

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.477 of 2017

Harishankar Singh son of late Dhanpat Singh, R/o vill. Pawanee, P.S. Buxar
(M) Dist. Buxar

... .. Defendant 2nd set-respondent 2nd set- Appellant
Versus

1. Rameshwar Singh

2. Sumeshwar Singh

Both son of Madho Singh R/o vill. Pawanee, P.S. Buxar (M), Dist. Buxar.

... .. Plaintiff- Appellant-Respondent 1st set

3. Most. Rajraniya Devi, Wife of Late Sudama Singh.

4. Ramashankar Singh, Son of Late Sudama Singh.

5. Rajesh Kumar Singh, Son of Late Sudama Singh.

All resident of Village- Pawanee, P.S. Buxar (M), District- Buxar.

.Defendant 2nd set-Respondent 2nd set-Respondent 2nd set

6. Chandrashekhar Singh.

7. Arimardan Singh.

8. Shri Hari Singh.

9. Dhanusdhari Singh.

All Sons of Late Chandrika Singh, resident of Village- Pawanee, P.S.-Buxar
(M), District- Buxar.

10. Ramawati Devi, Wife of Sudarshan Singh, resident of Village + P.O.

Mangraon P.S. Rajpur, District- Buxar.

11. Vinda Devi, Wife of Shubhnarayan Singh.

Resident of Village + PO Dastepur, District Gazipur (U.P.).

.Defendant 1st set-Respondent 1st set-Respondent 3rd set.

12. Angad Singh

13. Brijmohan Singh

14. Jagmohan Singh

15. Bhagwat Singh

All 12 to 15 are sons of late Dhanpat Singh R/o vill. Pawanee PS Buxar
(M), Dist. Buxar.

.. ... Defendant 2nd Set- respondent 2nd Set- Respondent 4th Set.

16. Inerwasiya Devi D/o late Dhanpat Singh w/o sri Bhagawan Singh R/o
vill. Dahiwar P.S. Buxar (M), Dist. Buxar.

.. ... Defendant 2nd Set- respondent 2nd Set- Respondent 4th Set.

with

SECOND APPEAL No. 476 of 2017

Harishankar Singh, son of late Dhanpat Singh, resident of village Pawanee,
P.S. Buxar (M), Dist. Buxar

... .. Defendant 2nd set- Appellant

Versus

1. Rameshwar Singh

2. Sumeshwar Singh

Both son of Madho Singh R/o vill. Pawanee, P.S. Buxar (M), Dist. Buxar.

... .. Plaintiff- Respondent 1st set-Respondent 1st set

3. Most. Rajraniya Devi, Wife of Late Sudama Singh.

4. Ramashankar Singh, Son of Late Sudama Singh.



5. Rajesh Kumar Singh, Son of Late Sudama Singh.
All resident of Village- Pawanee, P.S. Buxar (M), District- Buxar.
. ...Defendant 2nd set-Respondent 2nd set-Respondent 2nd set
6. Chandrashekhar Singh.
7. Arimardan Singh.
8. Shri Hari Singh.
9. Dhanusdhari Singh.
All Sons of Late Chandrika Singh, resident of Village- Pawanee, P.S.-Buxar (M), District- Buxar.
10. Ramawati Devi, Wife of Sudarshan Singh, resident of Village + P.O. Mangraon P.S. Rajpur, District- Buxar.
11. Vinda Devi, Wife of Shubhnarayan Singh.
Resident of Village + PO Dastepur, District Gazipur (U.P.).
.Defendant 1st set-Respondent 1st set-Respondent 3rd set.
12. Angad Singh
13. Brijmohan Singh
14. Jagmohan Singh
15. Bhagwat Singh
All 12 to 15 are sons of late Dhanpat Singh R/o vill. Pawanee PS Buxar (M), Dist. Buxar.
.. ... Defendant 2nd Set- respondent 2nd Set- Respondent 4th Set.

