original appellant Nos. 2 and 3, Smt. Leela Devi, Bimla Kumari (appellant nos. 2 and 3 in F.A. No. 746 of 1985) had filed the partition suit bearing Title Suit No. 213 of 2001 on 30.05.2001 for carving out their half share in schedule-2 properties and after hearing the parties, the said partition suit was dismissed on 08.04.2013 on the basis of conduct and admission with regard to earlier partition and on the basis of execution of sale deeds made by Prabhu Singh in the year 1999 (Ext. A series and Ext. B). On that sale deed Smt. Bimla



Kumari plaintiff No.2/appellant and her husband had put their signatures on the said document as witness and accepted the plea of earlier partition dated 01.12.1966.

51. From the above discussions and fact of the case, it is apparent that altogether three suits were filed with respect to the suit land. Title Suit No. 211 of 1972 was filed by one Kishori Singh against Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh and Krishna Singh for declaration of his title over the suit properties and for declaring possession of defendants illegal and also for recovery of possession, which was decreed holding that Somariya Devi and Bindiya Devi are the daughters of Puniya Devi, widow of Ratul Singh and Kishori Singh established their title on the basis of gift deed. Sita Ram Singh, Prabhu Singh, Lal Bahadur Singh and Krishna Singh had not acquired title over the suit land by adverse possession. It was further held that Kishori Singh (plaintiff) was entitled to recovery of possession of the suit land. Sita Ram Singh and Prabhu Singh had filed F.A. No. 339 of 1977, which was disposed of in terms of compromise between the parties, wherein, Kishori Singh got 2.38 acres of land whereas Sita Ram Singh and Prabhu Singh got 2.19 acres of land. Second Suit bearing Title Suit No. 160 of 1983 was filed by Krishna Singh (one of the defendants of Title Suit No. 211 of 1972), Leela Devi



(widow of Prabhu Singh) and Bimla Kumari (daughter of Prabhu Singh) against Kishori Singh (plaintiff of Title Suit No. 211 of 1972), Sita Ram Singh, Prabhu Singh and Lal Bahadur Singh as defendants challenging the judgment and decree passed in Title Suit No. 211 of 1972 and also challenging the compromise decree dated 05.07.1983 in F.A. No. 339 of 1977, which is not binding upon the aforesaid plaintiffs and the defendants have no right over the same and ultimately, for recovery of possession if the plaintiffs are found to be dispossessed. The said suit was dismissed holding that since F.A. No. 339 of 1977 was disposed of in terms of compromise by the guardian of plaintiff Nos. 1 and 2 and hence the said decree is binding upon the plaintiffs and the alleged memorandum of partition is suspicious document. The said judgment and decree passed in Title Suit No. 160 of 1983 was challenged by Krishna Singh, Leela Devi, Bimla Kumari in F. A. No. 746 of 1985. During the pendency of the said First Appeal, Leela Devi and Bimla Kumari filed the Suit bearing Title Suit No. 213 of 2001 for partition of half share in the the Schedule-2 properties. Leela Devi and Bimla Kumari filed Interlocutory Application in F.A. No. 746 of 1985 for withdrawal of their names from appeal on the ground that the same has been filed by them under wrong advise without knowing the complication in future.



The said Interlocutory Application was allowed on 07.11.2001 and the name of the Leela Devi and Bimla Kumari was deleted from the memo of appeal bearing F.A. No. 746 of 1985. The Title Suit No. 213 of 2001 was dismissed by holding that partition has taken place in the year 1966. The ground of assailing the memo of partition being forged and ante dated cannot be accepted as plaintiffs are themselves taking the benefit of said document.

