

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.117 of 2017

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Sunil Kumar Singh, S/o Late Chandeshwar Singh, resident of village -
Gangajal, P.S. Sonepur, District - Chapra at Presently residing at village -
Kosut, P.S. Dhanarua, District - Patna

... .. Appellant/s

Versus

1. Smt. Savitri Devi, W/o Sri Hari Shankar Singh, resident of village -
Lakhanpur, P.S. Punpun, District - Patna at Presently residing at Mohalla -
Lohanipur, P.S. Kadamkuan, District - Patna
2. Jawahar Ram, S/o Late Bachan Ram,
3. Gita Devi, W/o Sarayug Ram,
4. Susan Ram, S/o Late Sugambar Ram,
5. Lorik Ram, S/o Late Sugambar Ram,
6. Pappu Ram, S/o Late Sugambhar Ram, All 2 to 6 are resident of village -
Kosut, P.S. Dhanarua, District - Patna
7. Anil Kumar Singh, S/o Late Chandeshwar Singh,
8. Ashish Kumar Singh, S/o Late Chandeshwar Singh, Both 7 and 8 are
resident of village - Gangajal, P.S. Sonepur, District - Chapra, at Present
residing at village - Kosut, P.S. Dhanarua, District - Patna
9. Punam Devi, D/o Late Chandeshwar Singh, W/o Dharmendra Kumar,
Resident of village - Pitamber Nagar, Chauraha, P.S. Bihta, District - Patna
10. Sri Talkeshwar Singh, S/o Paras Nath Singh,
11. Sri Nageshwar Singh, S/o Paras Nath Singh,
12. Sri Maheshwar Singh, S/o Paras Nath Singh,
13. Sri Umesh Singh, S/o Paras Nath Singh, All 10 to 13 are resident of village -
Gangajal, P.S. Sonepur, District - Chapra
14. Smt. Rampyari Devi, W/o Madan Singh, resident of village - Gosi Amnor,
P.O. and P.S. Gosi Amnor, District - Chapra Saran
15. Smt. Raj Kumari Devi, W/o Late Bhrigu Nath Singh, resident of village -
Chandanpur, P.S. Ekama, District - Chapra
16. Smt. Suraj Devi, W/o Shashi Bhushan Singh, resident of village - Mardipur,
P.S. Manjhi, District - Chapra
17. Smt. Usha Devi, W/o Sri Shambhu Singh, resident of village - Surabal, P.S.
Jiradei, District - Siwan

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Alok Kumar Choudhary, Sr. Adv. Mr. Kulanand Jha, Adv.
For the Respondent/s	:	Mr. K.N. Choubey, Sr. Adv. Mr. Siddarth Harsh, Adv.



CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 23-12-2025 Heard Mr. Alok Kumar Choudhary, learned senior counsel assisted by Mr. Kulanand Jha, learned counsel for the appellant and Mr. K.N. Choubey, learned senior counsel assisted by Mr. Siddarth Harsh, learned counsel for respondents.

2. This Second Appeal has been preferred against the judgment and decree of affirmance dated 22.12.2016 passed by learned Additional District Judge-VIIth, Patna in Title Appeal No. 114 of 2000, whereby the learned First Appellate Court has upheld the judgment and decree dated 20.09.2000 passed by the learned Sub-Judge-IV, Patna in Title Suit No. 515 of 1990/29 of 2000.

3. The defendant is the appellant in the instant Second Appeal. The plaintiffs/respondents filed the Title Suit No. 515 of 1990/29 of 2000 for partition of their $\frac{3}{4}$ th share in Schedule-IV property and also for declaration that the lands purchased through sale deeds dated 07.03.1953 and 25.02.1963 in favour of Lakhpati Devi is joint family property and joint family is in possession of the same and also the said purchased property is liable for partition and the gift deed dated 22.04.1981 executed by Lakhpati Devi is not binding upon the plaintiffs.