Appearance :

(In SECOND APPEAL No. 477 of 2017)

For the Appellant/s : Mr.Kuber Pathak, Advocate

For the Respondent/s :

(In SECOND APPEAL No. 476 of 2017)

For the Appellant/s : Mr.Kuber Pathak, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 05-01-2026 Heard learned counsel for the appellant in both the appeals.

2. These two appeals arise out of Title Suit No. 218 of 2004, which was instituted by the plaintiffs-respondents 1st set for partition of their one-third share in Schedule-IV land of the plaint carving out of their share through appointment of a Survey-Knowing Pleader Commissioner and also for a declaration that the registered partition deed dated 08.08.1963 is



void, inoperative and not binding upon the plaintiffs.

3. Second Appeal No. 477 of 2017 has been preferred by the defendant 2nd set (appellant) against the judgment and decree dated 17.06.2017 passed by the learned Additional District and Sessions Judge-6, Buxar in Title Appeal No. 49 of 2008 (filed by the plaintiffs), whereby the judgment and decree dated 22.09.2008 passed by the learned Civil Judge (Senior Division)-I, Buxar in Title Suit No. 218 of 2004 were reversed.

4. Second Appeal No. 476 of 2017 has also been preferred by the defendant 2nd set (appellant) against the judgment and decree dated 17.06.2017 passed by the learned Additional District and Sessions Judge-6, Buxar in Title Appeal No. 81 of 2009 whereby the judgment and decree dated 22.09.2008 passed by the learned Civil Judge (Senior Division)-I, Buxar in Title Suit No. 218 of 2004 were affirmed against the defendant 2nd set.

5. Second Appeal Nos. 477 of 2017 and 476 of 2017 have been heard together at the admission stage.

6. The case of the plaintiffs, in brief, is that the genealogical table given in Schedule-I of the plaint shows that the common ancestor of the plaintiffs and the defendants, namely Sadhu Singh had two sons, Ugrah Singh and Raghunath



Singh. Ugrah Singh had two sons, namely, Sheo Mohan Singh and Deo Singh, both of whom died issueless just after the cadastral survey leaving behind Raghunath Singh as the surviving coparcener. It is further pleaded that Raghunath Singh had five sons, namely Ujagir Singh, Ramadhari Singh, Ram Sakhi Singh, Laljee Singh and Ram Krit Singh. Out of them, Ramadhari Singh and Laljee Singh died issueless living jointly with their remaining brothers. Consequently, the surviving descendants of Sadhu Singh, namely Ujagir Singh, Ram Sakhi Singh and Ram Krit Singh came into joint possession of the ancestral lands. The plaintiffs are the heirs of Ram Sakhi Singh. Defendant no. 1, Chandrika Singh, is the son of Ram Krit Singh and the defendant 2nd set are the descendants of Ujagir Singh. Thus, the plaintiffs- defendant 1st set and defendant 2nd set are each entitled to one-third share in the Schedule-IV land of the plaint. It is further pleaded that the cadastral survey *khatiyans* were prepared showing entries in the names of Sheo Mohan Koeri and Deo Koeri, sons of Ugrah Singh (Koeri), jointly for two shares and also in the names of Ujagir Singh (Koeri), Ramadhari Koeri, Ram Sakhi Koeri, Laljee Koeri and Ram Krit Koeri sons of Raghunath Koeri, equally. The parties are in joint possession over the suit land according to their respective shares



and no partition by metes and bounds ever took place prior to the institution of the suit. It is further pleaded that the father of the plaintiffs died prior to the year 1963, when the plaintiffs were minors and their mother, Chandradewa Devi was alive. She subsequently died on 18.07.2001. While the plaintiffs were minors, the ancestors of the defendant 1st set and defendant 2nd set in collusion with each other executed a registered partition deed dated 08.08.1963 in respect of the ancestral properties, wherein, the names of the plaintiffs were included as minors under the purported guardianship of Ramayan Mahto, father of the defendant 2nd set, without the knowledge or consent of the plaintiffs or their mother. By virtue of the said deed, the defendant 1st set was allotted half share while the plaintiffs and the defendant 2nd set were allotted 1/4th share each.

