

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.238 of 2011

1. Ranjana Devi @ Ranjan Devi D/o Late Jagdish Bhagat, w/o Ram Iqbal Bhagat, R/o Khesar, P.S. Belhar, Dist. Banka.
2. Chunni Devi D/o Late Jagdish Bhagat, W/o Santosh Jaiswal R/o Mohalla Deepnagar, P.S. Adampur, Distt. Bhagalpur
3. Renu Devi D/o Late Jagdish Bhagat, W/o Kanhaiya Prasad Bhagat R/o Belhar, P.S. Belhar, Dist.- Banka
4. Deji Kumari D/o Late Jagdish Prasad Bhagat, R/o Village- Khesar, P.S.- Belhar, Distt.- Banka
5. Sajjan Devi D/o Late Jagdish Prasad Bhagat, W/o Madan Prasad Bhagat Village and P.S. Pathargama, Distt.- Goda
6. Manoj Kumar Bhagat S/o- Late Jagdish Prasad Bhagat, R/o Village- Khesar, P.S.- Belhar, Distt.- Banka
7. Smt. Tara Devi, W/o Late Jagdish Prasad Bhagat, R/o Village- Khesar, P.S.- Belhar, Distt.- Banka

... .. Appellant/s

Versus

- 1.1. Shanti Devi W/o Ram Nath Bhagat, R/o Village Khesar, P.S. Belhar, Distt. Banka, presently residing at Govindpur, P.S. Govindpur, Distt. Jamshedpur (Jharkhand).
2. Bishwanath Bhagat, S/o Late Mahadeo Bhagat, Resident of Village Khesar, P.S. Belhar, Distt. Banka.
3. Most. Lalita Devi, D/o Late Yogendra Bhagat and W/o Surendra Jaiswal, R/o Barsanagar Zone No. 3, Near Kali Mandir, Jamshedpur Jharkhand
- 4.1. Mt. Jai Mala Devi, Wife of Late Rajendra Bhagat, Resident of Village - Khesar, Post Office - Khesar, Police Station Belhar, District- Banka Pin Code 813207, at present residing at village and Post Office - Baunsi, Police Station - Baunsi, District- Banka (Bihar) Pin Code - 813104.
- 4.2. Nadan Kumar Bhagat, Son of Late Rajendra Bhagat, Resident of Village - Khesar, Post Office - Khesar, Police Station Belhar, District- Banka Pin Code 813207, at present residing at village and Post Office - Baunsi, Police Station - Baunsi, District- Banka (Bihar) Pin Code - 813104.
- 4.3. Beauty Kumari, D/o Late Rajendra Bhagat, Resident of Village - Khesar, Post Office - Khesar, Police Station Belhar, District- Banka Pin Code 813207, at present residing at village and Post Office - Baunsi, Police Station - Baunsi, District- Banka (Bihar) Pin Code - 813104.
- 4.4. Rimjim Kumari, D/o Late Rajendra Bhagat, Resident of Village - Khesar, Post Office - Khesar, Police Station Belhar, District- Banka Pin Code 813207, at present residing at village and Post Office - Baunsi, Police Station - Baunsi, District- Banka (Bihar) Pin Code - 813104.
5. Sanjeev Kumar Bhagat, S/o Ram Nath Bhagat, R/o Village Khesar, P.S.



Belhar, Distt. Banka.

