**Decision Number:** 8845

**Decision Date:** 2068/08/28 (2011/12/13)

**Final Decision:** Supreme Court, Joint Bench

**Pre-Decisions:** Rupandehi District Court, Butwal Appellate Court

**Petitioner:** Kismati (Defendant)

**Respondent:** Shivpujan Murav (Plaintiff)

**Key Words:** Partition, Land Management, Evidence, Inheritance Right

## Key Points:

1. Implementation of laws formulated for land management purposes cannot adversely affect the inheritance rights of shareholders in the absence of concrete evidence supporting such impact.

2. Voter lists prepared to streamline the election system are related to election activities and cannot be considered absolute proof of separation of shares in the absence of other evidence.

3. Secondary evidence cannot take precedence over primary evidence in the absence of the latter.

4. When classifying documentary evidence, it must be examined under which law and for what purpose they were created. Documents created for other purposes cannot take the place of primary evidence for the purpose of partition.

## Facts of the Case

\* Jangi Murav had four sons: the plaintiff's father Gopi, Chaitu, Tulsi, and Harihar.  
\* Tulsi Murav's son is the defendant Bhola Murav.  
\* Chaitu's son is the defendant Ramnarayan, and daughter-in-law is Kismati Murav.  
\* Harihar passed away unmarried.  
\* The plaintiff claimed that they had been living together as a joint family and had not partitioned their property.  
\* After their mother's death, the defendants mistreated them and discriminated in food and clothing.  
\* When the plaintiff demanded their share on Bhadra 1, 2062 B.S., the defendants refused, leading to the filing of the lawsuit.

## Petitioner's Contention

The plaintiff claimed that they were mistreated and discriminated against by the defendants.The plaintiff requested the court to divide the property into three parts, allocate one part to the plaintiff, and register it in their name.

## Respondent's Contention

The defendants claimed that Gopi Murav had already taken his share in India and was residing there. The defendants argued that the plaintiff was not a resident of Nepal. The defendants asserted that the property to be partitioned was not registered in their name. Defendant Ramnarayan argued that the property acquired from his salary and retirement benefits from Rastriya Bank was his private property and not subject to partition.

## Legal Issues

1. Whether the land registration details and voter list can be considered as evidence of partition.

2. Whether the property acquired by Ramnarayan from his employment at Nepal Rastriya Bank is subject to partition.

3. Whether the ancestral property was already divided in India.

## Judgment

The Supreme Court upheld the Butwal Appellate Court's decision with some modifications. The court stated that land registration records and voter lists are not sufficient evidence to prove partition. The court also stated that the property acquired by Ramnarayan from his employment at Nepal Rastriya Bank is his personal property and is not subject to partition. The court reasoned that since the plaintiff's father had not taken his share of the property as per the existing laws, the plaintiff is entitled to a share in the ancestral property excluding the property earned by the defendant.

## Significance

This case clarifies the type of evidence required to prove partition under Nepali law, especially in cases where parties claim prior division of property in another country or rely on land registration documents and voter lists as proof of partition. The decision also addresses the issue of whether property acquired through personal earnings is subject to ancestral property partition. The case cites Muluki Ain, Section 1 and 30 concerning partition and Evidence Act 2031, Section 3, 27(2) and 28.

## Source:

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