7. It is further pleaded that on the basis of the said registered partition deed, the names of the parties were separately recorded in the possessory column of the revisional survey record of rights, although no partition by metes and bounds ever took place between the parties prior to the institution of the suit. The said registered partition deed is alleged to be void and inoperative. On the basis of the said void deed, the revisional survey *khatian* and the *chakbandi khatian*



were prepared. It is further stated that the plaintiffs filed objections under Section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Act') and thereafter instituted C.W.J.C.No. 2108 of 2000 before this Court. This Court, by order dated 30.06.2004, has held that the dispute relates to civil jurisdiction and the Consolidation Authorities have no jurisdiction over the matter and the aggrieved party is at liberty to institute a suit before the Civil Court. This Court further observed that the orders passed by the Consolidation Authorities would not prejudice the adjudication by the Civil Court. Pursuant to the aforesaid order of this Court, the plaintiffs requested the defendants to consider the registered partition deed dated 08.08.1963 as *void* and inoperative and to effect partition of their 1/3rd share in the suit land by metes and bounds. However, as the defendants failed and refused to accept the said request, the plaintiffs were constrained to institute the present suit.

8. On summons, the defendant 2nd set (defendant nos. 3 to 5) appeared and filed their written statement separately. They admitted the genealogical table given by the plaintiffs in Schedule-I of the plaint. They further pleaded that no deed of partition was ever executed in their family and their ancestor,



Ramayan Mahto was never the guardian of the plaintiffs. It has been specifically pleaded that their ancestor, Ujagir Singh had purchased the land appertaining to Khata No. 726, C.S. Plot No. 1519 measuring 1 acre 15 decimals; C.S. Khata No. 410, C.S. Plot No. 1254 measuring 5 kathas; C.S. Plot No. 1281 measuring 3½ kathas; and C.S. Plot No. 1250 measuring 3½ kathas through registered sale deeds dated 06-06-1924 and 29-05-1942 out of his personal income. They asserted that the said lands were the self-acquired property of Ujagir Singh. It is further pleaded that after the death of Ujagir Singh, the defendant 2nd set came in separate possession of the aforesaid purchased lands, which have been fully described in Schedule-I of their written statement. They have also pleaded that after excluding the lands mentioned in Schedule-I of their written statement the remaining properties described in Schedule-III of the plaint are ancestral properties, in which the plaintiffs are entitled to 1/3rd share.

9. Defendant No. 1 has also appeared and filed a separate written statement, wherein, he has denied the genealogical table given by the plaintiffs in the plaint, stating that the same is wholly incorrect and inconsistent with the genealogical table earlier given by the plaintiffs in the consolidation proceedings,



namely Consolidation Case No. 66 of 1978–79 as well as in the amendment petition filed therein in September 1978. According to the genealogy given by the plaintiffs in the Consolidation proceedings, Ugrah Mahto had four sons, namely Sheo Mohan Mahto, Deo Mahto, Raghunath Mahto and Hukum Mahto. Raghunath Mahto had three sons, namely Ujagir Mahto, Ramadhari Mahto and Ramsakhi Mahto. Ujagir Mahto had one son, Ramayan Mahto, who, in turn, had two sons, namely Dhanpat Singh and Sudama Singh (defendant 2nd set). It is further pleaded that Ramsakhi Mahto had one son, Madho Singh, who had two sons, namely, Rameshwar Singh and Sumeshwar Singh (the plaintiffs). Ramadhari Mahto is stated to have died issueless. It is further pleaded that Hukum Mahto had two sons, namely Laljee Singh and Ram Krit Singh. Laljee Singh died issueless and Ram Krit Singh had one son, namely Chandrika Singh (defendant no. 1). Defendant no. 1 has specifically asserted that the plaintiffs have wrongly stated in the plaint that Ugrah Mahto and Raghunath Mahto were full brothers. It has further been pleaded that prior to the commencement of the cadastral survey operations, both Ugrah Mahto and his son Raghunath Mahto had already died. Raghunath Mahto died leaving behind his widow, Jinisi Devi



