

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.69 of 2018

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Gharbharan Singh, Son of Late Doma Singh, Resident of Village- Magaha,
P.S.- Fulwaria, P.O. Kalyanpur, District- Gopalganj.

... .. Appellant/s

Versus

1. Jamuna Bhagat, Son of Late Keshwar Bhagat, Resident of Village - Magaha,
P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
2. Most. Sanmati Devi, Wife of Late Puja Bhagat, Resident of Village -
Magaha, P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
3. Lalti Devi, Wife of Shiv Shanker Singh, Daughter of Late Puja Bhagat,
Resident of Village - Magaha, P.S.- Phulwariya, P.O.- Kalyanpur, District-
Gopalganj.
4. Surendra Singh, Son of Late Puja Bhagat, Resident of Village - Magaha,
P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
5. Harendra Singh, Son of Late Puja Bhagat, Resident of Village - Magaha,
P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
6. Hridyanand Singh, Son of Late Puja Bhagat, Resident of Village - Magaha,
P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
7. Prem Kumar Singh, Son of Late Puja Bhagat, Resident of Village - Magaha,
P.S.- Phulwariya, P.O.- Kalyanpur, District- Gopalganj.
8. Guru Charan Bhagat, Son of Late Sathu Bhagat, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
9. Hari Charan Bhagat, Son of Late Sathu Bhagat, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
10. Sarda Singh, Son of Late Dwarika Singh, Resident of Village - Magaha,
P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
11. Pasupati Singh, Son of Late Dwarika Singh, Resident of Village - Magaha,
P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
12. Sudarshan Singh, Son of Late Dwarika Singh, Resident of Village - Magaha,
P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
13. Fhalmati Devi, Daughter of Late Dwarika Singh, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
14. Bipti Devi, Daughter of Late Dwarika Singh, Resident of Village - Magaha,
P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
15. Muneshwari Devi, Daughter of Late Dwarika Singh, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
16. Ram Nagina Singh, Son of Late Ram Lal Singh, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
17. Rajendra Singh, Son of Late Ram Lal Singh, Resident of Village - Magaha,
P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
18. Ramswarup Singh, Son of Late Ram Lal Singh, Resident of Village -
Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.



19. Suraj Narayan Singh, Son of Late Ram Lal Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
20. Ram Dyai Devi, Daughter of Late Ram Lal Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
21. Most Dulari, Wife of Late Ram Lal Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
22. Most. Pawadharia, Wife of Late Chandrika Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
23. Shiv Nath Singh, S/o Late Chandrika Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
24. Bigani Devi, D/o Late Chandrika Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
25. Raja Ram Singh, S/o Late Ram Bharosa Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
26. Dhrupdeo Singh, S/o Late Ram Bharosa Singh, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
27. Lal Bahadur, S/o Suni Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
28. Manoj, S/o Suni Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
29. Rajesh, S/o Suni Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
30. Rabadi Devi, D/o Suni Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
31. Sila Devi, D/o Suni Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
32. Kishuni Bhagat, S/o Phagan Bhagat, Resident of Village - Magaha, P.O.- Kalyanpur, P.S.- Phulwaria, District- Gopalganj.
33. Most. Sawaro, W/o Late Sita Ram Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
34. Lalan Singh, S/o Late Sita Ram Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
35. Banka Singh, S/o Late Sita Ram Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
36. Mangari Devi, W/o Late Nand Lal Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
37. Jayant Kumar, S/o Late Nand Lal Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
38. Gayatri Devi, W/o Yogendra Singh, D/o Late Sita Ram Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.
39. Gyanti Devi, W/o Vishundeo Singh, D/o Late Sita Ram Singh, resident of Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwariya, District- Gopalganj.



