

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 471 of 2003

(Against the judgment dated 25.06.2003 passed by learned 9th Additional District Judge, Hazaribag in Title Appeal No. 53 of 1993)

1. (a) Bilwa Devi, D/o Late Jaglal Gope, R.O.- Masrotu, P.O.- Rewdi, P.S.- Katkamsandi, Dist.- Hazaribagh
2. Mathura Gope
3. (a) Most. Nanki Devi, W/o Late Kedar Gope
3. (b) Santosh Kumar, S/o Late Kedar Gope
3. (c) Gagan Kumar, S/o Late Kedar Gope
All residents of village - Masrotu, P.O.- Rewdi, P.S.- Katkamsandi, Dist.- Hazaribagh
4. Banshi Gope
Nos. 3 to 4, all sons of Late Jaglal Gope.
5. Most. Maína Devi, wife of Late Mohru Gope.
All resident of Village- Masrotu, P.O.-Rewdi, P.S.- Katkansandi, District -Hazaribagh.

..(Defendant- Appellant) APPELLANTS.

Versus

1. (A) Most. Haro Devi, W/o Late Raghu Mahto
1. (B) Sibu Gope
1. (C) Chandra Deo Gope
1. (D) Umesh Gope
1. (E) Basudeo Gope
(B) to (E) sons of Late Raghu Mahto, all R/o village- Masratu, P.O.- Rewedi, P.S.- Katkam Saudi, Dist.- Hazaribag
1. (F) Sumri Devi, D/o Late Raghu Mahto, W/o Moti Gope, R/o Village- Banjia, P.O. &P.S.- Kotkamsaudi, Dist.- Hazaribag
1. (G) Munri Devi, D/o Late Raghu Gope, W/o Suresh Gope, R/o village & P.O.- Darh, P.S.- Katkam Sandi, Dist.- Hazaribag
2. Diyar Gope.
3. Mohon Gope.
Both sons of Late Janki Mahto and resident of Village Hurhuru, P.O. and P.S. Hazaribagh, District Hazaribagh.
4. Dahni Devi wife of Baijnath Gope, resident of Village Khirgaon, P.O. and P.S. Hazaribagh, District Hazaribagh.
5. Shankari Devi, wife of Kaila Mahto, resident of Village Dhengura, P.O. and P.S. Katkamsandi, District Hazaribagh.
6. Dasni Devi, wife of Late Shiv Narayan Gope, resident of Village Hurhuru, P.O. and P.S. and District Hazaribagh.
7. Malti Devi, wife of Nirmal Gope, resident of Village Duwari, P.O. Duwari, P.S. Itkhori, District Chatra.
8. Sita Devi, wife of Mahesh Gope resident of Village and P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
9. Chauli Devi, wife of Mahru Gope, resident of Village Birbir, P.O. and P.S. Muffasil, District Hazaribagh.

10. Mutari Devi, wife of Sri Komal Gope, resident Village Chano, P.O. and P.S. Muffasil, District Hazaribagh.
11. Bimla Devi, wife of Fodar Gope of Village Babhanbay, P.O. and P.S. Muffasil, District Hazaribagh.
12. Bali Devi, wife fo Dukhan Gope of village Masratu Tola, Murgitand @ Krishna Nagar, P.O. & P.S.- Katkamsandi, Dist.- Hazaribagh
13. Kalo Devi wife of Rameshwar Gope of Village Birbir, P.O. and P.S. Muffasil, District Hazaribagh.
14. Mostt. Kalo wife of Late Kailash Gope.
15. Tekan Gope son of Late Budhan Mahto. Both resident of Village Masratu, P.S. and P.O. Katkamsandi, District Hazaribagh.
16. Rohni Kumari, minor daughter of Late Kailash Gope of Village Masratu, P.O., P.S. Katkamsandi, District Hazaribagh, through her mother, natural guardian and next friend.
17. Sona Mahto.
18. (A) Suresh Gope
18. (B) Karu Gope, both S/o of Late Mohan Gope, Both residents of Masratu, P.O.- Rewali, Dist.- Hazaribagh (Jharkhand)
18. (C) Punam Devi
D/o Late Mohan Gope, W/o Fukhand Gope, R/o, village- Krishna Nagar, P.O.- Rewali, P.S.- Katkamdag, Dist.- Hazaribagh (Jharkhand)
19. Tejan Mahto
20. (A) Basant Gope
20. (B) Ashoke Gope
Both sons of Late Dukhan Mahto, Both R/o village- Masratu, P.S. & P.O.- Katkamsandi, Dist.- Hazaribagh
20. (C) Kapur Devi, D/o of Late Dukhan Mahto, W/o Suresh Gope
R/o Village - Kairso, P.O.- Barhi, Dist.- Hazaribagh
21. Kishun Mahto, son of Late Babun Mahto, resident of village- Dhengura, P.S. & P.O.- Katkamsandi, Dist.- Hazaribagh
22. Manwa Devi, wife of late Janki Mahto
23. Chamtu Gope
24. Bhuneshwar Gope,
Both the minor sons of Late Janki Mahto, through their mother and natural guardian, respondent nos. 22 to 24 all resident of Village Masratu, P.O. and P.S. Katkamsandi, District Hazaribagh.
25. Degni Devi (D/o Late Janki Mahto) wife of Bhuneshwar Gope, resident of Village Mahugain, P.O. and P.S. Barkagaon, District Hazaribagh.
26. Silwa Devi wife of Nemi Chand Gope, resident Village Murgitanr, P.O. and P.S. Katkamsandi, District Hazaribagh.
27. Samri Devi, wife of Dharamchand Mahto, resident of Village Chano, P.O. and P.S. Katkamsandi, District Hazaribagh.
28. Bhulani Devi, wife of Fuchan Mahto, resident Village Bandia, P.O. and P.S. Katkamsandi, District Hazaribagh.
29. Chhotu Mahto, descendent of Harpa and Durpa son of Harpa of Village Mosratu, P.O. and P.S. Katkamsandi, District Hazaribagh.
30. Dholi Devi wife of Late Punit Mahto(died on 3.7.03).
31. Dino Gope.