6. Munna Kumar Bhagat S/o Bishwanath Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
7. Pintu Kumar Bhagat S/o Bishwanath Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
8. Mintu Kumar Bhagat S/o Bishwanath Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
9. Arun Kumar Bhagat S/o Late Yogendra Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
10. Sarita Devi @ Sweety W/o Tunna Bhagat @ Musan Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
11. Shivani Kumari D/o Tunna Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
12. Roshan Kumar Bhagat, S/o Yogendra Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
13. Lalan Kumar Bhagat, S/o Rajendra Bhagat R/o Village Khesar, P.S. Belhar, Distt. Banka.
14. Pappu Kumar Bhagat, S/o Rajendra Bhagat. R/o Village Khesar, P.S. Belhar, Distt. Banka.
15. Subodh Prasad Kapri, S/o Baleshwar Prasad Kapri, Village Khesar, P.S.- Belhar, Distt.- Banka
16. Mostt. Geeta Devi, W/o Late Fani Bhushan Chaudhary R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
17. Munni Kumari, D/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
18. Chunni Kumari, D/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
19. Anita Kumari, D/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
20. Sunita Kumari, D/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
21. Chhoti Kumari, D/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
22. Mahesh Kumar, S/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.
23. Umesh Kumar, S/o Late Fani Bhushan Chaudhary, R/o Village Asouta, P.S. Shambhbuganj, Distt. Banka.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Prasad Singh, Sr. Advocate with Mr. Manish, Advocate
For the Respondent/s	:	Mr. Shashi Shekhar Dwiwedi, Sr. Advocate with Mr. Parth Gaurav, Advocate Mr. Govind Raj Shalu, Advocate



Mr. Ashutosh Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 26-05-2025

This Second Appeal is directed against the judgment and decree dated 21.02.2011 passed in Title Appeal No. 60 of 2010 by the learned Additional District & Sessions Judge, F.T.C-3rd, Banka, whereby the learned appellate court below has allowed the appeal filed by the defendants/respondents and set aside the judgment and decree dated 20.05.2010 passed by Sub-Judge-1, Banka in Title Suit No. 22 of 1997 and reversed the judgment and decree passed by the learned trial court.

2. In the present Second Appeal, the following substantial question of law has been formulated for determination:-

“whether the appellate court below has given the correct interpretation of the documents of Ekrarnama (Exhibit-7) and the deed of usufructuary mortgage (Exhibit-2) in order to come to the conclusion that there had been partition by metes and bounds between the parties with regard to the suit properties?”

3. The suit in question was filed alleging that the plaintiffs and the defendants are the descendants of common



ancestor, namely, Mahipal Bhagat, who had five sons. Mahipal Bhagat died in jointness with his son Patiram Bhagat, who had one son, namely, Sini Ram Bhagat. Both the parties belong to the branch of Sini Ram Bhagat. Sini Ram Bhagat had two wives. From the first wife, there was one son, namely, Mahadev Bhagat and from the second wife, there was one son, namely, Jagdish Bhagat.

4. Original plaintiffs were representing the branch of Jagdish Bhagat and the defendants were representing the branch of Mahadev Bhagat. It is further case of the plaintiffs that in the year 1929, amicably oral family partition was held between Patiram Bhagat and Sini Ram Bhagat and in that partition, Patiram Bhagat got 1.47 acres of land out of Schedule-I land and remaining 1.47 acres of land went to the share of Sini Ram Bhagat. Both the brothers of Sini Ram Bhagat got the land allotted to his father in the said family partition. The land which fell to the share of Sini Ram Bhagat is the subject matter of partition and fully described in Schedule-II item No. 1 of the plaint which is the suit land.

5. It is further case of the plaintiffs that Sini Ram Bhagat died in the estate of jointness with his two sons namely, Mahadev Bhagat and Jagdish Bhagat in or about the year 1938 and both the sons jointly inherited the suit land and came in exclusive



possession of the same. It is further case that the entire property was left by their father, namely, Sini Ram Bhagat and moveable and immovable property were partitioned between them except the suit land and both the branch divided in status only and the suit land as said remained joint even after the death of Mahadev Bhagat, who died more than 25 years ago leaving behind his four sons and grandsons, who are parties to the suit. As there was disturbance in the joint family, entire property was partitioned between them in the year 1942 except the suit land. Although a separate Jamabandi was created in the name of Mahadev Bhagat and wife of Jagdish Bhagat, but as a matter of fact, the suit land was never partitioned by metes and bounds and since the partition of 1942, the branch of plaintiffs and branch of Mahadev Bhagat were joint with respect to the suit land. It is further case of the plaintiffs that at the stage of survey and consolidation operation, the authorities illegally inserted and in collusion with the defendants got carved the suit land in several new plots which is indicated in Schedule-II Item 2 of the plaint and this was done by the defendant 1st and 2nd parties only to jeopardize the legitimate interest of the plaintiffs. It is pleaded that separation of Jamabandi for the suit land is apparently illegal and separate Jamabandi in the name of defendant 3rd party i.e. wife of Jagdish Bhagat is



