IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 132 of 2023

Gangadhar Rajwar, aged about 63 years, son of Late Jagdish Rajwar, resident of Village and P.O. Bhojudih, P.S. Chandankiyari, District Bokaro (Jharkhand), at present R/o Sector 12/A, Qr. No.1424, Near Kali Mandir, P.O. + P.S. Sector 12, District Bokaro (Jharkhand)

…. ... **Appellant**

Versus

1. Ram Prasad Rajwar, Son of Late Jadish Rajwar, resident of Village and P.O. Bhojudih, P.S. Chandankiyari, District Bokaro (Jharkhand).
2. Gita Rajwar, aged about 36 years, W/o Shashi Bhushan Rajwar, R/o Jagidih, P.O. Jagidih, P.S. Chandankiyari, District Bokaro, Jharkhand

…. ... **Respondents**

CORAM: HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant : Dr. Vandana Singh, Advocate
For the Respondent No.1 : Mr. Sunil Singh, Advocate
Mr. Rajesh Kumar, Advocate
For the Respondent No.2 : None

Reserved on: 09/10/2026 **Pronounced on: 30/10/2026**

1. Heard Dr. Vandana Singh, learned counsel appearing on behalf of the appellant and Mr. Sunil Singh, learned counsel appearing on behalf of the respondent No.1.

2. No one appears on behalf of the respondent No.2.

3. The present appeal has been filed under Section 96 of the Code of Civil Procedure by the Appellant-Plaintiff, namely, Gangadhar Rajwar impleading his brother Ram Prasad Rajwar as the respondent No.1-defendant. In course of hearing of this appeal, Gita Rajwar was impleaded as a party respondent No.2 being the sister of the

appellant as well as the respondent No.1 and the daughter of Jadish Rajwar.

4. The instant First Appeal is directed against the judgment dated 25.03.2023 and the decree signed on 31.03.2023, passed by the learned Civil Judge (Senior Division)-II, Bokaro in Original Suit No.06 of 2020, whereby the Original Suit of the plaintiff was decreed but not in terms of the prayer made by the Appellant-Plaintiff.

5. The learned Trial Court by the impugned judgment and decree, allowed the suit of the appellant-plaintiff holding that the plaintiff was entitled to the extent of 1/3rd share in the suit property and accordingly a preliminary decree was passed with a further direction for appointment of Survey Knowing Pleader Commissioner to effect partition as per the share of the parties by metes and bounds. Aggrieved by the preliminary decree, the present First Appeal has been filed.

6. Brief facts of the case are that the Original Suit No.06 of 2020 instituted by the appellant-plaintiff Gangadhar Rajwar against Ram Prasad Rajwar on 24.01.2020 wherein the plaintiff alleged that the plaintiff and defendant jointly owned and possessed the land within the district of Bokaro, Mouza Bhojudih, measuring an area of 33 decimals, which was acquired by them by virtue of registered sale deed of the year 1985, which is described in Item No.1 of Schedule-A of the plaint. It is further alleged that they had jointly purchased

the land measuring an area of 46 decimals through two registered sale deeds each of 23 decimals of land in the year 2003 and 2005 respectively, which was adjacent to the land purchased by them measuring an area of 33 decimals, which are fully described in Item No. II of Schedule-A of the plaint. Apart from that, the plaintiff and the defendant had jointly purchased the land measuring an area of 29 decimals and 25 decimals, total 54 decimals of land, in the year 2001 through registered sale deeds, which are fully described in Item No. III of Schedule-A of the plaint. Similarly, the land fully described in Item No. IV of Schedule-A of the plaint was also jointly owned and possessed by them.

7. Apart from that, the deceased mother of the plaintiff and the defendant, namely, Bhikhani Devi had also acquired land, which is fully described in Schedule-B of the plaint, who died leaving behind her two sons and a daughter, namely, Gita Devi but the daughter was not made party to the suit as she had relinquished her share in favour of her brothers.

8. It is further alleged that in course of time, some dispute and differences cropped up between the parties and consequent upon they tried to get their properties mutually partitioned, for which, as per their mutual consent, an *Amin* was appointed for measurement and demarcation of the land and some allocation of the land was also made but for one reason or another the dispute continued and hence the suit was instituted for which cause of action arose on 24.06.2014

when despite a formal *bantan-nama* signed by the parties at the intervention of the *panch*, the same could not be acted upon, hence the suit was instituted with a prayer for preliminary decree of partition in favour of the plaintiff for his half share described in Item Nos.I, II, III and IV of the Schedule-A of the plaint and half share in Schedule-B of the plaint. There upon, prayer was made for preparation of a final decree in terms of the preliminary decree.