and his three sons, namely Ujagir Mahto, Ramadhari Mahto and Ramsakhi Mahto. After the death of Raghunath Mahto, his widow Jinisi Devi remarried to one Hukum Singh, from whom she had two sons, namely Laljee Singh and Ram Krit Singh. Laljee Singh died issueless, while Ram Krit Singh had only one son, Chandrika Singh (defendant no.1). According to defendant no. 1, the plaintiffs and the defendant 2nd set are heirs of Raghunath Mahto, whereas the defendant 1st set are the heirs of Hukum Singh. It has been further pleaded that in respect of the ancestral properties, the plaintiffs and the defendants of the 2nd set were each entitled to 1/4th share, while the defendant 1st set were entitled to ½ (half) share, as per registered partition deed dated 08-08-1963. It is asserted that the said partition deed was executed with the participation of Ramayan Mahto, the father of defendant no. 2 and grandfather of defendant nos. 4 and 5, who also appeared as the guardian of the plaintiffs, who were then minors. It is further pleaded that the plaintiffs had earlier filed Consolidation Case No. 66 of 1978-79 on 11-04-1978 before the Consolidation Officer, wherein the defendant 2nd set were arrayed as defendant nos. 1 and 2 and defendant no. 1, Chandrika Singh, was impleaded merely as a formal (proforma) defendant no. 3 against whom no relief was claimed. In the said



proceeding, the plaintiffs had sought relief against Dhanpat Singh and Sudama Singh, sons of Ramayan Singh for declaration of incorrect survey entries and for confirmation of possession with an alternative prayer for recovery of possession in respect of land appertaining to Khata No. 131, plot No. 793 measuring 20 decimals and Khata No. 19, plot No. 5 measuring 5 decimals. In the said Consolidation case, the plaintiffs themselves had pleaded that a partition had already taken place among the parties and pursuant thereto, the revisional survey *khatiyān* was prepared. They further asserted that they were in peaceful possession of their respective allotted shares and had no concern with the portions of the others. The said Consolidation proceedings, ultimately, travelled up to this Court and was disposed of on 30-06-2004 as withdrawn. It is, thus, pleaded that thereafter the plaintiffs have instituted the present suit by making wrong and contradictory averments.

10. The learned Trial Court, after scrutinizing the pleadings, evidence and materials on record, dismissed the suit holding that Raghunath Singh and Hukum Singh were full brothers and Ramkrit Singh was the son of Hukum Singh. It was further held that the plaintiffs failed to establish the genealogy given in Schedule-I of the plaint, which was found to be



incorrect. With regard to the lands purchased in the name of Ujagir Singh through registered sale deeds dated 06-06-1924 and 29-05-1942, the learned Trial Court examined the pleadings and the evidence of defendant no. 2, Dhanpat Singh (D.W.1), the oldest member of the family. D.W.1 admitted that he was not born at the time of such purchases and further stated that the revisional survey *khatian* in respect of the said lands stood recorded in the name of the joint family to which neither he nor his father had ever raised any objection. He also admitted that he had never claimed before the Consolidation Officer or before this Court that the said lands were the self-acquired property of his grandfather. He further deposed that during the lifetime of Ujagir Singh, partition had already taken place amongst his brothers. On the basis of the aforesaid evidence, the learned Trial Court held that the lands purchased in the name of Ujagir Singh were voluntarily thrown by him into joint stock and that the defendant 2nd set failed to prove self-acquisition. Consequently, the said properties were held to be joint family properties and not the self-acquired properties of the defendant 2nd set. As regards the registered partition deed dated 08-08-1963, the learned Trial Court, on consideration of Ext.-3 (certified copy of the registered partition deed dated 08.08.1963)



