

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.327 of 2017

1. Ravi Kumar @ Kumar Ravi Patel (Minor) Son of Sri Abinash Kumar @ Sri Ram Under the under the guardianship of natural father Sri Abinash Kumar @ Sri Ram. Resident of Village and Post - Naraipur, Police Station - Bagaha, under Bagha Municipality, District- West Champaran.
2. Smt. Neesha Devi, Wife of Sri Abinash Kumar @ Sari Ram, Resident of Village and Post - Naraipur, Police Station - Bagaha, under Bagha Municipality, District- West Champaran.

... .. Appellant/s

Versus

1. Dharendra Mishra, Son of Late Madan Mohan Mishra, Resident of Village and Post - Naraipur, Police Station - Bagaha, District- West Champaran.
2. Upendra Mishra, Son of Late Madan Mohan Mishra, Resident of Village and Post - Naraipur, Police Station - Bagaha, District- West Champaran.
3. Manorma Devi, W/o Sri Abinash Chaudhary @ Sri Ram Chaudhary, Resident of Village and Post - Naraipur, Police Station - Bagaha, under Bagha Municipality, District- West Champaran.
4. Ram Kishore Pandey, S/o Sri Sankalap Pandey, Resident of Village and Post - Naraipur, Police Station - Bagaha, under Bagha Municipality, District- West Champaran.
5. Mahendra Mishra, S/o late Madan Mohan Mishra, Resident of Village and Post - Naraipur, Police Station - Bagaha, under Bagha Municipality, District- West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Neeraj Kumar, Advocate
For the Respondent/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate
		Mr. Abhitabh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

15 11-03-2026 Heard Mr. Neeraj Kumar, learned counsel for the appellants and Mr. Shashi Shekhar Dwivedi, learned senior counsel assisted by Mr. Abhitabh Kumar, learned counsel for the respondents.

2. This Second Appeal has been filed by the defendants/respondents/appellants against the judgment and



decree dated 22.02.2017 passed by the Additional District and Sessions Judge-VI, West Champaran in Title Appeal No. 37 of 2012 whereby the judgment and decree dated 30.03.2012 passed by the Sub-Judge-II, Bagaha, West Champaran in Title Suit No. 48 of 2005 has been set aside. The matter arises out of Title Suit No. 48 of 2005 which was filed by the plaintiffs/respondent nos. 1 and 2 for declaration that the plaintiffs have got title over the disputed land and sale deed executed by defendant no. 6 in favour of defendant no. 5 and sale deed executed by defendant no. 5 in favour of defendant no. 4 in respect of Khata No. 164, Plot No. 714, Area 2 *kattha* 17 *dhurs* (Schedule-I '*Kha*') of the plaint is illegal, forged and fabricated and are not binding upon the plaintiffs.

3. The contesting defendants appeared and filed their written statement but did not adduce oral or documentary evidence in support of their case. The said suit was dismissed by the learned Sub-Judge-II, Bagha, West Champaran vide judgment and decree dated 30.03.2012 which was challenged by the plaintiff in Title Appeal No. 37 of 2012. After hearing the parties and considering the materials on record, the learned Additional District Judge-VI, West Champaran at Bettiah allowed the said appeal by judgment and decree dated



22.02.2017 setting aside the judgment and decree of the Trial Court and allowed the claim and decreed the suit of the plaintiffs. Against the aforesaid judgment and decree of the learned court of appeal below, the instant Second Appeal has been filed by the defendants/appellants.

4. After hearing the parties and on perusal of materials on record including the judgments of the learned courts below, it appears that the learned court of appeal below, which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that the plaintiffs have proved the earlier partition through *Yadast Batwaranama* (Ext.-1) over which signature of the father of the plaintiffs and defendant no. 6 is present, whereby, father of the plaintiffs partitioned the property equally amongst his sons and also kept a share for himself and consent of the sons is not necessary for the exercise of power under Section 323 of Mulla's Hindu Law (14th Edition). It is further observed that the effect in law is not only a separation of father from the sons, but a separation of the sons *inter se*. The consent of the sons is not necessary for the exercise of that power and relied upon a decision of the Hon'ble Supreme Court in the case of ***Kalyani (Dead) By Lrs. vs. Narayanan and Ors.*** reported in ***AIR 1980***



SC 1173. The claim of the plaintiffs was denied by the Trial Court only on the basis that the said *Yadast Batwaranama* does not contain the signature of three sons and in absence of signature of the parties over the *Batwaranama*, the said *Batwaranama* is not valid. This finding of the Trial Court is not tenable in the eye of law. However, the defendants did not produce any oral or documentary evidence to disprove *Yadast Batwaranama*. The learned Appellate Court also mentioned that cause of partition through *Yadast Batwaranama* arises when defendant no. 6 had cut down a full grown mango tree standing over Plot No. 714 and sold it without informing the father or other co-shares. The pleadings of the defendants has not been proved by any evidence. *Yadast Batwaranama* relates to Plot Nos. 164, 714 and 700. Defendant no. 6 executed sale deed with regard to 4 *kattha* 17 *dhurs* of Plot no. 714 and he had no right to sell the aforesaid property as being *Karta* and as such, the sale deed executed by defendant no. 6 with regard to 4 *kattha* 17 *dhurs* of Plot No. 714 is *ab initio void* and not binding upon the plaintiffs. The plaintiffs have no objection with regard to other land sold by defendant no. 6 and accordingly, set aside the judgment and decree of the Trial Court.

5. Having considered the facts and circumstances as



well as materials on record, it is apparent that the defendants could not prove that *Yadast Batwaranama* dated 24.03.1989 is forged and fabricated. Moreover, except the pleadings of denial of *Yadast Batwaranama*, the defendants have not proved their pleadings by any cogent evidence. The principle of partition by father during his lifetime has already been settled by the Apex Court in the case of ***Kalyani (Dead) By Lrs. (Supra)***, wherein, the Hon'ble Supreme Court has held that "*a Hindu father joint with his sons and governed by Mitakshara law in contradistinction to other manager of a Hindu undivided family or an ordinary coparcener enjoys the larger power to impose a partition on his sons with himself as well as amongst his sons inter se without their consent and this larger power to divide the property by metes and bounds and to allocate the shares to each of his sons and to himself would certainly comprehend within its sweep the initial step, viz., to disrupt the joint family status which must either precede or be simultaneously taken with partition of property by metes and bounds.*" It is apparent from the aforesaid judgment of the Hon'ble Apex Court that the father of a joint family has the power to divide the family property at any moment during his lifetime provided he gives his sons equal shares with himself. The consent of the sons is



not necessary for exercise of the said power. However, defendant no. 6/appellant executed the sale deed much after *Yadast Batwaranama* dated 24.03.1989, which is beyond his power.

6. In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned judgment and decree of the learned court of appeal below nor does it find any substantial question of law involved in the instant Second Appeal.

7. Accordingly, the Second Appeal is dismissed at the stage of admission under “Order XLI Rule 11 C.P.C”.

(Khatim Reza, J)

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