

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.56 of 2015

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Mithilesh Singh Son of Late Rajendra Pratap Singh, Resident of Village-
Charkawan, P.O and P.S.- Rafiganj, District- Aurangabad Bihar.

... .. Appellant/s

Versus

1. Ramadhar Singh
2. Jaydhar Singh.
3. Kamlesh Singh. All are Sons of Late Rajendra Prasad Singh. All are Resident of Village- Charkawan, P.O. and P.S.- Rafiganj, District- Aurangabad Bihar.
4. Malti Devi, Wife of Janak Tiwary, Resident of Village- Khutahan, P.S.- Obra, District- Aurangabad Bihar.
5. Pratima Devi, Wife of Sunil Sharma, Resident of Villlage- Konch, P.O. and P.S.- Konch, District- Gaya.
6. Bachchi Devi, Wife of Ramadhar Singh.
7. Sumitra Devi, Wife of Jaydhar Singh. Both are Resident of Village- Charkawan, P.O. and P.S.- Rafiganj, District- Aurangabad Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

3 16-06-2025 Heard learned counsel for the appellant.

2. This Second Appeal has been filed against the judgment and decree dated 09.01.2015 passed in Partition Appeal No. 54 of 2009/128 of 2009 by the learned Additional District Judge-IV, Aurangabad whereby the judgment and decree dated 18.09.2009 passed in Title Partition Suit No. 17 of 2005/04 of 2009 by the learned Subordinate Judge-V, Aurangabad has been affirmed.

3. The plaintiff/appellant filed partition suit for 1/6



share of the plaintiff in the suit property. It is pleaded that Rajendra Prasad Singh had five sons and two daughters. It is further case of the plaintiff that Lovlesh Singh one of the sons of Rajendra Prasad Singh separated from his father and his brothers on 09.07.1981 and came in possession of the land allotted to him. He died in the year 1988 leaving behind his widow, Manorma Devi as his sole heir, who came in possession of the estate of her husband. The said widow subsequently gifted the property on 4.12.1992 to defendant nos. 1 to 3 as well as the plaintiff. It is further case of the plaintiff that three brothers of the plaintiff i.e. defendant nos. 1, 2 and 3 and plaintiff remained joint with their father Rajendra Prasad Singh, who purchased Schedule 2, 3 and 4 land in the name of defendant nos. 1, 2, 6 and 7 with the joint family nucleus. The father of the plaintiff died in the year 2002 and after his death, the defendant no. 1 became *Karta* and Manager of the joint family and its properties as mentioned in the Schedule 1 to 4 of the plaint. It is submitted that the plaintiff, who is a junior member of the family, alleged that family is in joint enjoyment of the suit properties and the defendant no. 1 has



evaded his repeated requests for partition and ultimately refused the same on 27.02.2005 as such cause of action for the suit arose.

4. On summon, the defendants appeared and contested the suit but the suit has been contested only by defendant nos. 1 to 3, 6 and 7. Apart from ornamental objection with regard to the suit, it is vehemently pleaded that there is no unity of title and possession with the plaintiff in respect of the suit property as the same was earlier partitioned by metes and bounds on 09.07.1981 during lifetime of Rajendra Prasad Singh and the said partition was amongst all the brothers.

5. A memorandum of partition was prepared as Exhibit-A. It is alleged that defendant nos. 4 and 5 were adjusted in shares of others and altogether six schedules were prepared and allotted to the plaintiff as well as his brothers including Lavlesh Singh @ Navlesh Singh and Rajendra Prasad Singh. It is further submitted that after the death of Rajendra Prasad Singh on 21.06.2002, the land previously allotted in his share was partitioned and a document was prepared on 22.07.2002 as per the said



scheme of partition, all the co-sharers came in possession of the lands allotted to them and accordingly dealt with the same. It is further pleaded that the plaintiff himself sold land of *Khata* No. 34, Plot No. 48, Area 6 decimals and *Khata* No. 3, Plot No. 19, Area 74 decimals and as such the said memorandum of partition was acted upon. It is further pleaded that father of the plaintiff and defendant nos. 1 to 3 also gave their land of *Khata* No. 5, Plot No. 1568, Area 62.5 decimals through registered sale deed dated 20.10.1997 and the said transaction took place in presence of the plaintiff as a witness to the sale deed. It is further alleged that the widow of Lavlesh Singh, namely, Manorama Devi executed deed of gift in favour of the plaintiff as well as the defendant nos. 1 to 3 wherein the father of the plaintiff is one of the witness. It is further pleaded that the property mentioned in Schedule 3 and 4 are self acquired property of defendant nos. 6 and 7 by virtue of purchase made by them with the aid of their *Streedhan* and they have been coming in possession of the same to the exclusion of others who have no manner of concern with the same. There is specific pleading in the written statement



of defendant nos. 6 and 7, namely Bacchi Devi and Sumitra Devi, who have denied the case of the plaintiff as regards unity of title and possession in respect of the suit properties and have asserted prior partition among Rejendra Prasad Singh and his five sons including the plaintiff and said Lavlesh Singh. They also supported the case of the defendant nos. 1 to 3. It is further pleaded that land property of Schedule 3 and 4 have their exclusive properties acquired by their own *streedhan* by means of registered sale deeds dated 30.09.1982 and 25.05.1984 respectively.

6. On the basis of pleadings, the learned Trial Court framed nine issues and after analyzing of the evidence adduced by the parties and materials on record, dismissed the suit.

7. Being aggrieved, the plaintiff/appellant filed Title Appeal before the District Judge, Aurangabad, who also dismissed the same and hence, this Second Appeal has been filed by the plaintiff/appellant.

8. Considering the materials available on record including the judgments of the learned courts below, it appears that the learned court of appeal below, which is the



final court of facts, has held that there is no unity of title between the parties. It is further held that the learned Trial Court has rightly held that Exhibit-F is an admitted document between the parties which reveals that there was previous partition and in which the plaintiff is one of the donee of the said gift. It is also held that the father of the plaintiff is the identifier on the document. The said document also speaks of prior partition and allotment of land to the share of her husband, namely, Lavlesh Singh. This document appears significant in the context of boundaries of the land in which the name of other co-sharers have been mentioned. Besides, the said documentary evidence, the defendants have also adduced documentary evidences as Exhibit B to B/6 and Exhibit E to E/6 which are irrigation receipts and rent receipts respectively. It is held that the defendants have proved prior partition which took place in the year 1981. According to, the documentary as well as oral evidences of the plaintiff, there is no unity of title and possession amongst the parties in this suit. It is further held that the Schedule 3 and 4 property are the exclusive property of defendant nos. 6 and



7 purchased through *streedhan*.

9. The learned Appellate Court has further held that the property was allotted by memorandum of partition in the year 1981. The plaintiff also sold some of the lands which shows that the said memorandum of partition was acted upon.

10. Both the courts below concurrently held that plaintiff has failed to establish or prove the case of unity of title and possession amongst the parties.

11. Considering the aforesaid facts and submissions averments made by the appellant as well as 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 much less substantial of law involved in this case.

12. Accordingly, this Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 C.P.C.

(Khatim Reza, J)

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