4. The case of the plaintiffs is that Late Udit Narain



Singh had one son Ram Naresh Singh and one daughter Ram Swari Devi. Ram Naresh Singh had one son, namely, Vijay Singh. Ram Naresh Singh died in the year 1952 during the lifetime of his father Udit Narain Singh leaving behind his wife Vidhyachali Devi, son Vijay Singh and daughter Savitri Devi. The said Vijay Singh died unmarried in the year 1956-57 and further case of the plaintiffs is that Udit Narain Singh died in the year 1972 leaving behind his widow Lakhpatri Devi, daughter Ram Swari Devi, pre-deceased son's widow Vidhyachali Devi and pre-deceased son's daughter Savitri Devi. It is further case of the plaintiffs that Udit Narain Singh was the *Karta* of the joint family and Udit Narain Singh had sufficient nucleus and income from the joint family property and he had also income from his government service and from their income he purchased 3 kattha 3 dhur land in Plot No. 769 through registered sale deed dated 07.03.1953 in the name of his wife Lakhpatri Devi for construction of the house. He again purchased 3 kattha 3 dhur from joint family fund just adjoining north of the previously purchased land through registered sale deed 26.07.1957 in his own name and again he purchased 11 and ½ decimals of land adjoining north of the aforesaid land through sale deed dated 25.02.1963 in the name of his wife Lakhpatri



Devi and thus he acquired a block of 9 kattha 9 dhur 12 dhurki in Plot No. 769 for construction of residential house for occupation of his family members. He also constructed residential house west side of the aforesaid block by the side of the road covering part of all the said three purchased plots and in the remaining vacant portion of the land vegetables were grown. Lakhpati Devi had not invested any money for purchasing the land or construction of the house nor Udit Narain Singh had acquired the said property for the benefit of Lakhpati Devi, who had no means or source of income from her *Naihar*. It is further pleaded that Ram Naresh Singh died in the year 1952 in the state of jointness with his father Udit Narain Singh leaving behind his wife Vidhyachali Devi, one son Vijay Singh and one daughter Savitri Devi. The widow of Ram Naresh Singh succeeded the interest of her husband along with his son Vijay Singh in the joint family property and her limited interest became absolute after passing of the Hindu Succession Act, 1956. However, her son Vijay Singh, son of Late Ram Naresh Singh also died unmarried in the year 1956-57. Further case of the plaintiffs is that there was 17 Bighas and odd *raiya* land including the house in the village and a double storeyed house at Patna over 2 kattha 8 dhur 16 dhurki land in the joint family.



Lakhpati Devi, Smt. Vidhyachali Devi, Ram Swari Devi gave 5 Bigha 9 kattha land in village Kosut, 1 kattha 4 dhur and 8 dhurki with house at Patna to Savitri Devi through gift deed dated 17.06.1974 and donee accepted the gift and came in possession on the same date. It is further contended that Lakhpati Devi, Vidhyachali Devi, Ram Swari Devi and Savitri Devi gave 3 Bigha 7 kattha land described in Schedule-II of the plaint to Tarkeshwar Singh, Nageshwar Singh and Maheshwar Singh, Umeshwar Singh sons of Ram Swari Devi through registered gift deed dated 17.06.1974 and the donee after accepting the gift came in possession of the same. Again on the same date aforesaid donee gave 6 Bighas 8 dhurs land at Kosut and 1 kattha 4 dhur 8 dhurki of land with house at Patna to Chandeshwar Singh through registered gift deed dated 17.06.1974 and the donee accepted the gift and came in possession of the same. Further case of the plaintiffs is that 11 kattha land with house at village Kosut remained in joint possession of the plaintiffs and Lakhpati Devi, who was original defendant no. 1. The said Lakhpati Devi died on 30.10.1990, and therefore, her interest in the remaining joint family property described in Schedule-IV of the plaint devolved on her daughter Ram Swari Devi and pre-deceased son's daughter of Savitri



