

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.151 of 2015

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Sheo Chandra Thakur @ Deochandra Thakur, S/o Late Uchit Thakur,
Resident of Village- Bhanshi, P.S. Garhpura, District Begusarai.

... .. Appellant/s

Versus

1. Ram Udgar Thakur and Ors S/o Late Uchit Thakur Resident of Village Bhanshi, P.S. Garhpura, District Begusarai.
 - 2.a Shanti Devi Wife of Ram Chandra Thakur, Resident of Village - Bhansi Ward No. 2, P.O. - Kumharson, P.S. Garhpura, District- Begusarai.
 - 2.b Ragini Devi @ Ragini Kumari Jha Wife of Pankaj Jha, Resident of Village - Fulwaria Ganj, P.O. - Barauni, Ward No. 20, Barauni Nagar Panchayat, P.S. - Teghra, District- Begusarai.
 - 2.c Bhikki Devi Wife of Sri Subodh Jha, Resident of Village Fulwaria Ganj, P.O. - Barauni, Ward No. 20, Barauni Nagar Panchayat P.s. - Teghra, District- Begusarai.
 - 2.d Nilu Kumari Wife of Pappu Singh, Resident of Village - Chhoti Agh, P.O. - Bari Aghu, P.S. - Matihani, District- Begusarai.
 - 2.e Reshmi Devi @ Nikku Kumari Wife of Sri Gopal Singh, Resident of Village and P.O. - Paspura, District- Begusarai, Pin - 851129, Mobile - 8271281585.
 - 2.f Shiv Shankar Son of Sri Shiva Shankar Singh, Resident of Village - Barauni Falg, Ward No. 1, P.O. Barauni Deorhi, District- Begusarai, Mobile No. 6203783476.
 - 2.g Raushan Kumar, Son of Shri Shiv Shankar Singh, Resident of Village - Barauni Falg, Ward No. 1, P.O. Barauni Deorhi, District- Begusarai, Mobile No. 6203783476.
 3. Rajesh Kumar
 4. Rakesh Kumar
- Both S/o Ram Chandra Thakur, All Resident of Village Bhanshi, P.S. Garhpura, District Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ram Sumiran Singh, Advocate
For the Respondent no. 1	:	Mr. Amarendra Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 22-09-2025 Heard learned counsel for the appellant and learned
counsel for the respondent no.1

2. This Second Appeal has been filed against the



judgment and decree dated 27.11.2014 passed by learned 1st Additional District Judge, Begusarai in Title Appeal No. 32 of 2006 / 3 of 2014, whereby the learned appellate court has reversed the judgment and decree dated 28.07.1999 passed by learned Subordinate Judge-3, Begusarai, in Title Suit No. 53 of 1993.

3. The defendant no. 2 is the appellant in the instant Second Appeal.

4. The plaintiff filed Title Suit No. 53 of 1993 for preliminary decree of 1/3rd share of the plaintiff to be declared in his favour and also to carve out separate share with cost and other reliefs.

5. The case of the plaintiff, in brief, is that the plaintiff and the defendants are the heirs of Uchit Thakur, who was father of plaintiff and defendants from his 2nd wife, Daiyan Devi. The first wife died leaving behind no issue. The said Uchit Thakur possessed ancestral property as well as purchased land in the joint family constituting of the plaintiff and defendants. Uchit Thakur died in the month of April, 1982 leaving behind the plaintiff, defendants and his widow, Daiyan Devi, the mother of the plaintiff and defendants. Further case of the plaintiff is that in the year 1959, during the lifetime of Uchit Thakur, the joint