32. Binod Gope.
33. Suresh Gope.
all sons of Late Punit Mahto, residents of Village Birbir, P.O. and P.S. Sadar, District Hazaribagh.
34. Md. Sadique son of Sobran Mian, resident Village Masratu, P.O. and P.S. Katkamsandi, District Hazaribagh.
35. Fahimuddin.
36. Allauddin.
37. Ishaque.
All sons of Late Amir Mian, all resident of Village Masratu, P.O. and P.S. Katkamsandi, District Hazaribagh.
38. Md. Nojam.
39. Md. Ajim. Both sons of Late Sukar Mian (died on 27.6.2003.).
40. Ara Khatoon wife of Late Sukar Mian, respondent nos.38 to 40 all are resident of Masratu, P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
41. Noor Mohamad son of Md. Ali, resident of Masratu, P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
42. Samsunissa, widow of Late Basrat Ali.
43. Allauddin, son of Late Basarat Ali.
44. Yakub.
45. Faruque.
46. Samsuddin.
All sons of Late Gafoor, All are residents of Village Masratu, P.O. Rewali, P.S. Katkasandi, District Hazaribagh.
47. Bandhu, son of Janki & resident of Masratu, P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
48. Jumma Debi wife of Jhari Pandey, resident of Village Masratu, P.S. Katkamsandi, P.O. Rewali, District Hazaribagh.
49. Mathura Gope, son of Shankar Gope.
50. Pachu Mahto, son of Heman Mahto.
51. Madina Khatoon wife of Wali Mohammad, All are resident of Village Masratu, P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
52. Sohar Mahto son of Wazir Mahto, resident of Village Mahudar, P.O. and P.S. Katkamsandi, District Hazaribagh.
53. Kaila Mahto grand son of Titu Mahto deceased resident of Village Masratu, P.O. Rewali, P.S. Katkamsandi, District Hazaribagh.
54. Most. Etwaria, wife of Late Deoki Bhuiyan.
55. Haridas Ram.
56. Basudeo Ram.
57. Kishun Ram.
58. Tileshwar Ram(minor)
respondent no. 55 to 58 all sons of Late Deoki Bhuiyan, All residents of Village Masratu, P.O. Rewali, P.S. Katkamsandi, minor son of Late Deoki Bhuiyan is represented through his mother and natural guardian Most. Etwaria who has no adverse interest against the minor.
59. Beni Bhuiyan son of Late Bhukhan Bhuiyan,
60. Kedar Ram.
61. Karu Ram.

Both son of Late Parsadi Ram, deceased.

62. Lalo Bhuiyan.

63. Sahdeo Bhuiyan.

Both son of Late Daulat Bhuiyan, deceased.

64. Most. Panwa, wife of Late Rudan Mahto.

65. Bhola Gope.

66. Bulan Gope.

67. Babulal Gope.

68. Bhuneswar Gope.

respondent no.65 to 68 all are sons of Late Rudan Mahto.