Devi, who came in joint possession of the same and therefore is unity of title and possession in respect of the properties described in Schedule-IV of the plaint between Vidhyachali Devi and Ram Swari Devi, whereas, sons of Ram Swari Devi have no interest in the same. During the pendency of the suit, the plaintiffs amended their plaint after filing of written statement with regard to gift deed dated 22.04.1981 and pleaded that the alleged gift deed is forged and fabricated and Lakhpatri Devi was mentally unable to understand the business and was under undue influence and coercion of Chandeshwar Singh and was duped which has also been challenged and the said gift deed is not binding upon the plaintiffs. The plaintiffs have alleged that due to attitude of the sons of Ram Swari Devi joint management of the land described in Schedule-IV of the plaint is not possible so there is need for partition. It is further contended that during the pendency of the suit Chandeshwar Singh had sold 2 kattha $\frac{1}{2}$ dhur of land of Plot No. 769 in favour of one Gita Devi and Jawahar Ram and others by three sale deeds which are without consideration and not binding on the plaintiffs and the same is hit by law of *lis pendens*.

5. On the other hand, defendant no. 1, Smt. Ram Swari Devi filed written statement denying the claim of the



plaintiffs. It is further contended that the plaintiffs have filed this suit for declaration of title and recovery of possession in garb of partition suit. Some of the properties stood in the name of Nagbaso Devi, widow of Ramasrey Singh, who was father of Udit Narain Singh and Haribansh Narain Singh. It is further submitted that Haribansh Singh was brother of Udit Narain Singh and heirs of Haribansh Narain Singh is also necessary party in the suit. The defendant has admitted that there was partition between Haribansh Narain Singh and Udit Narain Singh. This defendant has admitted the relationship between the parties as well as the year of death as alleged by the plaintiffs but has submitted that the plaintiffs have not given the correct fact and has concealed most of the facts. It is further contended that the lands of Plot No. 769 was purchased by Lakhpatri Devi through different sale deeds in different years from her own personal fund given to her by *Naihar* people who were very rich so Lakhpatri Devi purchased 3 kattha 3 dhur through registered sale deed dated 07.03.1953 in her own name from her personal fund and came in exclusive possession as *streedhan* property. Again, Lakhpatri Devi from her own personal fund purchased 3 kattha land in the name of her husband through two sale deeds dated 26.07.1957 in Plot No. 769. Again, she purchased from



her own personal fund 11 and $\frac{1}{2}$ decimals land in Plot No. 769 in her own name through registered sale deed dated 25.02.1963 and became exclusive owner and came in possession of total 9 kattha 19 dhur 12 dhurki in Plot No. 769 and not 11 kattha as alleged. Since, Plot No. 780 is concerned, 2 and $\frac{1}{2}$ kattha was purchased by joint family of Udit Narain Singh and Haribansh Narain Singh in the name of their mother Nagbaso Kuer and subsequently by partition, Udit Narain Singh got 1 kattha 5 dhur in Plot No. 780 and later on by succession and inheritance, Lakhpati Devi got said 1 kattha 5 dhurs of homestead land in Plot No. 780 and other heirs of Udit Narain Singh relinquished their respective interest in favour of Lakhpati Devi. It is further pleaded that after the death of Ram Naresh Singh and Vijay Narain Singh, there was no other male member in the family so, Udit Narain Singh became frustrated. It is further case of the defendant that Lakhpati Devi out of her sweet will and being pleased with the service of Chandeshwar Singh, she gifted 9 kattha 9 dhur 12 dhurki of Plot No. 769 and Plot No. 780 Area 1 and $\frac{1}{4}$ kattha through registered gift deed dated 22.04.1981 which was accepted by donee, who came in possession as absolute owner. Lakhpati Devi died on 30.10.1990 and her *saradh* was performed by the defendant for which they had



taken loan to meet the expenses. Chandeshwar Singh sold 2 and $\frac{1}{2}$ kattha through three different sale deeds and purchaser came in possession of the same. It is vehemently pleaded that there was no unity of title and possession among the parties with respect to the properties described in Schedule-IV of the plaint and the plaintiffs have no right to claim the partition.

