

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.137 of 2024

1. Shailendra Kumar Singh Son of Late Sahjad Singh @ Late Shahjad Singh, All resident of village- Dewhaliya, P.S. Ramgarh, District- Kaimur at Bhabhua.
2. Vikram Kumar Singh, Son of Late Sahjad Singh @ Late Shahjad Singh, resident of village- Dewhaliya, P.S. Ramgarh. District- Kaimur at Bhabua.
3. Bhanu Pratap Singh, Son of Ram Pravesh Singh, resident of village- Dewhaliya, P.S. Ramgarh. District- Kaimur at Bhabua.

... .. Appellant/s

Versus

1. Surendra Pratap Singh, S/o Jamuna Singh. R/o Dewhaliya, P.S. Ramgarh, District- Kaimur at Bhabhua. At present -99(B), Ashok Nagar, Narvi Ghat, Varanasi (U.P.).
2. Poonam Singh , D/o Late Prem Narayan Singh. Resident of Village Siakari, P.S. Chandauli, District- Chandauli (U.P.).
3. Sushma Singh, D/o Late Prem Narayan Singh. Resident of Village Siakari, P.S. Chandauli, District-Chandauli(U.P.)
4. Sandhya Singh, D/o Late Prem Narayan Singh. Resident of Village Siakari, P.S. Chandauli, District- Chandauli (U.P.).
5. Maliti Devi, Wife of Jagdish Singh. Resident of village- Rupin, P.S. Chainpur, district-Kaimur(Bhabua).
6. Ravindra Pratap Singh, Son of Late Jamuna Singh. Resident of village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua. At present 28, Kashi Complex Auraiya, P.S. Sarnath, District- Varanasi.
7. Virendra Pratap Singh, Son of Late Jamuna Singh. Resident of village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua. At present 28, Kashi Complex Auraiya, P.S. Sarnath, District- Varanasi.
8. Abhishek Pratap Singh, Son of Ravindra Pratap Singh. Resident of village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua. At present 28, Kashi Complex Auraiya, P.S. Sarnath, District- Varanasi.
9. Vaibhav Pratap Rathaur, Son of Virendra Pratap Singh. Resident of village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua. At present 28, Kashi Complex Auraiya, P.S. Sarnath, District- Varanasi.
10. Dhananjay Singh, Son of Jagdish Singh, Resident of village- Rupin, P.S. Chainpur, District- Kaimur at Bhabua. At Present village- Dewhaliya, P.S. Ramgarh, district- Kaimur at Bhabua.
11. Saraswati Devi D/o Gaya Singh. Resident of village- Kabilaspur, P.S. Durgawati, District- Kaimur at Bhabua.
12. Lalawati Kuer W/o Late Sudarshan Singh. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.
13. Jhunjhun Singh, S/o Late Sudarshan Singh. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.



14. Mangal Sing S/o Late Ramayan Singh. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.
15. Sashi Kumar Singh, S/o Shriram Singh. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.
16. Sadhna Singh, W/o Dhananjay Singh. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.
17. Indra Devi, W/o Pappu Yadav. R/o Village- Dewhaliya, P.S. Ramgarh District- Kaimur at Bhabua.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg, Adv.
For the Respondent/s : Mr. Praveen Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

3 25-08-2025 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 03.02.2024 passed in Title Appeal No. 81 of 2018 by the learned Additional District Judge-XI, Kaimur whereby the judgment and decree dated 12.10.2018 passed by the learned Sub-ordinate Judge (Civil Judge, Sr. Division)-VI, Kaimur in Title Suit No. 332 of 2008 has been upheld by which the Court decreed the suit declaring that the plaintiff has 1/5th share in the suit land.