9. The sole defendant appeared and contested the claim of the plaintiff, taking various pleas including the plea of bar by the law of limitation.

10. The defendant-respondent in his written statement admitted the joint acquisition of the property described in Schedule-A of the plaint with certain technical defects in summons served upon him. So far as Schedule-B of the plaint is concerned, details have been given with regard to purchase made by the mother of the parties and the fact is not disputed that Schedule-B property was acquired by the mother of the parties, who died leaving behind her two sons, the plaintiff, the defendant and one daughter Gita Devi and after the death of said Bhikhani Devi, the mother of the parties, all three legal heirs were equally entitled to a share in it. The answering respondent-defendant contested the plea of relinquishment by the daughter in favour of her brothers in the absence of any document to that effect. There is a claim of construction of the house by the parties themselves, which is being claimed to be in exclusive

possession of the respective parties. The plaintiff and the defendant both claimed to have constructed the house thereon. The plea of previous partition is also taken by the defendant alleging that it was duly partitioned by village *panchayat* to the satisfaction of both the parties and the suit, accordingly, was not maintainable and fit to be dismissed.

11. On completion of pleadings, the learned trial Court framed the following issues:

> *I) Whether suit is maintainable either on facts or in Law?*
> *II) Whether suit is barred by Law of limitation or bad for nonjoinder or mis-joinder of necessary parties?*
> *III) Whether there is unity of Title and possession over the suit land mentioned in Schedule "A" and Schedule "B" of the plaint?*
> *IV) Whether earlier there has been any amicable partition for the property mentioned in Schedule-A Item No. I and Schedule 'B' land before punch or with the intervention of the Ld. P.D.J. Court, Bokaro in connection with Misc. Case No.13/2017 or any amicable partition due to joint Compromise between the parties of the landed properties (56 decimals) mentioned in Schedule 'A' or Schedule 'B' land?*
> *V) Whether the plaintiff is entitled for preliminary decree of his half share of Schedule 'A' property and half share in Schedule 'B' property mentioned in the Plaint? To what relief or reliefs Plaintiff found entitled?*

12. On behalf of the plaintiff, three witnesses, namely, Arjun Rajwar as P.W.-1, Gour Rajwar as P.W.-2 and Gangadhar Rajwar, who is the plaintiff and son of Bhikhani Devi as P.W.-3 were examined. The documents exhibited on behalf of the plaintiff-appellant are: (1) Exhibit-1, Map duly prepared by Amin Amulya Ratan Mahto, (2) Exhibit-2, *Panchnama* dated 25.04.2018, (3) Exhibit-2/1, Signature of defendant over *Panchnama* dated 25.04.2018, (4) Exhibit-3, C.C.

of registered sale deed No.1050 dated 29.01.1985, (5) Exhibit-3/1, C.C. of registered sale deed No.4730 dated 03.07.2009, (6) Exhibit-3/2, C.C. of registered sale deed No.3337 dated 18.05.2005, (7) Exhibit-3/3, C.C. of registered sale deed No.3563 dated 05.09.2001 and (8) Exhibit-4, C.C. of Revisional Survey *Khatian*.

13. On behalf of the defendant, three witnesses, namely, Meghnath Ghosh as D.W.-1, Binod Kumar Rajwar as D.W.-2 and Ram Prasad Rajwar, who is the respondent No.1 as D.W.-3. On behalf of the defendant, certain documents have been exhibited which are: (1) Exhibit-A, Bantannama dated 24.06.2014, (2) Exhibit-A/1, Signature of the plaintiff in Bantannama dated 24.06.2014, (3) Exhibit-B, Original map prepared by Amin Amulya Ratan Mahto, (4) Exhibit-C, C.C. of joint compromise petition in Cr. Misc. Case No.13/2017 and (5) Exhibit-D, C.C. Copy of order sheet dated 25.11.2017 in Cr. Misc. Case No.13/2017.