52. Various aspects of the matter are involved in this case apart from admission of earlier partition in Title Suit No. 160 of 1983, the compromise decree dated 05.07.1983 passed in First Appeal No. 339 of 1977 between Kishori Singh, Sita Ram Singh, Prabhu Singh and sons of Sita Ram Singh; till date, the said decree having not been set aside by any court of law whereby, branch of Sita Ram Singh and Prabhu Singh, who are full brothers, have got 2.19 acres of land and at that time, plaintiff being daughter of Prabhu Singh, had no right to challenge the said compromise and the said compromise was acted upon during the lifetime of Prabhu Singh. After the death of Prabhu Singh, his daughter and widow has filed the present suit for partition of the entire property left by Chhaterdhari Singh which is not permissible in law. At best, appellant is only entitled to claim her half share which was allotted to the branch of Sita Ram Singh and Prabhu Singh through



compromise decree dated 05.07.1983. Since parties in the compromise decree dated 05.07.1983 obeyed the compromise decree and never challenged the said compromise decree on any ground including ground of fraud etc., daughters and wife had no locus to challenge the said compromise decree, which was decreed with the consent of the husband (Prabhu Singh) of Leela Devi and father of Smt. Bimla Kumari and is binding upon the plaintiffs/appellant.

53. So far partition of Schedule-2 property of the present suit is concerned, the finding in Title Suit No. 160 of 1983 with regard to memorandum of partition dated 01.12.1966 is that the same is declared suspicious document. The said finding has not been set aside by any Court of law. Moreover, the present suit is for partition of Schedule-2 property mentioned in the plaint. This is the only suit for partition of the Suit Property with regard to Branch of Sita Ram Singh and Prabhu Singh. It is apparent from the records that there was partition in the Branch of Kishun Singh, Ratul Singh and Devdhari Singh before the last survey. The lands detailed in Schedule-1 and 2 were recorded in the name of mother of Somaria & Bindiya and widow of Ratul Singh, namely, Punia Devi. Plaintiffs and principle defendant are descendant of Kishun Singh who had one son Bhattu Singh; Bhattu Singh have sons Hira



Singh and Moti Singh, Hira Singh have two sons Sita Ram Singh and Prabhu Singh. Original Defendant Nos. 1 to 12 are heirs of Sita Ram Singh, Original plaintiff Nos. 1 and 2 are heirs of Prabhu Singh. There is no document to prove any partition between Sita Ram Singh and Prabhu Singh except the unregistered partition deed dated 01.12.1966 which was held as suspicious document. Moreover, part of the property mentioned in the memorandum of partition dated 01.12.1966 was being allotted to Kishori Singh successor in interest of property of Ratul Singh in compromise decree passed in First Appeal No. 339 of 1977, wherein, Sita Ram Singh and his sons and Prabhu Singh were parties in the aforesaid compromise decree. It is apparent from the records that Prabhu Singh, father of plaintiffs/appellant in sale deeds Ext. A-1 to 11 and Ext. B agreement for sale had admitted that he has partitioned the joint family property. An agreement to sale Ext. B was executed by Prabhu Singh on 16.02.1999. The property in the subject matter of Somaria and Bindiya had been allotted to Prabhu Singh in the amicable partition of joint family property in 1966. The said agreement to sale was witnessed by Bimla, Plaintiff No. 2, daughter of Prabhu Singh and Dadan Chaudhary (PW-15) Son-in-law of Prabhu Singh. The receipts of the consideration money on the overleaf of agreement to sale, on which receipts of 20,000/-



was made and payment was made to Dadan Chaudhary, husband of Plaintiff No. 2 on 25.09.1996 (Ext. C). It is apparent that story of partition of 1966 among the family members was known to everyone including the daughter and son-in-law of Prabhu Singh.

54. On the other hand, Sita Ram Singh and ancestor of Defendant Nos. 1 to 12 executed several deeds prior to his death such as Exhibits 2 to 2(a), 6(a), 6(c) and 6(d) wherein Sita Ram Singh stated that properties which he sold were the Khandani Property (family property/ijmal property). Exhibit 6(C) i.e., sale deed dated 25.07.1975, with respect to Khata No. 3, Plot No. 85 is the subject matter of the Suit, wherein, Sita Ram Singh and Prabhu Singh executed the sale deed for the necessity of the joint family and there is no mention about any partition of 1966 by way of family settlement.