3. The aforesaid suit was filed for cancellation of sale deed no. 5459 dated 08.08.2007 and sale deed no. 4334 dated 20.05.2008 executed by defendant no. 1 in favour of defendant no. 9 and also for partition of 1/5th share of the plaintiff in



Schedule-Ka property and other reliefs. It is further contended that one Suraj Singh @ Surya Singh had one son Yamuna Singh, who was defendant no. 1 in the original suit and his wife Panvrit Devi was defendant no. 2. Yamuna Singh had three sons and two daughters, namely, Ravindra Pratap Singh, Virendra Pratap Singh, Surendra Pratap Singh, Vasanti Devi and Malti Devi, who are defendant nos. 3 to 6. Surendra Pratap Singh is the plaintiff and defendant no. 7 is the son of defendant no. 5 and defendant no. 8 is the son of defendant no. 6. It is further pleaded that the plaintiff and defendant 1st set are members of joint family governed by Mitakshara School of Hindu Law of which defendant no. 1 was the *Karta*. It is further contended that defendant no. 1 had retired from military service and was living at home with monthly pension of Rs. 10,000/-. The plaintiff and defendant nos. 5 and 6 were doing service. Defendant Nos. 5 to 8 were living outside for their livelihood and were sending their savings to defendant no. 1 and with the earnings of joint family property and said savings, the suit property detailed in Schedule-Ka was purchased on which there is unity of title and joint possession of the parties. It is further contended that defendant no. 9, who is the son of defendant no. 4, due to his poor financial condition, has been living with his maternal



grandparents since his childhood. Taking advantage of his relationship, defendant no. 9 had obtained sale deed from defendant no. 1 for Schedule-Kha property, which is the part of the Schedule-Ka property. It is further contended that sale deed has been executed by defendant no. 1 in favour of defendant no. 9 without any knowledge or consent of defendant nos. 5 to 8. It came to knowledge of the plaintiff on 20.07.2008, when he came to the village in holidays. Thereafter, he obtained certified copy of two sale deeds dated 08.08.2007 and 20.05.2008. The recital of said deeds reveals that for legal necessity the said land was sold to repay the debt of the family for consideration of Rs. 8, 16, 000/-. However, it is further contended that there was no debt on the family. The joint family had 10 acres land and savings were being sent by defendant nos. 5 and 6 besides that of defendant no. 1. Defendant no. 9 had no capacity to pay the said consideration money of Rs. 8, 16,000/-. Defendant no. 1 had no right to execute the sale deed with regard to joint family property without the consent of defendant nos. 5 to 8. No consideration amount was at all paid by defendant no. 9. Defendant no. 9 had never got any possession over the aforesaid land.

4. Further case of the plaintiff is that one Sitaram @



Sita Singh had three sons Suraj Singh, Amar Singh and Kunwar Singh. Amar Singh and Kunwar Singh died unmarried. All properties of the said Sitaram @ Sita Singh came in possession of Suraj @ Surya Singh (defendant no. 1). The *Khatiyan* of *Khata* Nos. 2, 8 and 10 was jointly prepared with defendants-2nd party but they had already partitioned, so their separate possession had been entered as per share allocated. Schedule-Ka properties belongs to plaintiff and defendants-1st party and so defendants-2nd party are proforma defendants. They demanded for partition and the cancellation of sale deeds but defendants-1st set did not consider and refused to cancel the same. The final refusal was made on 16.09.2008. Hence, the suit was filed.

5. Defendant nos. 1 and 2 appeared and filed their written statements jointly and denied the claim of the plaintiff apart from ornamental objection. Defendants 1st set pleaded that three sons of defendant no. 1 are living separately outside at the place of their livelihood alongwith their respective families. None of them sends any money to defendant no. 1. It has further been stated that there is only 2.17 acres ancestral land which has no irrigation facility and is yielding single crop in an year. There was meager income from the said land, which resulted in no