40. Dalsingar Singh, S/o Dip Narayan Singh, resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
41. Most. Raj Bansi, W/o Gena Singh, resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
42. Anil Kumar, minor Son of Late Gena Singh, Represented through his Mother the nearest guardian and nearest friends of defendant 42 to 44. resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
43. Sunil Kumar, minor Son of Late Gena Singh, Represented through his Mother the nearest guardian and nearest friends of defendant 42 to 44. resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
44. Raju Kumar, minor Son of Late Gena Singh, Represented through his Mother the nearest guardian and nearest friends of defendant 42 to 44. resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
45. Raj Kishore, Son of Late Gena Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
46. Gagiya, D/o Dip Narayan Singh, W/o Ramdhari Singh, Resident of Village- Bhagwanpur, P.O. Nandpur, District- Deoria at present Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
47. Rama Shanker Singh, Son of Late Jiwlal Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
48. Keshwar @ Vidya Singh, Son of Late Kabilas Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
49. Sonamati Devi, D/o Late Kabilash Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
50. Kanti Devi, Minor D/o Musmat Hajar Patti Kuwer D/o Late Kabilash Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
51. Roma Devi, Minor D/o Musmat Hajar Patti Kuwer D/o Late Kabilash Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
52. Rani Devi, Minor D/o Musmat Hajar Patti Kuwer D/o Late Kabilash Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, District- Gopalganj.
53. Hajarpati Kuwar, W/o Late Kabilash Singh, Resident of Village- Bairagi Tola, P.S.- Phulwaria, P.O.- Songarhwa, District- Gopalganj.
54. Most. Dukhani, W/o Late Sarju Singh, Resident of Village- Magaha, P.O.- Kalyanpur, P.S.- Phulwariya, District- Gopalganj.
55. Dudhnath Singh, Son of Late Sarju Singh, Resident of Village- Magaha, P.O. - Kalyanpur, P.S.- Phulwariya, District- Gopalganj.
56. Kedar Singh, S/o Late Sarju Singh, Resident of Village- Magaha, P.O. - Kalyanpur, P.S.- Phulwariya, District- Gopalganj.
57. Gurucharan Singh, Son of Late Raghunath Singh, Resident of Village- Bairagi Tola, P.S.- Phulwariya, District- Gopalganj.
58. Prabhawati Devi, W/o Narayan Singh, R/o Chapwa, P.S.- Bhore, District-



Gopalganj.

59. Janki Devi, W/o Ramanand Singh, R/o Bania Chhapar (Koyla Dewa), P.S.- Phulwaria, District- Gopalganj.
60. Lilawati Devi, W/o Janki Singh, R/o Village and P.O. Narayanpur Dubey, P.S.- Khampar, District- Deoria (UP), all at present Village- Bairagi Tola, P.O.- Songarhwa, P.S.- Phulwaria, District- Gopalganj.
61. Shanti Devo, D/o Late Kashi Bhagat, W/o Indrashan Singh, R/o Village Durgapatti, P.S. Lala Sumaria, P.S.- Kateya, Present Village- Bairagi Tola, P.S.- Phulwariya, District- Gopalganj.
62. Hardeo , S/o Mahadeo Singh, R/o Village- Barawa, P.O. Lala Semaria, P.S.- Kateya, Distt. - Gopalganj at present of Village- Magaha, P.S. Phulwaria, District- Gopalganj.
63. Urmila, D/o Mahadeo Singh, Minor represented through guardian mama the nearest friend guardian of minor. R/o Barwa, P.O.- Lala Semaria, P.S. Kateya, District- Gopalganj.
64. Lalmuni Devi, W/o Bikrama Singh, R/o Jamsari, P.O. Jamsara, P.S. Uchkagaon, Distt.- Gopalganj.
65. Ram Rati Devi, W/o Rajbansi Singh, R/o Raghunathpur, P.S. Bhore, present Magaha, P.S. Phulwariya, P.O.- Kalyanpur, Distt.- Gopalganj.
66. Chan Kaliya Devi, W/o Ram Nath Singh, R/o Village- Sukwalia, P.S.- Fulwaria, P.O.- Bathua Bazar, Distt.- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Najib Ahmad with Mr. Sanjay Kumar Mr. Rahul Nath, Advocates
For the Respondent/s	:	Mr. Shailendra Kr. Dwivedi, Advocate.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

8 20-08-2024 Heard learned counsel for the appellants and learned
counsel for the respondents.

2. This Second Appeal has been filed against the judgment of affirmance dated 20-12-2017 passed by the learned Additional District Judge -VIII, Gopalganj in Title Appeal No. 85 of 2009 whereby the learned appellate Court has affirmed the judgment and decree dated 11-08-2009 passed in Partition Suit No. 351 of 1999 / 36 of 2008 by the learned Sub Judge-IX,



Gopalganj.