14. The learned Trial Court after considering the oral as well as documentary evidence, held that the suit as framed was maintainable and was not barred by law of limitation. However, Gita Devi, the sister of the parties was a necessary party to the suit, who was not impleaded as a party and there was nothing on record to show that any deed of relinquishment was made or executed by said Gita Devi. The learned Trial Court while considering the issue Nos. III and IV held that there was absence of sufficient evidence to show that there was any previous partition by metes and bounds between the parties

and that the presumption of unity of title and unity of possession was not rebutted by any sufficient evidence. Under such circumstances, the learned Trial Court decreed the suit of the plaintiff holding that the plaintiff was entitled to 1/3rd share in it as the plaintiff along with his brother and sister were also entitled to a share in the suit property. Accordingly, the suit of the appellant-plaintiff to the extent of 1/3rd share was decreed and a preliminary decree to that effect was passed. Further, order was passed for preparation of final decree by appointing the Survey Knowing Pleader Commissioner.

15. Dr. Vandana Singh, learned counsel appearing on behalf of the appellant-plaintiff has submitted that in course of hearing of this appeal, by the order of this Court, the sister i.e. Gita Devi was impleaded as a party to the appeal. *The said respondent No.2 appeared before the Court acknowledging the factum of relinquishment of her share in favour of her brothers and for the said purpose, it was proposed that she would be filing a petition to that effect before this Court, which was not filed*. However, the fact remains that the sister does not claim any share in the property as she has relinquished her share in favour of her two brothers. Under such circumstances, the plaintiff was entitled to ½ share in the entire suit property, which fact was not considered by the learned Trial Court while passing the impugned judgment and decree.

16. Dr. Singh further submitted that even otherwise, the said respondent No.2 i.e. Gita Devi would be entitled to a share only in respect of the

property of the mother and not in respect of the property which was jointly acquired by her brothers i.e. the present appellant and the respondent No.1 but the learned Trial Court committed an error in law and fact in not passing a decree of ½ share in respect of Schedule-A property and thus the impugned judgment and decree to that extent is fit to be set aside.

17. Dr. Singh has further submitted that there are further issues, particularly the issue relating to possession, construction of house etc. which have not been considered while passing the preliminary decree. However, in all fairness, she has submitted that these questions can be considered even at the stage of final decree when actual demarcation of land would be done by following the principles of partition where the possession of the parties and the construction made by the respective parties is to be respected, if it is equitable. Therefore, it has been further submitted that the only point for determination which arises in this case is whether the claim of relinquishment as put forward by the parties in respect of the share of Gita Devi in favour of her two brothers was fit to be considered or not and whether a decree for partition of 1/3rd share in respect of Schedule-A property could have been passed. Hence, prayer has been made to allow the appeal by setting aside the impugned judgment and decree and decreeing the suit in favour of the appellant-plaintiff by passing a decree that the plaintiff was entitled to ½ share in the entire suit property.

18. *Per contra*, Mr. Sunil Singh, learned counsel appearing on behalf of the respondent No.1 has submitted that the appellant had taken up a plea of previous partition, which was not considered. It has been further submitted that there was no document on record that there was any relinquishment of share of the respondent No.2 in favour of the appellant and the respondent No.1 and, therefore, the respondent No.2 was lawfully entitled to a share in the property. However, learned counsel for the respondent No.1, in all fairness, concedes that Schedule-A property was jointly acquired by the appellant and the respondent No.1 and it was not the paternal property of the parties. It has been also argued that certain aspects of the case were not considered with regard to possession of the parties and the respective construction of house by them over the land in their possession, which was based on amicable family partition through a *panchayati*. On these arguments, prayer has been made to pass appropriate orders.

19. In course of argument, learned counsel for the Respondent has submitted that though the Respondent had a claim of previous partition, which was disbelieved by the learned Trial Court, but he has neither filed any cross appeal nor has taken cross objection in this appeal.

FINDINGS

20. Heard the learned counsel appearing on behalf of the appellant and the respondent No.1 and perused the Trial Court Record and also the materials available on record.

21. After hearing the rival contentions of the parties, the short Point for determination which falls for consideration before this Court is ***whether the properties described in Schedule-A of the plaint were jointly acquired by the appellant and the respondent No.1 or it was the paternal property where the respondent No.2 was also entitled to a share in it***.

22. Above being the dominant point for determination would put at rest to the entire issues involved in the present appeal.