savings at all from such joint property, as defendant no. 1 had to educate and marry his children out of income from joint family property nucleus. He had savings from his salary and from that savings, he had purchased the lands. It is vehemently submitted that the financial condition of defendant no. 9 never had been weak. The suit lands are self-acquired properties of defendant no.1 and not the joint family property. The sale deeds were executed voluntarily after receiving consideration amount. Defendant no. 9 had never taken any advantage of his being grandson of the defendant nos. 1 and 2. The sale deeds were executed to meet his expenditures. Defendant no. 1 had full right to execute the sale deeds which was acquired from his savings. On the date of registration of sale deed in favour of defendant no. 9, the possession of the said land was given to defendant no. 9. It has been admitted that Sitaram @ Sita Singh had three sons Suraj Singh, Amar Singh and Kunwar Singh and two sons died unmarried leaving all properties to said Suraj @ Surya Singh (father of defendant no. 1). It is further contended that defendant no. 1 had not sold any joint family property. The plaintiff is not entitled for any relief.

6. A separate written statement of defendants nos. 3, 5 to 8, 10, 12 and 13 was filed and they supported the case of the



plaintiff. Defendant No. 18 is the purchaser from defendant no. 14 to whom defendant no. 1 sold lands through registered sale deed dated 05.08.2009. He has supported the case of defendants-1st set and denied the case of the plaintiff. Defendant nos. 15 to 17 also supported the case of defendants nos. 1 and 2 and denied the allegations made in the plaint. Defendant no. 14 filed her separate written statement and also denied the averments made in the plaint and supported the case of defendants nos. 1 and 2 and being satisfied, defendant no. 1 gifted 3.02 acres of land in favor of defendant No. 14 and put her in possession of the said land. It is further contended that Yamuna Singh (defendant no. 1) had purchased the land with the money of his pension and salary, the plaintiff and defendants nos. 5 to 8 have no concern with the said purchase.

7. On the basis of the pleadings, the learned Trial Court had framed issues and decided the case on the basis of evidence adduced by the parties and materials available on record. The learned Trial Court decreed the suit on contest and held that there is unity of title and possession. There was no legal necessity of the joint family to sell the land in favour of defendant no. 9. The learned Trial Court mentioned the pleadings of defendant no. 1 in his written statement that the



sale deeds were executed in the capacity of *Karta* for the legal necessity of the joint family for the benefit of estate. This proves the existence of joint family. There was a common stock which was the nucleus of the joint family. During his service and after his retirement, he sold and purchased the properties. It is further held that whatever he had acquired was not his individual self acquired property, rather, he had done so in the capacity of *Karta* for the benefit of joint family. The admission of the defendant is that defendant no. 1 was already getting pension of Rs. 22,500/- to fulfill his requirements and the necessity shown in the sale deed is vague. Defendant no. 9 could not show his source of income and he was living with his grandparents. Payment of such huge consideration money could not be established. Defendant no. 1 was an advance age person aged about 82 years and his sons were living outside. Defendant no. 9 (grandson) stayed with him (defendant no. 1) till his death. The sale deeds in favour of defendant no. 9 is without consideration and hence void. The properties are joint and the plaintiff is entitled to 1/5 th share of the suit land.

8. Being aggrieved by the judgment and decree dated 12.10.2018 passed in Title Suit No. 332 of 2008 by the learned Sub-ordinate Judge (Civil Judge, Sr. Division)-VI, Kaimur, Title



Appeal No. 81 of 2018 was filed. The learned lower Appellate Court after hearing the parties and considering the materials on record and judgment of the Trial Court, affirmed the judgment and decree of learned Trial Court and dismissed the appeal *vide* judgment dated 03.02.2024 after framing points for determination of the appeal. The learned lower Appellate Court has held that on the basis of pleadings of the parties, the plaintiff and defendants family had only 2.17 acres ancestral lands. The pleadings of defendant nos. 1 and 2 in paragraph no. 10 that there was no savings out of the meagre income from those lands. In paragraph no. 11, defendant no. 1 admitted that he had got his sons educated and daughters married from the income of joint family property. The sale deeds were executed by the defendant no. 1 in the capacity of *Karta* of joint family for the legal necessity and for the benefit of estate. Thus, there is admission of nucleus of at least 2.17 acres land. Defendant no. 1 has admitted in his written statement as well as in his evidence that he was the Manager/*Karta* of the joint family, who failed to prove that the purchase money proceeded from his separate fund or his savings. There is not a single chit of paper on behalf of defendant no. 1 to prove the payment of consideration from his personal income for any of the acquisition. Hence, defendant no.