family of the ancestral property was partitioned through registered partition deed dated 01.04.1959 in which 1/4th share was allotted to Uchit Thakur, 1/4th share was allotted to Udgar Thakur, 1/4th share allotted to defendant Ramchandra Thakur and 1/4th share allotted to Shiv Chandra Thakur. The 1/4th share allotted to Uchit Thakur on partition is in dispute which is the subject matter of the suit. The plaintiff further pleaded that at the time of partition in the family, these defendants were minor and hence, Uchit Thakur was looking after the property of these defendants. Further case of the plaintiff is that on the death of Uchit Thakur, 1/4th share of Uchit Thakur came in possession of widow, Daiyan Devi. Both the plaintiff and the defendants equally share the expenses on the *Shradh Karm* of Uchit Thakur. It is further pleaded that during the lifetime of Uchit Thakur, he gifted some property of his share to Rajesh Kumar and Rakesh Kumar, who are sons of Ramchandra Thakur, on 23.11.1981. These donees are in possession of the same. It is further pleaded that some properties were sold by Daiyan Devi for the treatment of Uchit Thakur with his consent. Defendant no. 1, Ramchandra Thakur, admitting his 1/4th share in partition of 1959 sold some properties of his share to one Rajendra Mahto.

6. It is further case of the plaintiff that on 09.07.1992,



Daiyan Devi executed a power-of-attorney in favour of Ram Chandra Thakur, defendant no. 1, and Shiv Chandra Thakur, defendant no. 2, with respect to the share of the property of Uchit Thakur which was possessed by his widow, Daiyan Devi. Uchit Thakur and Daiyan Devi jointly deposited Rs. 5000/- in the State Bank of India by way of Fixed Deposit showing the plaintiff as nominee of the said amount in which after the death of Uchit Thakur, the name of Daiyan Devi, jointly inserted with the plaintiff. Daiyan Devi died on 01.04.1993 and the plaintiff performed *Shradh* ceremony. After the death of Daiyan Devi, the plaintiff and defendants came in joint possession of equal share of the remaining properties of the share of deceased Uchit Thakur which is described in Schedule-1 of the plaint, and this is the subject matter of the partition. The plaintiff claimed his 1/3rd share in the said Schedule-1 property. The defendants forcibly tried to get harvested the crop of the suit land and, hence, the necessity of the suit. The plaintiff made the demand for amicable partition of the suit land on several dates and lastly on 10.03.1993 the defendants had refused and hence, the cause of action arose for the plaintiff to the suit.

7. On summon, defendant no. 1 appeared and filed his written statement. Apart from ornamental defence, it is further



alleged that the plaintiff is not in possession of Schedule-1 land or any part of that. He has further admitted the correctness of registered deed of partition dated 01.04.1959 effected amongst Late Uchit Thakur and his three sons by which the plaintiff got 1/4th share. He has further stated that a separate schedule was allotted to the plaintiff and the plaintiff came and continued in possession of the same exclusively having no concern with 3/4th share which remained in joint with Late Uchit Thakur and the defendants. It is further pleaded that at the time of aforesaid partition, defendant nos. 1 & 2 were minor and as such, the late father partitioned the land in four equal share and 1/4th, out of it was separated on the spot and 3/4th share belonging to Late Uchit Thakur and the defendants remained joint with the late Uchit Thakur. It is further case of the defendants that after the death of Uchit Thakur, the defendants jointly inherited in the share of their father to the exclusion of the plaintiff and that the plaintiff will not get any property of Late Uchit Thakur. He has further pleaded that after partition on 01.04.1959, late Uchit Thakur acquired some property from the income and savings from the properties of the defendants and as such, the plaintiff has no right to claim in the share of the property. He further averred that with regard to 1/4th share of Uchit Thakur, the



plaintiff has no concern as it devolved upon the defendants on his death. He has further asserted that Uchit Thakur died in jointness with defendants only. The widow of Late Uchit Thakur, namely, Daiyan Devi did not come in the separate possession of any property of late Uchit Thakur as Late Uchit Thakur had not kept any property for Daiyan Devi. The Further case of the defendants is that the said deed of partition i.e. Schedule-1 was prepared and allotted to the first party consisting of Uchit Thakur and the defendants whereas Schedule-B was prepared and allotted to the plaintiff and Daiyan Devi. The widow of Late Uchit Thakur did not got anything nor had been in possession of any property belonging to Uchit Thakur till her death. He has further pleaded that Late Uchit Thakur gifted some property to Rajesh Kumar and Rakesh Kumar by way of gift out of sweet will and the plaintiff has no *locus standi* to challenge the same. Daiyan Devi had sold some property which was purchased from her *Stridhan* and not from the acquisition of joint family property. He has accepted that Daiyan Devi had executed Power-of-Attorney on 09.07.1992 in favour of defendant but it was only to deal with her personal property acquired out of *Stridhan*, not for the property of her husband. He has further pleaded that Daiyan Devi had deposited