6. A separate written statement has been filed on behalf of defendant no. 2, namely, Chandeshwar Singh, who is son of original defendant no. 1, who supported the case of defendant no. 1. Additional written statement has been filed on behalf of Chandeshwar Singh (defendant no. 2) in which he has stated that Plot Nos. 775 and 776 were self acquired property of Udit Narain Singh, who died in the year 1972. After his death, his wife Lakhpatri Devi became in absolute owner of the same and aforesaid plots were gifted by Lakhpatri Devi to Chandeshwar Singh in the year 1973 and after accepting the same, Chandeshwar Singh became absolute owner of the said property. It is further pleaded that through registered sale deed dated 11.01.1997, Chandeshwar Singh and Dhananjay Kumar Singh sold aforesaid plots to Mahapatri Devi and Deoki Devi for valuable consideration and the purchasers came in possession and unless and until these purchasers are not made parties, this



suit cannot proceed.

7. Defendant Nos. 7 and 9 to 11 have also filed separate written statement stating therein that they have purchased the lands which are subject matter of dispute from defendant nos. 1 to 6 through registered sale deeds after paying proper consideration money. A separate written statement has also been filed on behalf of defendant no. 8 stating that they are the purchasers of part of the suit land from Chandeshwar Singh through sale deed dated 14.11.1990 after paying full consideration amount.

8. No separate written statement has been filed on behalf of defendant nos. 3 to 6 and 12 to 15 and the suit was proceeded *ex parte* against them.

9. On the basis of the pleadings of the parties, the learned Trial Court framed issues and after hearing the parties and considering the materials available on record and evidences adduced by them has held that the genealogical table, relationship between the parties as well as year of death of Udit Narain Singh, Lakhpati Devi, Ram Naresh Singh as also Vijay Singh are admitted. It is also admitted fact that Udit Narain Singh was the *Karta* of the joint family property. Further it is held that the plaintiffs and defendant have nowhere claimed that



partition has already been taken place in the family of Udit Narain Singh. The learned Trial Court further observed that main dispute is on two points i.e., (i) What would be the share of the parties according to Hindu Law? (ii) Whether the properties purchased in the name of Lakhpati Devi is her self-acquired properties? The learned Trial Court while deciding the Issue Nos. 8 and 9 held that it is evident that on the death of Ram Naresh Singh in the year 1952, his widow Vidhyachali Devi stepped into shoes of her husband with respect to the joint family property without disrupting the joint family status and her limited interest became absolute in the year 1956 after passing of Hindu Succession Act, 1956. It is admitted fact that Vijay Singh son of Ram Naresh Singh died unmarried in the year 1957, so, his share also devolved upon his mother Vidhyachali Devi, who is plaintiff no. 1. Therefore, the share of Vidhyachali Devi in the joint family became half and rest half went to Udit Narain Singh. It is also admitted fact that Udit Narain Singh died in the state of jointness in the year 1972 leaving behind his widow Lakhpati Devi, daughter Ram Swari Devi, daughter-in-law Vidhyachali Devi (plaintiff no. 1), great grand daughter Savitri Devi (plaintiff no. 2) all are Class I heirs. Therefore, according to notional partition, the share of Udit



Narain Singh will devolved upon these four ladies and each of them will get $\frac{1}{4}^{\text{th}}$ share in share of Udit Narain Singh. Accordingly, plaintiff nos. 1 and 2 will get together half of the share of Late Udit Narain Singh and rest half will go to Lakhpati Devi and Ram Swari Devi. So, total share of plaintiff no. 1 Vidhachali Devi and plaintiff no. 2 Savitri Devi in the joint family of Udit Narain Singh will be $\frac{3}{4}^{\text{th}}$.

10. The learned Trial Court dealt with the evidence of brother of Lakhpati Devi, namely, Chandra Shekhar Singh, who deposed on behalf of the plaintiffs. He has stated in his evidence that in the marriage of Lakhpati Devi with Udit Narain Singh, neither money was given nor she got ornaments or money from her *Naihar*. He further stated that Udit Narain Singh was Nazir in Patna Collectorate and he had good earning and he also had earning from the landed property. The land purchased in the name of Lakhpati Devi was actually purchased by Udit Narain Singh himself. He also stated that his two sisters were also married at village Kosut; one was married with the brother of Udit Narain Singh and another was married with Basgit Singh. He further stated that due to poverty in his family, Udit Narain Singh had helped in marriage of his sister. This witness is closely related with Lakhpati Devi.