23. In course of argument, the fact is not in dispute that Schedule-B property was acquired by the mother of the parties, and the law is not in dispute that on death of the mother, all her legal heirs would be entitled to a share in it. ***In so far as Schedule-B property is concerned, this property admittedly belonged to the mother of the parties and upon her death all her three legal heirs i.e. two sons and one daughter Gita Devi would be equally entitled to a share in it and to that extent the preliminary decree awarding 1/3rd share of each of the parties is in accordance with law***. Oral plea of relinquishment cannot be entertained as relinquishment has to be evidenced by registered document. Relinquishment comes under the meaning of transfer, under the T P Act, which mandatorily requires registration. More so, in the facts of the present case, the appellant or the respondent No.1 have not come up with any document of relinquishment and even if the respondent No.2, despite orally admitting the factum of relinquishment, but in absence of a

registered instrument or any valid document i.e. a judicial order recognizing relinquishment, such plea of relinquishment cannot be entertained.

24. So far as Schedule-A property is concerned, there being four properties described in it as Item No. I, II, III and IV. Four sale deeds have been exhibited. Exhibit-3 is sale deed No.1050 dated 29.01.1985 where the purchasers are Ram Prasad Rajwar and Gangadhar Rajwar and the property relates to land of Plot No.1120 measuring an area of 33 decimals, which is described in Item No.I of Schedule-A of the plaint. Similarly, 2nd exhibit i.e. Exhibit-3/1 also shows that the purchasers are Ram Prasad Rajwar and Gangadhar Rajwar, which relates to Item No. II of Schedule-A of the plaint. It is apparent that four sale deeds show that the same are jointly acquired by the present appellant and respondent No.1. The ld. Trial Judge in its judgment, which presently is under challenge, has also concluded that the schedule A property was acquired by the two brothers i.e. the present Appellant and Respondent no.1. Under such circumstances, various properties described in Schedule-A of the plaint shall be considered to be the joint property between the appellant and the respondent No.1, where the respondent No.2 i.e. their sister was not entitled to any share in it. However, the learned Trial Court despite deliberating on the various documents and the admitted contention of the plaintiff and the defendant i.e. the present appellant and the respondent no.1 that Schedule-A property was

admittedly jointly acquired by the appellant and the respondent No.1, decreed the suit allowing only 1/3rd share in Schedule-A property, which to the considered view of this Court, is not in accordance with law.

25. The sole question for determination as formulated by this Court rests answered, ***that the properties described in Schedule-A of the plaint was not the paternal property of the parties rather it was jointly acquired property by the appellant and the respondent No.1 where both the appellant and the respondent No.1 were equally entitled to ½ share in it***.

26. There is nothing on record to show that it was a HUF acquisition arising out of the funds of joint family nucleus and hence allowing 1/3rd share to the sister of the parties in Schedule-A of the plaint was contrary to the materials on record.

27. This Court, therefore, is of the considered view that passing of the preliminary decree to the extent of 1/3rd share in respect of Schedule-A property is not in accordance with law. The plaintiff and the defendant No.1 were equally entitled to an equal share in Schedule-A property and a ***decree to the extent of ½ share in respect of Schedule-A property ought to have been passed***.

28. It is reiterated that so far Schedule-B property is concerned, the same, admittedly was in the name of the mother of the parties where all three class I legal heirs would be entitled to an equal share and in

this case the appellant, the respondent No.1 and the respondent No.2 were entitled to an equal share in it. Therefore, the decree of 1/3rd share in respect of Schedule-B property of the plaint is, hereby, **affirmed**.

29. Certain incidental questions, which comes up for consideration before this Court relates to the question of construction of house by the appellant and the respondent and also possession by the parties, may be, by way of mutual convenience or through some unrecognized partition. The law is settled particularly in relation to partition that at the time of preparation of final decree, the Court should consider the respective possession of the parties and respect the same, so far it is equitable. Further, if construction has been made by any of the parties, effort should be made to ensure that such portion of land is allotted to the share of the person, who has made construction over it but all these comes up with a rider that under no circumstance, the partition can be in-equitable considering the previous possession or any construction made by the respective parties. Therefore, these questions remain open for consideration at the time of preparation of final decree and, hence, at this stage no comment is required to be made on these aspects of this case.

30. Having considered the entire contentions of the parties and having decided the point for determination as formulated by this Court, the present First Appeal is **partly allowed** only to the extent that the preliminary decree is, **modified** as discussed above. ***To conclude,***

the preliminary decree with respect to Schedule-A property is modified and it is held that the appellant and the respondent are equally entitled to ½ share in Schedule-A property while so far as Schedule-B property is concerned, the appellant, respondent No.1 and respondent No.2 are equally entitled to 1/3rd share in Schedule-B property. With the above observation and modification in the preliminary decree, the present First Appeal is **partly allowed**.

(Manoj Prasad, J.)

October 30th, 2026
N.A.F.R.
Madhav/-
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