3. The defendant is appellant in the instant Second Appeal. The plaintiffs -respondents filed Partition Suit No. 351 of 1999/36 of 2008 for partition with respect to $\frac{1}{2}$ share in Schedule-I and II properties of the plaint for carving out the share of the plaintiffs through process of the court.

4. The case of the plaintiffs- respondents is that one Sohan Koiri had two sons, namely, Khushi Koiri and Bhawani Koiri. Khushi Koiri had two sons, namely, Shiv Prasad Koiri and Moti Koiri, out of whom Moti Koiri had one son, namely, Satnam Koiri who died issueless and Shiv Prasad Koiri had three sons, namely, Nanhak Koiri, Abhilakh Koiri and Lutan Koiri. It is further pleaded that said Nanhak Koiri had one son, namely, Keshwar Koiri. Abhilakh Koiri had two sons namely, Bal Govind Koiri and Laxman Koiri. Likewise, Lutan Koiri had one son, namely, Sadhu Koiri. The plaintiffs- respondents are legal heirs of Nanhak, Abhilakh and Lutan Koiri. It is further pleaded that said Bhawani Koiri had four sons, namely, Ram Narayan Koiri, Shiv Narayan Koiri, Paltan Koiri and Jiyan Koiri, out of whom, Ram Narayan Koiri and Shiv Narayan Koiri died issueless. It is further pleaded that said Paltan Koiri had three daughters, namely, Sukwariya Devi, Mahangi Devi



and Sanichari Devi who have died. Defendant Nos.4 to 16 are legal heirs of said Paltan Koiri. Jiyan Koiri had one son, namely, Doma Koiri, whose heirs are defendant Nos. 1 to 3. It is further pleaded that C.S. khatiyani was prepared in the name of Moti Koiri and four sons of Bhawani Koiri, but after C.S. operation Moti Koiri and Shiv Prasad Koiri were separated on one side and Paltan and others remained together on another side. They had separated in mess and business, but the ancestral property were not partitioned, and they cultivated the same lands, according to their convenience. It has further been pleaded that Moti Koiri died leaving behind his son, namely, Satnam Koiri and his wife. His wife also died in the year 1961. Later on, said Satnam Koiri also died leaving behind his wife only and she was maintenance holder. Therefore, entire property of Satnam Koiri came to the plaintiffs- respondents through survivorship and they are in possession over the same. It has been further pleaded that at the time of R. S. operation, Shiv Prasad had died and his sons were minors whereas, said Satnam Koiri was very old and hence, R. S. operation was looked after by Jiayan Koiri and Paltan Koiri and got their names entered in the R. S. khatiyani. Neither the plaintiffs nor the ancestor of the plaintiffs have knowledge about R.S. entry because they are in possession



over half of the entire property and all the co- sharers remained in possession, according to their share and separation took place in 1903 and, accordingly, said Satnam Koiri separated on one side and Paltan Koiri on another side. After separation, Nanhak Koiri S/o Shiv Prasad Koiri purchased land of R.S. Khata No.17 (CS Khata No.43,) and he was in exclusive possession over the said purchased land and in this way, defendants-appellants have got no concern with the land of R.S. Khata No.17. Later on, there was a difference in the family and hence the plaintiffs- respondents demanded partition of their respective $\frac{1}{2}$ share in the suit-land from the defendants-appellants. Hence, the Partition Suit.