a sum of Rs. 5000/- in the State Bank of India which was the income and sale proceeds of her own property and on the death of their mother, the plaintiff and the defendants are equally entitled to it. The defendants on the death of Daiyan Devi performed the religious rituals and *Shradh* ceremony with equal contribution of the expenses. It is, vehemently, pleaded that the subject-matter of the suit is not the joint property of the plaintiff and the defendants rather it is an exclusive property of the defendants. There was Section 144 Cr.P.C. proceeding which was subsequently converted into Section 145 Cr.P.C. in which the police found the possession of the defendants on the suit land. These defendants after partition amongst defendant nos. 1 & 2 got Survey Plot No. 243 and 244 which they got in the year 1959 and mango, Mahua and Sheesham etc. were planted on it which is personal property and also that after the death of Uchit Thakur, the defendants partitioned and these defendants got Plot No. 457 allotted to them and planted Sheesham tree thereon.

8. Defendant no. 2 also filed his written statement. He also admitted the partition deed registered on 01.04.1959 by which 1/4th share of the property was allotted. There was only 2 separate schedule containing 1/4 of the plaintiff and 3/4 together of rest of the family, and the defendants and their father remained



joint with $\frac{3}{4}$ share. The defendants being minors under the guardianship of their father and hence, they have denied any partition of $\frac{1}{4}$ share of the father after his death. After his death in jointness with his sons (defendant) $\frac{3}{4}$ th share came in exclusive possession of the defendants (sons). The mother, namely, Daiyan Devi had no separate share either in the previous partition or after the death of the father of the defendants and hence inheritance as pointed out in favour of Daiyan Devi of $\frac{1}{4}$ th share of his father is denied. He has denied the gift in favour of Rajesh and Rakesh as legal and valid. The donee never came in possession of the gifted property. After the death of their father in 1982, the $\frac{3}{4}$ share was equally divided in between defendant no. 1 and defendant no. 2 and they continued in possession separately to their respective half share. Daiyan Devi executed a Power-of-Attorney in favour of the defendants to manage her personal properties. It is further alleged that the plaintiff has no concern with the disputed sum of Rs. 5,000/- in the State Bank of India. In fact, the plaintiff played fraud on her by inserting his name as survivor. The plaintiff did not contribute anything in the performance of religious rituals of the mother on her death. It is further pleaded that the plaintiff brought Section 144 Cr.P.C. proceeding and the



factum of possession was in process to be decided, the plaintiff has filed the suit which is not in his favour. The plaintiff has no manner of concern with the suit property mentioned in Schedule-I of the plaint.

9. A joint written statement on behalf of defendant no. 3, namely, Rajesh and defendant no. 4, namely, Rakesh has been filed. They have alike pleaded in the written statement in the manner similar to the defendant nos. 1 & 2 admitting all the points and also stated that the father filed the partition deed and excluded the plaintiff from the line of succession after the partition in 1959. Uchit Thakur also acquired property after 01.04.1959 from the income and saving of the defendants and so the plaintiff has no right to claim partition of those properties and also averred that Uchit Thakur had gifted some properties to these defendants out of his free will and without any duress over which these defendants came in possession as donee from 23.11.1981.

10. On the basis of pleadings of the parties, the learned trial court framed issues for determination of the suit and after hearing the parties and considering the evidence adduced and materials on record, dismissed the suit with cost.

11. Being aggrieved by the judgment and decree of



the learned trial court, the plaintiff filed Title Appeal No. 32 of 2006 / 03 of 2014 which was heard by the Court of 1st Additional District Judge, Begusarai. After hearing the parties and examining the materials on record along with the trial court judgments, the appeal was allowed and consequently, the suit was decreed in favour of the plaintiff/respondent which is challenged in the instant Second Appeal.