1 failed to prove his case. Therefore, it shall be presumed that all the acquisitions were made by defendant no. 1 from joint family income and, accordingly, the learned lower appellate court has held that the suit lands are not the self acquired individual property of defendant no. 1, but the same are the joint family property, which had sufficient nucleus and there was unity of title and possession over the suit lands between the plaintiff, his brothers, sisters, mother and father.

9. So far sale deeds dated 08.08.2007 and 20.05.2008 executed by defendant no. 1 in favour of defendant no. 9 on consideration money of Rs. 8, 16,000/- for meeting the debt of the family is concerned, the learned Appellate Court elaborately discussed the matter and considered the oral as well as the documentary evidence. It is observed that the contesting defendants/appellants or their predecessors-in-interest were required to prove the legal necessity of said joint family *qua* vendor Yamuna Singh or the agreement was for the benefit of estate or in discharge of legal debt. The burden always lie upon the alienee. In the present case, defendant no. 1, vendor had pleaded that he had made alienation in the capacity of the *Karta* for the legal necessity and benefit of estate. But it has nowhere been clarified even as to what was the legal necessity or benefit



to estate. The contesting defendants had not laid any evidence at all on this point. He did not prove that the vendor Yamuna Singh had any legal necessity to any extent. Nor the purchaser defendants pleaded or proved that he had made *bonafide* inquiry as to the existence of such-necessity. So, this burden was not discharged. It is held that the alienation is neither for legal necessity nor for the payment of an antecedent debt. The other coparcener are entitled to a declaration that the alienation is void in its entirety and held that the sale deeds in question executed by defendant no. 1 in faovur of defendant no. 9 not being for legal necessity, cannot be enforced even as against defendant no. 1, and the plaintiff is definitely entitled for the reliefs claimed. Therefore, the plaintiff had successfully established the case and the contesting defendants, upon whom the onus shifted, failed to discharge the onus lying upon them and held that the plaintiff is also entitled for cost in this appeal. The learned lower Appellate Court imposed consolidated cost of Rs. 2 lakhs, wherein, the appellants have purchased the litigation during the pendency of the suit. The cost was be paid within 6 months failing which interest at 6% shall apply till date of realization.

10. After hearing the parties and on perusal of materials on record including the judgment of the learned courts



below, it is apparent that the learned court of appeal below, which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that the existence of joint family is not in dispute. Defendant no. 1 was the Manager/*Karta* of the joint family and certain properties were purchased claiming to be self-acquired properties. The contesting defendants did not file a single chit of paper to prove the payment of consideration from his personal income for any of the acquisition and further held that the lands are not the self-acquired individual property of defendant no. 1 but the same are the joint family property which had sufficient nucleus and there was unity of title and possession over the suit lands between the plaintiff and the contesting defendants. The defendants had made alienation in the capacity of *Karta* for the legal necessity and benefit of the estate but necessity has not been established by any cogent evidence. The sale deed executed by defendant no. 1 being *Karta* of the joint Hindu family was without the consent of other members of the family. Moreover, the consideration money claimed to be received by defendant no. 1 but could not be proved from his account statement to show the corresponding withdrawal or transfer of money.



11. In the aforesaid facts and circumstances of the case, I am not inclined to interfere with the concurrent findings of the courts below. There is no question of law much less substantial questions of law involved in this case.

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

13. So far as the cost imposed upon the appellants is concerned, this Court is of the view that the learned Appellate Court has exceeded its jurisdiction in imposing cost of Rs. 2 lakhs against the provision of Section 35A (2) of the Code of Civil Procedure. The cost of Rs. 2 lakhs as imposed by the Appellate Court is hereby set aside.

14. Pending interlocutory applications, if any, shall be disposed of.

(Khatim Reza, J)

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