and Ext.-E (original copy of the registered partition deed dated 08.08.1963) held that although the plaintiffs were minors at the relevant time, they were duly represented by Ramayan Mahto, the ancestor of defendant no. 2 as their guardian. The learned Trial Court further found that no fraud had been committed by the defendant 1st set or the ancestors of the defendant 2nd set and the shares were correctly allotted under the said deed. Accordingly, the learned Trial Court held that the registered partition deed dated 08-08-1963 was valid, effective and binding upon the plaintiffs. It was further held that the plaintiffs having assailed the said partition deed for the first time after a lapse of about 26 years is barred by limitation. In view of the fact that a valid partition by metes and bounds had already taken place on 08.08.1963, the learned Trial Court held that no question of a second partition could arise.

11. Being aggrieved by the judgment and decree of the learned Trial Court dated 22.09.2008, two Title Appeals were preferred. Title Appeal No. 49 of 2008 was filed on behalf of the plaintiffs (respondents 1st set), whereas Title Appeal No. 81 of 2009 was filed by the defendant 2nd set. Both the appeals were heard separately by the same Court and were disposed of on the same day, i.e., 22.09.2008.



12. The learned Appellate Court, while deciding Title Appeal No. 49 of 2008, held that the genealogical table given by the plaintiffs in the plaint was correct having been duly supported by reliable documentary evidence. The Appellate Court placed reliance on Exhibit-7, being the Cadastral Survey *Khatiyani*, wherein Sakhi Mahto, Ramkrit Mahto and Laljee Mahto have been recorded as the sons of late Raghunath Mahto. It was further observed that in C.S. Khatiyani, Khata No. 118 (Exhibit-7), the names of five persons, namely, Ram Sakhi, Ujagir, Ramadhari, Ramkrit and Laljee have been jointly recorded in respect of plot Nos. 631, 688, 691, 897, 909, 1342 and 1361 all described as the sons of late Raghunath Mahto. Exhibit-7, thus, clearly reveals that the said five persons were the sons of late Raghunath Mahto and for that reason their joint possession has been recorded over several plots in the *khatiyani*. Significantly, the name of Hukum Singh does not find mention anywhere in the said Exhibit, leading to the irresistible conclusion that Hukum Singh was not a member of the family. Further, reliance was placed on the Cadastral Survey *Khatiyani* of Khata No.237 (Exhibit-7/a), wherein, all the plots recorded therein describe the joint possession of the aforesaid five sons of Raghunath Mahto. In the remarks column, Ramkrit and Laljee



have specifically been described as sons of Raghunath Koeri. As regards Khata No. 237 (Exhibit-7/f), the said C.S. khatiyans records only Shiv Mohan and Deo as sons of Ugrah Singh and even in this Khata, the name of Hukum Singh is not appearing. Likewise, in Exhibit-7/f, the names of Ramsakhi, Ujagir, Ramadhari, Ramkrit and Laljee have been recorded as the five sons of Raghunath Koeri, showing their joint possession over Plot No. 599. Similarly, in Cadastral Survey *Khatiyans* relating to Khata Nos. 155 and 270, the aforesaid five persons have consistently been recorded as sons of Raghunath Mahto, while Shiv Mohan and Deo have been recorded as sons of Ugrah in the column of *raiyats*/tenure-holders. Exhibit-7/e, relating to Khata No. 418 of the C.S. *Khatiyans*, reveals that the *khatiyans* was finally published on 22.01.1914, wherein, the names of five sons of Raghunath Koeri and two sons of Ugrah Koeri were recorded. The learned Appellate Court further observed that the entire Exhibit-7 series conclusively demonstrates that up to the final publication of the Cadastral Survey *Khatiyans* on 22.01.1914 there was no person named Hukum Singh in the family. The Exhibit-7 series further establishes that late Raghunath Mahto had five sons, one of whom was Ramkrit Mahto and that at several places in the C.S. *khatiyans*, Ramkrit