illegal on the very face of it as she is not entitled for any share in view of the fact that the suit land was the ancestral property of the plaintiffs, defendant 1st and defendant 2nd party. However, defendant 3rd party has nothing to do with the suit land as Jagdish Bhagat and his sons are entitled for half share in the suit land. The suit land is located at Sultanganj-Deoghar Road adjacent to the east to the suit land and the survey authority ignoring the location of the suit land, recorded front of the portion appertaining to road in favour of defendants and plaintiffs were given the back side of the allotted portion of the defendants causing loss and hardship to the plaintiffs. The entry in this survey Khatiyan is illegal, void and not binding upon the plaintiffs. A proceeding under Section 144 Cr.P.C. was started between the parties for the suit land which ultimately converted into proceeding under Section 145 Cr.P.C. The plaintiffs were the first party and the defendants were the second party in the suit proceedings. Both the parties adduced their evidences and filed their respective documents. After hearing the parties, the learned Magistrate held that the parties are in joint possession of the suit land which was held up to the revisional court i.e. Additional District Judge-1st, Banka, which vide order dated 01.09.1995 held that the parties are in joint possession of the suit land. It is further contended that the plaintiffs filed a suit



during the pendency of proceeding under Section 145 Cr.P.C. which was dismissed for default as it was the suit for only permanent injunction during the pendency of survey and consolidation proceeding. The plaintiffs and defendants are in joint possession of the suit land but the defendants always create trouble with the plaintiffs in joint enjoyment and as such, the plaintiffs filed the present suit for partition of half share after appointing Survey Knowing Pleader Commissioner.

6. On summon, the defendants 1st party and 2nd party and minor defendants have filed their written statements. However, defendant 3rd party have not filed any written statement. No written statement was filed on behalf of the defendant 4th party, who are said to be purchaser of the said land from defendant 1st and 2nd party. The defendants raised several objections about the maintainability of the suit. They also denied the plaintiffs' claim on merit. It is further pleaded that the present suit is a suit for declaration of title and recovery of possession but the plaintiffs have filed the suit for partition. According to the defendants, partition of the suit land has already been done between deceased father of defendant nos. 1 to 4, namely, Mahadev Bhagat and deceased mother of original plaintiff no. 1 and grand mother of plaintiff no. 2 inasmuch as in the year 1942 which was reduced to



writing by way of *Ekrarnama* and was accepted by the ancestor of both the parties in the said partition. The moveable and immoveable properties including the suit land was partitioned half and half and the parties remained in separate possession and they used to cultivate and were utilizing the usufruct of the same as per the *Ekrarnama*. The land of the suit plot no. 680 area 1.47 acres was partitioned in between Mahadev Bhagat, ancestor of the defendant and Sulochani, the mother of Jagdish Bhagat. The father of defendants Late Mahadev Bhagat executed a mortgaged deed in favour of Tara Devi, wife of original plaintiff no. 1 for taking a loan of Rs. 1,000/- which she kept as security, 73.5 decimals of disputed C.S. Plot No. 680 which is precisely the half of the area allotted to Mahadev Bhagat and other half to Jagdish Bhagat. This was redeemed by Mahadev Bhagat after repaying the mortgaged amount to the mortgagee (Exhibit-2). The name of Mahadev Bhagat and wife of plaintiff no. 1 is running in the survey record separately and they are paying rent separately. So there is no any jointness between the parties regarding the suit land since the year 1942.

7. Upon the aforementioned pleadings of the parties, learned trial court framed altogether six issues for adjudication, out of which issue nos. 2, 3 & 5 are the relevant issues which has been



decided in favour of the plaintiffs and accordingly, the suit was decreed.