11. On the other hand, DW-7 Chandeshwar Singh, who is defendant no. 2, has stated in his evidence that the entire land in Plot No. 769 was purchased by Lakhpatri Devi from his own income and she constructed a small house considering of 3-4 rooms and used to reside there and this was her personal property. No documentary evidence was produced to show that Lakhpatri Devi had personal property or any source of personal income from which she purchased personal property for her own use.

12. The case of the defendant is that the entire land purchased through three sale deeds was self-acquired property of Lakhpatri Devi and she got constructed her own house. But, the evidence adduced on behalf of the defendants as well as documents do not support the story of the defendant.

13. The learned Trial Court after considering the evidence and the materials held that there was no partition in the family and properties mentioned in Schedule-IV of the plaint are joint family property over which the plaintiffs and defendants have unity of title and possession. Further, the plaintiffs are entitled for $\frac{3}{4}$ th share in the property described in Schedule-IV of the plaint. The sale deed dated 07.03.1953 and 25.02.1963 are joint family property purchased from the joint family fund by



Udit Narain Singh and these were not self-acquired property of Lakhpati Devi so the aforesaid properties purchased in the name of Lakhpati Devi is also liable for partition. Consequently, the gift deed dated 22.04.1981 executed by Lakhpati Devi in favour of Chandeshwar Pd. Singh to the extent of $\frac{3}{4}$ th share of the land is not binding upon the plaintiffs. It is also admitted fact that Chandeshwar Pd. Singh has sold some portion of Plot Nos. 769 and 780 to Jawahar Ram and others during the pendency of the suit. So, their deeds are also subject to partition and they are not binding upon the plaintiffs to the extent of $\frac{3}{4}$ th share and accordingly the suit was decreed and held that the plaintiffs are entitled for partition of their $\frac{3}{4}$ th share in the Schedule-IV property.

14. Being aggrieved, the defendants preferred Title Appeal No. 114 of 2000 against the judgment and decree passed by the learned Trial Court on 20.09.2000. After hearing the parties, the learned Appellate Court dismissed the Title Appeal and affirmed the judgment and decree passed in Title Suit No. 515 of 1990/29 of 2000 and held that the property in dispute is jointly in possession of both the parties and land mentioned in Schedule-IV of the plaint is joint family property, which was purchased from the nucleus of joint family property by Udit



Narain Singh in favour of Lakhpati Devi for the benefit of joint family in which the plaintiffs have $\frac{3}{4}$ th share in the joint family properties which are liable to be partitioned. The learned Appellate Court also relied upon the evidence of Chandra Shekhar Singh, who is brother of Lakhpati Devi. He stated in his evidence that at the time of marriage of Lakhpati Devi with Udit Narain Singh, neither money was given nor she got ornaments or money from her *Naihar*. It is also admitted fact that Udit Narain Singh was *Nazir* in Patna Collectorate and the said witness stated that he had good earning and he also had earning from landed property. The land purchased in the name of Lakhpati Devi was actually purchased by Udit Narain Singh himself. The said Udit Narain Singh financially helped in the marriage of his other sister. The property in suit i.e. 9 kattha 19 dhurs 12 dhurki is joint family property acquired from joint family fund by Udit Narain Singh in the name of his wife. Lakhpati Devi has no personal source of income and she neither got money nor ornaments from her *Naihar*. On the other hand, Udit Narain Singh had substantial income from his service and from landed properties of the joint family. In view of the above discussions, the learned Appellate Court neither interfered in the judgment of the Trial Court nor found any irregularity in



the said judgment.