and Laljee are shown as full brothers and sons of Raghunath Mahto. Consequently, the contention of the defendant 1st set that Laljee was the son of Hukum Singh was rightly rejected as untenable. The learned Appellate Court also considered the documents produced by D.W.-1, such as mortgage deeds, rehan depositions (Exhibit-K) and receipts of the Sugar Mill and Forest Department executed after the year 1940 wherein, the name of Ramkrit's father was recorded as Hukum Singh. However, the Appellate Court held that the Cadastral Survey *Khatian* is the oldest document and is also a public document and is presumed to be genuine unless rebutted by cogent evidence which the defendant 1st set failed to do. Accordingly, the learned Appellate Court affirmed that the genealogical table given by the plaintiffs is correct, which finding was also accepted by the defendant 2nd set (appellant). Consequently, the the first Appellate Court held that three branches of the family are entitled to equal shares, each having 1/3rd share in the suit property. The certified copy of the registered partition deed dated 08.08.1963, produced on behalf of the plaintiffs, was marked as Exhibit-3, and the original copy of the same registered partition deed, produced on behalf of the defendant 1st set, was marked as Exhibit-E. The learned Appellate Court



further observed that it was not in dispute that, under the original registered partition deed (Exhibit-E), Ramayan Mahato, the ancestor of the defendant 2nd set, had appeared as the guardian of the plaintiffs, who were admittedly minors at the time of execution of the said deed in the year 1963. It was also an admitted position that although the father of the plaintiffs had died, but their mother was alive at the relevant time, yet she was not appointed or included as their natural guardian in the partition proceedings. The learned Appellate Court found that such conduct clearly amounted to fraud upon the minor plaintiffs. Under the said partition deed, out of the three branches of the family, Ramkrit Singh, the ancestor of the defendant 1st set was allotted a disproportionately large share of 1/2, whereas, the plaintiffs and the defendant 2nd set were allotted only 1/4th share each. This unequal distribution was held to be neither just nor fair and was patently prejudicial to the interests of the minor plaintiffs. The learned Appellate Court further held that since the partition deed was vitiated by fraud, no question of limitation arose for reopening the partition. Consequently, the First Appellate Court decreed the suit by declaring the plaintiffs' entitlement to 1/3rd share in the Schedule-IV property and, accordingly, allowed the appeal



preferred by the plaintiffs.

13. The defendant 2nd set-appellant also preferred Title Appeal No. 81 of 2009 against the judgment and decree dated 22.09.2008 passed in Title Suit No. 218 of 2004, whereby the learned Trial Court held that the defendant 2nd set had failed to establish that the lands purchased in the name of Ujagir Singh through registered sale deeds dated 06.06.1924 and 29.05.1942 were his self-acquired properties. The learned Trial Court, accordingly, concluded that the said properties were not self-acquired properties, but were held to be joint family properties. Aggrieved by the aforesaid findings, the defendant 2nd set preferred the said appeal.

14. The learned Appellate Court, after considering the pleadings and evidence on record, observed that the sole issue arising for determination in the appeal was whether the lands purchased through the registered sale deeds dated 06.06.1924 and 29.05.1942 were the self-acquired properties of Ujagir Singh. While adjudicating the issue, the learned Appellate Court took into account the evidence of Defendant No. 2 (DW-1), Dhanpat Singh, who categorically admitted that Exhibits E and Ext. E/1 were recorded in the Revisional Survey *Khatiyani* in the joint names of the family members. It was further noted that



DW-1 specifically stated in his evidence that he had never claimed that the lands purchased through the aforesaid sale deeds were the self-acquired properties of Ujagir Singh. The Appellate Court also observed that the properties purchased in the name of Ujagir Singh had been treated as joint family properties and were included in the registered partition deed dated 08.08.1963, in which only the father of Defendant No. 2 and grand father of defendant nos. 4 to 5 namely Ramayan Mahto had participated. The learned Appellate Court further observed that the conduct of the ancestors of the defendant 2nd set clearly demonstrated that the properties acquired through the registered sale deeds were consistently treated as joint family properties and never as exclusive or self-acquired properties of Ujagir Singh. On the basis of the aforesaid evidence and conduct, the Appellate Court held that the lands purchased through the sale deeds dated 06.06.1924 and 29.05.1942 were not self-acquired properties of the ancestors of the defendant 2nd set. Consequently, Title Appeal No. 81 of 2009 was dismissed.