8. The learned trial court clearly held that from the perusal of the *Ekrarnama* Exhibit-7 / Exhibit-A, it appears that there is no specific boundary given in it and allotted in the share of the defendants. However, it is the definite case of the defendants that out of total area 2.94 acres under plot no. 680, Khata No. 161, half share of the defendant 1st party was allotted towards east of the Sultanganj-Deoghar Road and with respect to the above, Exhibit-B and Exhibit-2 have been referred but the aforesaid mortgaged deed is not based on the *Ekrarnama* wherein there is no mention of the specific boundary of the respective parties. It has also been held that survey proceeding was not final and as such, the plaintiffs are entitled for partition of the suit property which is nearest to the road and valuable land and co-sharer cannot be debarred from his valuable land. Learned trial court after considering the oral as well as documentary evidence also held that survey proceeding is not final. The court can reopen the partition in joint family property and also held that there is unity of title and possession in between the parties with respect to the suit land and the plaintiffs were entitled to 8 Annas share and accordingly preliminary decree was passed.



9. Being aggrieved by the judgment and decree passed by the learned trial court, the defendants filed Title Appeal before the learned appellate court which was allowed by the judgment and decree under appeal. The learned lower appellate court while reversing the finding of the learned trial court, came to conclusion that Exhibit-2 and Exhibit-7 are admitted by both the parties. Therefore, it appears that partition was done by way of severance in estate of jointness. The plaintiffs did not challenge the whole partition as made under Exhibit-7 / Exhibit-A, but only challenged a part of the land in the whole property as mentioned in Exhibit-7 / Exhibit-A on the ground of situational disadvantage which is legally not permissible. It has been further held that there is no unity of title and the unity of possession between the parties with respect to the suit property. As such, the judgment and decree of the trial court was set aside.

10. Learned counsel for the appellants vehemently submitted that the learned lower appellate court wrongly interpreted the documents of *Ekrarnama* (Exhibit-7) and deed of usufructing mortgage (Exhibit-2). Bare perusal of Exhibit-7 / Exhibit-A, it is apparently clear that though there was mutual partition but the land situated in Mauza Khesar Khata No. 161 (suit land) and some other lands were kept joint and as such, both



the admitted documents will clearly show that there was no partition with respect to the suit land even after separation amongst the parties. Learned appellate court has also ignored the fact that usufruct mortgage Exhibit-2 / Exhibit-B executed by Mahadev Bhagat in favour of wife of Jagdish Bhagat, namely, Tara Devi in which the details of land had been described bearing Khata No. 161, Plot no. 680, but in the bottom of the plot, half has been mentioned without specific boundaries of the area and as such, this document itself proves the fact that parties have half share in this property without a specific portion allotted to them. Learned counsel for the appellants submitted that it is well settled that it is always open to the members of a joint family to divide some property of the family and to keep the remaining property undivided. This view has been taken by this Hon'ble Court in the case of *Smt. Bijay Laxmi Kumar & Ors. Vs. Most. Shyama Devi & Ors.* reported in (2012) 4 PLJR 769 (Para 20). It is further submitted that separation in the family by mutual partition is not a partition by metes and bounds. Reliance in this regard has been placed in the case of *Pata Sahu and Another Vs. Hiru Sahu & Others* reported in AIR 1991 Pat 276. (Para 42). Learned counsel further submitted that the Consolidation Act merely provides a machinery for consolidation of the land and determination of the



right for limited purpose. The suit based on title challenging the correctness of the entry in register of the land under the Consolidation Act are not barred in the Civil Court. This view has been taken by the Full Bench of this Court in the case of ***Sheikh Haider Zan vs. Md. Yusuf Ansari & Another*** reported in **2000 (2) PLJR 338** (Para 42). Learned counsel further submitted that the lower appellate court has failed to appreciate the documentary evidences adduced by the parties in right prospective and even the learned court has failed to consider the recital of Exhibit-2 and Exhibit-7 while setting aside the decree of the trial court. In the present case, learned lower appellate court has committed jurisdictional error by not appreciating and interpreting the actual status of Exhibit-2 and Exhibit-7 and as such, judgment and decree passed by the lower appellate court is fit to be set aside by affirming the judgment and decree of the trial court.