15. Mr. Alok Kumar Choudhary, learned senior counsel assisted by Mr. Kulanand Jha, learned counsel appearing for the defendant/appellant submits that both the courts below have wrongly decreed the suit in favour of the plaintiffs/respondents. The learned courts below failed to appreciate that the plaintiffs, who are ladies, cannot be a coparcener of the property standing in the name of female Lakhpati Devi. Both the courts below disbelieved the evidences adduced on behalf of the defendant/appellant and accepted the evidences adduced on behalf of the plaintiffs. They were incompetent to prove that the suit property was a joint family property. It is vehemently submitted that Section 14 of the Hindu Succession Act, 1956, clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The explanation to Sub Section (1) further clarifies that a Hindu women has full ownership over any property that she has acquired on her own or as her *streedhan*. The same shall not be treated as a part of the joint Hindu family property. Admittedly, the properties in dispute were purchased in the name of Lakhpati Devi from his own earning/*streedhan*. This view has been dealt with in the case of **Marabasappa**



(Dead) by LRS and others Vs. Ningappa (Dead) by LRS and others reported in *(2011) 9 SCC 451*. Reliance has also been placed in the case of *Gangamma and others Vs. G. Nagarathnamma and others* reported in *AIR 2009 SC 2561*, wherein, the Hon'ble Apex Court has held that the suit property standing in the name of plaintiffs' mother-in-law becomes full owner of the property by operation of Section 14(1) of the Hindu Succession Act, 1956.

16. On the other hand, learned senior counsel appearing for the plaintiffs/respondents submits that both the courts below consecutively held that there is unity of title and possession between the plaintiffs and defendant no. 1. The property had been purchased in the name of Lakhpati Devi from the nucleus of joint family property. The said Lakhpati Devi had no source of income or *streedhan* while his husband, namely, Udit Narain Singh had sufficient income from his service, who was *Nazir* at Patna Collectorate and also had income from the landed property. Therefore, the property purchased in the name of Lakhpati Devi was for the benefit of the joint family and not for the benefit of individual. The plaintiffs have proved the financial condition of Udit Narain Singh and income from other property of the joint family property. It is submitted that both



the courts have rightly decided the issues in favour of the plaintiffs/respondents.

17. Having considered the rival submissions, materials on record as well as on perusal of impugned judgment of the courts below, this Court finds that the learned Trial Court has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to the trial. This court also finds that the learned Appellate Court also framed points for determination and decided the issues involved in this case.

18. The learned senior counsel appearing for the appellant has relied upon the decision in the case of *Marabasappa (Dead) by LRS (Supra)*, which is not applicable in the present facts of the case. The Hon'ble Apex Court was dealing with a case, wherein, upon analysis of the evidence it was found/proved that the property was acquired by the female concerned from the income arising out of her *streedhan*/lands and at the same time her husband had no independent source of income and was, in fact, living with this parents-in-law and they had no independent source of income and in that background the Hon'ble Apex Court held that the property was the self-acquired property of the female and cannot be treated as a part of joint



family property and she had absolute and full ownership in terms of explanation to Section 14(1) of Hindu Succession Act, 1956. Insofar as the decision reported in ***Gangamma (Supra)*** is concerned, the Hon'ble Apex Court has held that in absence of any evidence to prove the income of the husband much less substantial income, the properties recorded in the name of wife (i.e. female member) would be deemed to be her full ownership properties by operation of Section 14(1) of the Hindu Succession Act, 1956 and cannot be regarded as joint family properties.

19. In the present case, on the contrary, from the evidences on record it stands proved as has been found that the learned courts below recorded a concurrent finding of fact on appreciation of evidences on record that the widow (i.e. female member) in whose name the property stands, has no independent source of income and she did not get any *streedhan* from her *Naihar* as stated by his brother, namely, Chandra Shekhar Singh and at the same time her husband and his family had substantial source of income and means to purchase the property. In that background, it is apparent that the existence of nucleus in the joint family stands proved and on the other hand, the widow had no source of income and as such, the learned



courts below have rightly treated the property as joint family properties based on appreciation of evidence which requires no interference in exercise of second appellate jurisdiction being not perverse in any view of the matter on the basis of materials on record and there is no application of Section 14(1) of Hindu Succession Act, 1956 in fact of the present case.

20. Having regard to the discussions made hereinabove, I am not inclined to interfere with the concurrent findings of the courts below and there is no question of law much less substantial question of law involved in this case.

21. Thus, the instant Second Appeal is dismissed at the stage of hearing under Order XLI Rule 11 C.P.C..

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

(Khatim Reza, J)

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