15. Against the judgment and decree passed in Title Appeal No. 81 of 2009, only Defendant No. 2, Dhanpat Singh has preferred the present Second Appeal challenging the concurrent findings relating to the sale deeds dated 06.06.1924



and 29.05.1942. It is pertinent to note that the brother of Dhanpat Singh, namely Sudama Singh, who had died during the pendency of the suit and whose legal heirs were duly substituted, did not prefer any appeal against the said findings nor did they challenge the same either before the First Appellate Court or in Second Appeal. Consequently, the findings regarding the nature of the properties purchased in the name of Ujagir Singh as joint family properties attained finality against the other heirs of Ujagir Singh.

16. Having considered the averments made on behalf of the appellant(s) and after perusal of the materials on record, including the judgments of the learned Courts below, it appears that both the learned Courts below, after considering the pleadings of the parties and the evidence adduced, arrived at a definite conclusion that the defendant 2nd set admitted the genealogical table given by the plaintiffs in Schedule I of the plaint and categorically pleaded that no deed of partition was ever executed in their family. It was further pleaded that their ancestor, Ram Narayan Mahto (father of Dhanpat Mahto and Sudama Mahto) was never the guardian of the plaintiffs and the alleged earlier partition was denied. The defendant 2nd set only claimed that their ancestor, Ujagir Singh, had purchased the



land, in question, through two registered sale deeds dated 06.06.1924 and 29.05.1942 out of his personal income and the said properties were his self-acquired properties. However, both the learned Courts below concurrently held that the defendant 2nd set failed to prove that the lands purchased in the name of Ujagir Singh were acquired from his personal income, particularly, in view of their admission that there had been no prior partition in the family. The properties were always treated as joint family properties and were also included in the registered partition deed dated 08.08.1963, in which Ram Narayan Mahto, the father of defendant no. 2 and grandfather of defendant nos. 4 and 5 had participated. Though the said partition deed dated 08.08.1963 was ultimately held to be illegal and vitiated by fraud upon the minor plaintiffs, it was observed that under the said deed the defendant 1st set was allotted a disproportionate half share whereas, the plaintiffs and the defendant 2nd set were allotted only 1/4th share each. Such unequal distribution was held to be neither just nor fair and was found to be patently prejudicial to the interests of the minor plaintiffs. Moreover, the evidence adduced by defendant no. 2 (DW-1), Dhanpat Singh, clearly revealed that Ext. E (sale deed dated 06.06.1924) and Ext. E/1 (sale deed dated 29.05.1942)



were recorded in the revisional survey khatiyani in the joint name of the family members. He further admitted in his evidence that he had never claimed that the lands purchased under the aforesaid sale deeds were the self-acquired properties of Ujagir Singh in previous proceedings. Considering the aforesaid facts and the materials available on record, it is quite apparent that the properties purchased in the name of Ujagir Singh were neither exclusive nor self-acquired properties of Ujagir Singh, but were joint family properties.

17. Considering the aforesaid facts and circumstances as well as the materials on record, it is quite apparent that the judgment and decree of the learned Courts below are based on finding of facts, and no question of law much less any substantial question of law arises for consideration.

18. Thus, both the Second Appeals are dismissed at the stage of hearing under Order XLI Rule 11 of the C.P.C.

19. Pending interlocutory applications, if any, shall also stand disposed of.

(Khatim Reza, J)

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