11. Mr. Shashi Shekhar Dwiwedi, learned senior counsel appearing on behalf of the defendant/respondents, on the other hand, submitted that some facts is admitted in the present case by both the parties such as the Sini Ram Bhagat @ Shivnandan Bhagat died in the year 1938 leaving behind his son, Mahadev Bhagat from the first wife and the second wife, namely Sulochani and her two minor sons. There was partition between Mahadev



Bhagat on the one side and Sulochani, wife of Late Sini Ram Bhagat @ Shivrindan Bhagat and her sons on the other side. The descendants of Mahadev Bhagat are defendants in the present suit. Jagdish Prasad Bhagat, son of Sini Ram Bhagat from his second wife and his son, Manoj Kumar Bhagat are the plaintiff nos. 1 & 2 whereas the wife of original plaintiff no. 1, namely, Tara Devi has been impleaded as defendant no. 14. Partition between Mahadev Bhagat and Sulochani and her sons took place and the same was reduced to writing by way of memorandum of partition containing the shares made in partition to both the parties (Exhibit-7 / Exhibit-A). It is submitted that in the entire body of the memorandum of partition, there is no mention of leaving any single property moveable or immoveable situated anywhere, to have been left as joint. Therefore, the appellants cannot say that those words in the agreement signifying joint cultivation and distribution of usufruct in jointness between the parties. Both the parties got their names separately mutated and have been getting rent receipts separately in their names in terms of agreement i.e. Exhibit-7 / Exhibit-A. It is also mentioned that there is separate Jamabandi in the name of both the parties and separate preparation of khatyan in the name of Mahadev Bhagat and Tara Devi (Defendant no. 14). it is vehemently submitted that original



plaintiff no. 1 Jagdish Bhagat filed Consolidation Case No. 1 of 1978-79 against Mahadev Bhagat for partition of the disputed property, in accordance with Section 8A of The Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as 'Consolidation Act'), where the claim of plaintiff no. 1 was dismissed holding that already there had been a partition in the year 1942. Against that, an appeal was filed by plaintiff no. 1 which was also dismissed vide order dated 29.08.1983. The order of the Consolidation Officer was affirmed in Revision Case No. 1948 of 1983 filed by Jagdish Prasad Bhagat. The said revision case was also dismissed vide order dated 24.04.1986 holding that partition had been affected between the parties in the year 1942 itself. Against the said order, the plaintiffs never moved before the High Court and it attained finality.

12. Learned senior counsel for the respondents further submitted that the findings of partition by lower appellate court has not been recorded only on the basis of Exhibit-2 or Exhibit-7. They have only added and supported the other evidence, in abundance, found on record, including the oral evidence. Therefore, a finding with respect to these two documents only cannot be sufficient for upsetting the judgment delivered by the appellate court. Admittedly, in the joint family property or a



property joint between the parties, there is no determination of a particular share or particular portion in favour of any particular person. Every co-sharer/co-owner has got a right over every inch of land. It goes without saying that one cannot take a mortgage of his own land. The wife of Jagdish Prasad gave a loan of Rs. 1,000/- by taking a registered mortgage from Mahadev Bhagat with respect to her own joint property. Reliance has been placed in the case of ***Ram Bahadur Nath Tiwary Vs. Kedar Nath Tiwary and Others*** reported in ***AIR 1977 Pat 59***, wherein, the Division Bench of this Court had held categorically in paragraph no. 14 that "separate transactions by members of the joint family may not by themselves establish separation but mutual transactions between two members of the family stand on an entirely different footing and they furnish a very strong evidence of separation". It is also submitted that separate residence or separate mess or separation in cultivation are not evidence of partition. Learned counsel for the appellants have relied on a judgment in the case of ***Pata Sahu (supra)*** and learned counsel for the respondents also relies on the said judgment which has followed the judgment reported in ***AIR 1930 Privy Council 73, AIR 1951 Pat 277, AIR 1946 Pat 278*** and ***AIR 1971 Pat 215***. It is vehemently submitted that separation in food and residence for a long time amongst the brothers of Hindu