12. Having considered the submissions made on behalf of the appellant and upon perusal of materials on record including the judgments of learned courts below, it appears 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 findings that it is admitted fact that the plaintiff and defendant nos. 1 & 2 are the sons of Late Uchit Thakur from his 2nd wife, namely, Dayn Devi. It is also admitted fact that partition was held in the family of Uchit Thakur through registered partition deed dated 01.04.1959 between the father and his three sons, who are the plaintiff and defendant nos. 1 & 2. Through the said partition, all have $\frac{1}{4}$ share in the entire family property. The learned appellate Court further held that the trial court has wrongly assumed that after partition in the year 1959 (Ext.-3), Uchit Thakur and his



two minor sons i.e. defendant nos. 1 & 2 got $\frac{3}{4}$ share jointly but in the said $\frac{3}{4}$ property, the share of Uchit Thakur was clearly defined as $\frac{1}{4}$ share in the registered deed of partition dated 01.04.1959 (Ext.-3). As per Hindu Law, where share has been defined, it will be presumed that there is no joint family and there is complete separation in the family, they may claim partition by metes and bounds but it cannot be presumed that they remained joint rather they can file a suit for separate patti only. The plaintiff as well as defendants have admitted about that Ext.-3 (deed of registered partition) and learned trial court has also decided by deciding issue no. 6 that partition took place in the family in the year 1959. The learned trial court has clearly observed and accepted $\frac{1}{4}$ separate share of Uchit Thakur (father of plaintiff and defendant nos. 1 & 2). The learned trial court also accepted that partition took place in the year 1959 and share of each co-parcener were declared and decided $\frac{1}{4}$ share. Thus, the question does not arise that $\frac{3}{4}$ share was joint family property of Uchit Thakur and of defendant nos. 1 & 2 only. After the death of Uchit Thakur and Daiyan Devi, the plaintiff is entitled to get $\frac{1}{3}$ share in Schedule-1 property left by Uchit Thakur from his $\frac{1}{4}$ share. The learned appellate court further held that there is neither evidence on record nor pleading that



deed of gift dated 23.11.1981 executed by Uchit Thakur is illegal, inoperative and not executed by Uchit Thakur. The learned trial court observed that share of Uchit Thakur was to the extent of $\frac{1}{4}$ share and in this way, observation of learned trial court is self-contradictory at one stage. The learned trial court further observed that Uchit Thakur got $\frac{1}{4}$ share allotted to him separately and at another stage, the court observed that due to jointness the deed of gift is not valid. In this way, findings of the trial court is erroneous and without any reason.

13. Learned appellate Court has further held that the findings of learned court below on issue no. iv, v, vii, x & xi are not correct and suit property $\frac{1}{4}$ share of Late Uchit Thakur is joint property in between the plaintiff and defendant nos. 1 & 2 and there is unity of title and unity of possession in between the plaintiff and defendant Nos. 1 and 2 with respect to the suit property mentioned in Schedule-1 of the plaint which was exclusive property of Uchit Thakur, who got through registered partition deed dated 01.04.1959 as $\frac{1}{4}$ share and the plaintiff is entitled to get decree for partition of his $\frac{1}{3}$ share in Schedule-1 property of the plaint. Accordingly, learned appellate court held that the plaintiff is entitled to get a preliminary decree for partition of $\frac{1}{3}$ share in Schedule-1 property of the plaint.



14. Having regard to the facts and circumstances as well as materials on records, it is quire apparent that factum of partition through registered partition deed dated 01.04.1959 has been admitted by the parties. The defendants also admitted that through partition in the year 1959 (Ext.-3), the father of the plaintiff and defendant nos. 1 & 2 were allotted $\frac{1}{4}$ separate share in the ancestral properties of the parties. After the death of Uchit Thakur and his widow, the surviving heirs i.e. the plaintiff and defendant nos. 1 & 2 are entitled to get $\frac{1}{3}$ share left by Late Uchit Thakur from his $\frac{1}{4}$ share.

15. In the aforesaid background, this Court does not find any illegality in the impugned judgment and decree of the learned court of appeal below, nor does it finds any substantial questions of law involved in the instant Second Appeal.

16. Accordingly, this Second Appeal is dismissed at the stage of "Hearing Under Order XLI Rule 11 of the Code of Civil Procedure".

(Khatim Reza, J)

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