5. On summons, defendants Nos.1 to 6, 15, 17 to 19 appeared and filed their joint written statement. They raised the objection with regard to maintainability of the suit and further pleaded that there is no unity of title and jointness of possession in between the plaintiffs- respondents. It has further been pleaded that the genealogical table, as mentioned in the plaint, is also incomplete and suit is also hit by the principle of partial partition. It has further pleaded that Satnam Koiri had no issue and he was re-united with Jiyan Koiri and Doma Koiri son of Jiyan Koiri and he jointly started business and cultivation and



utilized the crops and their mess and business were joint and they became the members of joint family of Jiyan Koiri. After the death of Satnam Koiri, his share devolved upon Jiyan Koiri. It has been further pleaded that plaintiffs-respondents have no right, title, interest and possession over the property of said Satnam Koiri. Doma Koiri and Jiyan Koiri after their death, they have performed last rites, according to Hindu rites and rituals. Therefore, entire property of Satnam and his wife came to Jiyan Koiri and his son Doma Koiri. Therefore, the property of Satnam devolved upon Doma Koiri son of Jiyan Koiri who is in possession over the said property. It has been further pleaded that three sons of Sohan Koiri, namely, Khushi Koiri, Bhawani Koiri and Juddi Koiri acquired so many lands along with Dih-basgit and after death of Sohan his three sons, named above, separated with each other and they have partitioned in their mess and business and they have got separate possession of land, as per their convenience. It has been further pleaded that there was amicable partition of ancestral property and the defendants-appellants have got 12 *anna* share and they are coming in possession since long. There is no any deed of partition. Hence, the suit is liable to be dismissed with cost.

6. The learned Trial Court, after considering the



pleadings, evidence adduced by the parties and materials on record, has held that plaintiffs are entitled to $\frac{1}{2}$ share and rest half to the defendants and decreed the suit.

7. Being aggrieved by the judgment and decree dated 11-08-2009 passed in Partition Suit No. 351 of 1999 / 36 of 2008 by the learned Sub Judge-IX, Gopalganj, the defendants-appellants preferred Title Appeal No. 85 of 2009. After hearing the parties and considering the materials on record, the learned Additional District Judge-VIII, Gopalganj, affirmed the judgment and decree of the learned Trial Court and dismissed the appeal *vide* judgment and decree dated 20-12-2017. The learned lower Appellate Court has held that the story of re-union in between Satnam and branch of Bhawani is not correct as per materials available on record and both the branches have half and half share of land in the suit property. It is also held that there is no any document in respect of reunion of the parties whereas, the entry in C.S. *khatian* as well as R.S. *khatian* show that parties are coming in separate possession since the times of their ancestors as per their convenience and claim of the appellant has been rejected.

8. The learned counsel for the appellant submitted that the appellant filed some documents before the learned lower



Appellate Court as an additional evidence which has been marked for identification as X to X/8 series, but the learned appellate Court has not taken into consideration those documents. It is submitted that if those documents were to be considered then the matter in dispute would have finally been settled. It was the duty of the learned Appellate Court to look into those documents, which are on record, the court below has failed to consider it. It is further submitted that this is only the main issue in the present appeal which has to be decided. The learned appellate Court has failed to decide the same.

9. Considering the materials on record and submission of the learned counsel for the appellant, it is apparent that defendants have not proved the story of reunion with Satnam (who was member of branch of plaintiffs' ancestor). The principle of reunion has already been settled in the case of ***Ram Narain Chaudhry and others vs. Mt. Pan Kuer and others*** reported in ***AIR 1935 Privy Council 9*** and in the case of ***Commission of Income Tax vs. A.M.Vaiyapuri Chettiar & Anr.*** reported in ***[1995] 215 I.T.R. 836 (MAD)***. Similar issue has been settled by the Hon'ble Supreme Court in the case of ***Bhagwan Dayal vs. Mst. Reoti Devi*** reported in ***1962 AIR 287*** wherein, the Hon'ble Supreme Court has held that, "if there is a



separation of a Hindu Family; the family or any of its members can agree to reunite as a Joint Hindu Family but the reunification can only take place for general reasons which would apply in many cases under the Mitakshara law of schools of Hindu Law. Though such reunion is very rare in occurrence, it must be proved and the party who has the burden of proof is the one who is appealing for the reunification of the estate into a Joint Hindu Family.”

10. Both the courts below concurrently held that the defendants have failed to establish or prove the story of re-union of Satnam with the defendants.

11. Considering the facts and findings of both the courts below, I am not inclined to interfere with the concurrent findings of the courts below. There is no question of law in as much as no substantial question of law is involved in this case. Thus, the instant Second appeal is dismissed at the stage of hearing under Order XLI Rule 11 C.P.C.

12. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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