55. On analysing the case of the parties, it is clear that ancestor of the plaintiffs and ancestors of original Defendant Nos. 1 to 12 raised their respective claims contrary to their own pleadings.

56. At this juncture, I think it apt to clarify the position, for if I leave at this when a partition suit is filed, the defendant would be in a position to advance a plea that there is no unity of title on the basis of earlier partition by way of memorandum of



partition dated 01.12.1966. It is already discussed above that the memorandum of partition dated 01.12.1966 is a suspicious document as held in Title Suit No. 160 of 1983 by the Civil Court in another civil proceeding and the same was not challenged anywhere, except that, it was challenged by the present appellant along with his mother namely Leela Devi (since deceased) and by one of the sons of Sita Ram Singh namely, Krishna Singh which in due course of litigation at the stage of First Appeal bearing F.A. No. 746 of 1985, the original appellants (Leela Devi and Bimla Kumari) withdrew their names from the memo of appeal and the rest one appellant namely Krishna Singh (Son of Sita Ram Singh) entered into compromise with the respondent of that F.A. No. 746 of 1985 and, therefore, the memorandum of partition of 1966 remained a suspicious document. Further in none of the cases, the said memorandum of partition in the year 1966 was decided to be beyond suspicion, therefore, unity of title and unity of possession remained there between the parties. The defendants/respondents have failed to prove earlier partition in the family. In the case of ***Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe*** reported in ***AIR 1986 SC 79***, the Hon'ble Apex court has held that-

“the character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain



its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. By a unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property”.

57. In the present case, the appellant is the daughter of a co-parcenor of joint Hindu family. The question is that whether female relatives of a co-parcenor is entitled for share in the joint family or not. This aspect of the matter has been dealt with in the case of **Anar Devi & Ors. vs. Parmeshwari Devi & Ors.** reported in **(2006) 8 SCC 656**. Law applicable to joint family property is governed by Mitakshara school of law prior to the amendment in 2005 by Act (39 of 2005) is set out in the following terms:

“...hold that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener, by survivorship but upon his heirs by intestate succession. Explanation 1 to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained and, i.e., that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately



before his death, irrespective of whether he was entitled to claim partition or not. It means for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got in notional partition.”

58. Recently in ***Uttam vs. Saubhag Singh & Ors*** reported in **(2016) 4 SCC 68** also the Hon’ble Apex Court summed up in the following terms:-

“ (i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female



relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Section 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.”

59. It is admitted case of the parties that Prabhu Singh (father of the appellant) died in 2001. Therefore, appellant being daughter is entitled to the share by survivorship.

60. Now, it is clear that there is unity of title and unity of possession over Schedule-2 lands. In the instant suit, the



property/lands would devolve upon plaintiffs-appellant being daughter of Prabhu Singh and defendants/respondents being heirs of Sita Ram Singh in equal share of the transaction made by the parties would abide by the share that they have in Schedule-2 properties. Both the parties are entitled to their respective share in the manner half and half in Schedule-2 properties and the lands alienated by them or their ancestors would be adjusted according to their respective shares.

61. Further, the compromise decree passed in F.A. No. 746 of 1985 arising out of Title Suit No. 160 of 1983 is not binding upon the appellant. Under the aforesaid facts and circumstances, the judgment and decree dated 08.04.2013 passed in Title Partition Suit No. 213 of 2001 by the learned Sub Judge VIII, Patna is set aside and the suit is decreed to the extent mentioned above.

62. Office is directed to prepare decree accordingly.

63. In the result, the appeal is allowed.

(Khatim Reza, J)

Premchand/
Sankalp-

AFR/NAFR	AFR
CAV DATE	16.02.2024
Uploading Date	06.06.2024
Transmission Date	N/A