Family, independent transactions of property, separate possession and enjoyment of properties, are by themselves not conclusive to prove the partition but the cumulative effect of such facts may show that there had been partition between the brothers during their lifetime. From the judgment in question it is apparent that cumulative effect of all the documents exhibited on behalf of the parties have been taken into consideration, coming to an irrefutable conclusion that a partition had taken place in the year 1942 which is admitted by both the parties. It is apparent from paragraph nos. 10 and 10A of the plaint which shows that after a road was constructed by the side of the defendants' share of land, the suit was filed to get a share on the road side also. It is also submitted that the plaintiff himself filed partition suit in accordance with Section 8A of the Consolidation Act seeking partition of the instant disputed land which was contested by the defendants on the ground of previous partition which was upheld by consolidation authority on looking into documents as well as inspection of disputed lands. The order of Consolidation Officer (Exhibit-D/1) was challenged before the Deputy Director, Consolidation which also was dismissed vide Exhibit-D in 1983 and then a revision against the same was filed before the Director, Consolidation which was dismissed vide order dated 24.04.1986



and this order was never challenged before the High Court and it attained finality. Therefore, those judgments between the parties with respect to the same subject matter with the same plea by both the parties had attained finality and the Civil Court cannot record a finding contrary to the finding recorded by the Consolidation Court. Learned senior counsel further placed reliance in the case of ***Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary***, reported in ***AIR 1967 SC 1124***, wherein, Paragraph nos. 6 & 7 have explained about what a partition means. It is settled law that in the event of a partition being admitted or proved between the parties, the heavy onus lies on the person alleging non-partition of a particular property. In such view of the matter, the plaintiffs have to prove unity of title and unity of possession in order to succeed in a suit for partition. In the instant case, the same has not been at all been attempted to be proved, much less proved. Learned senior counsel submitted that the substantial question of law framed in the appeal is not at all a question which is determinative of the suit itself, as stated above and, therefore, the appeal is fit to be dismissed.

13. On analysing the materials on records and impugned judgments as well as substantial questions of law having been framed by this Court in this appeal which is "whether the appellate



court below has given the correct interpretation of the documents of Ekrarnama Exhibit-7 (Exhibit-A) and the deed of usufructuary mortgage (Exhibit-2) in order to come to the conclusion that there had been partition by metes and bounds between the parties with regard to the suit properties?"

14. Before dealing with the respective contentions put forward by the parties, I would like to discuss in general the effect and value of *Ekrarnama* (family arrangement) entered into between the parties with a view to resolving disputes once for all. By virtue of an *Ekrarnama* or agreement, the members of the family descending from common ancestor seek to sink their differences and disputes settled and resolved their conflicting claims or disputed titles once for all in order to bring about complete harmony and good will in the family.

15. Now, I shall take up the document Ekrarnama (Exhibit-7) which shows both the branch i.e. Mahadev Bhagat son of Shivnandan Bhagat (alias Sini Ram Bhagat) and Mostt. Sulochani, widow of Shivnandan Bhagat, Indra Prasad Bhagat and Jagdish Prasad Bhagat, minor sons of Late Shivnandan Bhagat under the guardianship of their mother entered into an agreement on 1349 Fasli i.e. 1942. From the bare perusal of the document, it appears from the recital of the agreement that there were two types



of property mentioned in the said agreement; one moveable (cash, ornaments, grains) and another immoveable (agricultural and residential house). However, moveable properties mentioned in the said agreement has already been partitioned between them half and half. Nothing remains for partition of moveable property. The details of the agricultural land has been mentioned at the foot of the document. So far partition of the house is concerned, the recital denotes that the house situated at Sadar Bazar near Mahaveer Sthan having equal share and house in which Jagarnath Bhagat and both the parties i.e. Sulochani and her sons and Mahadev Bhagat the parties are having equal share. The share of Mostt. Sulochani, Indra Prasad and Jagdish Prasad having allotted with definite boundaries of the house allotted to Sulochani and her sons in their jointness such as North- Dev Narayan Bhagat, South- Jagarnath Bhagat, East- Sadar Bazar, West-Road, whereas share allotted to Mahadev Bhagat, the boundary of the said house mentioned as North- Jagarnath Bhagat, South- Rajaram Bhagat, East- Mukhlal Bhagat, West- Parti. This house was selected by Mahadev Bhagat himself. It is further mentioned in the agreement (*Ekrarnama*) that the lands situated at Mauza Khesar having area 2 bigha, 7 katha stands in the name of Mahadev Bhagat in which both the parties are having equal share. The produce (usufruct) of the said



agricultural land shall be divided in equal share between both the parties i.e. Mahadev Bhagat and Sulochani on year to year basis and Government rent receipts (Malguzari) shall regularly be paid by both the parties half and half. It is also mentioned that the income from last year shall be divided into two shares. It is specifically mentioned that except land and Lahna, nothing remains joint and income of joint Lahna and land will be divided by both the parties each year and details of the agricultural land has been mentioned at the foot of the agreement. Thus, the recital of the said *Ekrarnama* indicates the partition of the house of the ancestor of the parties. So far agricultural lands are concerned, it has been specifically mentioned that the lands remained joint and income from the produce shall be divided in both the parties half and half. Therefore, according to the recital of the *Ekrarnama* (Exhibit-7), the suit land was left joint among the parties. There is no material available on record to show that the said land was ever partitioned by metes and bounds.

16. So far Exhibit-2 is concerned, this document shows intra party dealing in respect of the part of the suit land. Exhibit-2 is a mortgage deed executed by Mahadev Bhagat in favour of Tara Devi, wife of Jagdish Prasad Bhagat. The details of the land has been described as Khata No. 161, Plot No. 680 area 73.5 decimals



(1 bigha 3 katha 10.5 dhur). The total land of the Plot no. 680 is 1.47 acres which is the land in dispute. The details of the plot number has been mentioned as half is noted below the plot number which clearly means that only half of total land was mortgaged. It is also apparent from the Exhibit-2 that the boundary of the mortgage land which is half of 1.47 acres has been mentioned as North -Kamli Bhagat, South- Hospital, East- Chhotelal Bhagat and West- District Board Sadak, which is the boundary of entire land in the suit i.e. 1.47 acres while through this document, only half portion of total area of 1.47 acres of Khata No. 161, plot no. 680 was subjected to the mortgage. In any boundary, land under mortgage does not disclose the name of Jagdish Bhagat or Sulochani and others. Apart from Exhibit-7 and Exhibit-2, P.W.-2, P.W.-3, P.W.-6 in their evidences have stated that there was no partition of item no. 2 land of Schedule-II of the plaint.

17. It is also apparent from *Ekrarnama* (Exhibit-7), that the parties shall contribute their shares of rent and divide the annual income from the usufruct of land mentioned in Exhibit-7.

18. In view of Exhibit-7 and Exhibit-2, the learned appellate court has wrongly interpreted the aforesaid documents and came to a conclusion that their land had been partitioned by metes and bounds. Contrary to that, Exhibit-7 specifically



mentioned that the suit land remained ijmal, only house of the ancestor of the parties were partitioned by metes and bounds with definite boundaries. So far agricultural land is concerned, the same remained joint. The mere entry in the survey record or Jamabandi does not vitiate the right, title of the parties. There is a presumption that properties are joint unless the same is rebutted by good and cogent evidences. Presumption has not been vitiated by either of the documents. While the said documents specifically mentioned that agricultural land mentioned in the *Ekrarnama* was joint with half share of both branches.

19. In the light of the narrative and discussion supra, there can be no doubt that the learned lower appellate court erred and was not justified in dismissing the suit of the plaintiffs by setting aside the judgment of the trial court.

20. The substantial question of law formulated is, therefore, answered in favour of the appellants.

21. Consequently, the judgment of the learned lower appellate court dated 21.02.2011 passed in Title Appeal No. 60 of 2010 is set aside and the suit of the plaintiff/appellants is decreed and the judgment and decree of the trial court dated 20.05.2010 passed in Title Suit No. 22 of 1997 is affirmed.



22. This Second Appeal has got merit and accordingly, it is being allowed.

23. There shall be no order as to costs.

24. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

premchand/-

AFR/NAFR	AFR
CAV DATE	21.11.2024
Uploading Date	26.05.2025
Transmission Date	N/A