69. Budhni Devi wife of Late Fakhan Mahto.

70. Riyas.

71. Imamuddin.

Both sons of Late Ali Mian

72. Alimuddin, son of Late Gendo Mian,

73. Hussain, son of Late Md. Jalil,

74. Khalil son of Late Md. Hafiz,

75. Yunus son of Late Gafoor Mian.

76. Mustafar son of Late Mahbul Mian,

77. Shanti Devi wife of Banshi Pandey.

78. Bijay Laxmi Devi, wife of Kedar Pandey. All residents of Village
Masratu, P.O. Rewali, P.S.- Katkamsandi, District Hazaribagh.

.....(Respondents- Defendants) Respondents

79. (a) Deo Nath Bhagat

79. (b) Prakash Bhagat

79. (c) Ashok Bhagat

79. (d) Rajendra Bhagat

79. (e) Sunil Bhagat

79. (f) Anil Bhagat

Respondent nos. 79 (a) to 79 (f) are sons of Late Arti Devi, R/o
village- Masratu, P.O. & P.S.- Katkamsandi, Dist.- Hazaribag

.....(Defendants- Appellants) Respondents

For the Appellants

: Mr. Amar Kr. Sinha , Adv.

Mr. Kundan Kr. Ambastha , Adv.

Mr. Anurag Chandra , Adv.

Mr. Anupam Kishor Prasad , Adv.

For the Respondents

: Ms. Vandana Singh, Adv.

Ms. Neha Pandey, Adv.

Mr. M.K.Laik , Sr. Adv.

Mr. Manjusri Patra , Adv.

Mr. Pratik Sen , Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOWDHARY

By the Court:- Heard the parties.

2. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred against the judgment of concurrence dated 25.06.2003 passed by learned 9th Additional District Judge, Hazaribagh in Title Appeal No. 53 of 1993 whereby and whereunder, learned First Appellate Court dismissed the appeal and confirmed the judgment and decree passed by learned trial court being learned Subordinate Judge III, Hazaribagh in Partition Suit No. 32 of 1983 / 27 of 1989.
3. The brief facts of the case is that the respondent-plaintiff filed Partition Suit no. 32 of 1983 in the court of learned Subordinate Judge III, Hazaribagh with a prayer for partition of one third share in respect of the suit properties as mentioned in Schedule A to the plaint.
4. The case of the plaintiff is that Juman Mahto is the common ancestor of parties to the suit. The plaintiff and the defendants constitute a joint Hindu family. The undisputed fact of both the parties is that Juman Mahto had three sons being Bandhan Mahto, Lalo Mahto and Bhanjo Mahto. The plaintiffs are the descendants of Lalo Mahto and the defendants are the descendants of Bandhan Mahto and Bhanjo Mahto. Thus, the plaintiff claimed that he is entitled to 1/3rd share from the property left behind by the common ancestor Juman Mahto, hence, the plaintiff filed the suit for partition.
5. It is the case of the plaintiffs that though there was separation between the said three sons of Juman Mahto in respect of their residence and mess but they cultivated the land jointly for the sake of convenience. With passage of time, the plaintiff cultivated some land separately and some lands jointly and some land were given in Dar - Raiyati to some of their servants. In the Cadastral Survey

operation, the possession of Dar -raiyats having separate cultivation of some lands for the sake of convenience was entered in the Record of Rights. A few years after Cadastral Survey, the recorded Dar -raiyats left the village and ceased to hold the possession of the land recorded in the Khatiyan. The plaintiff pleaded that that the defendant nos. 1 to 8 have 1/3rd share and the defendant no. 9 to 12 have 1/3rd share. The plaintiff demanded partition by metes and bound and initially by differing with the proposal of the plaintiff, ultimately on 15.03.1993, the defendants refused for partition of the lands by metes and bounds and hence, the plaintiff filed the suit.

6. The defendant no. 1- Jaglal Mahto filed his separate written statement. The defendants nos. 6 and 7 together filed a set of written statement. The defendant no. 14 to 18 filed another set of written statement. The defendant no. 20, 24, 27 and 29 also filed a separate written statement.
7. In his written statement, the defendant no. 1 challenged the maintainability of the suit on various technical grounds. The defendant no. 1 specifically, pleaded that the suit land has been partitioned by Sohar Mahto and his brothers, who are descendants of Bandhan Mahto on one side and Ugan Mahto who is the father of the plaintiff and the descendants of Bhanjo Mahto in the year 1925 and thereafter, there is no joint family property. The lands which were allotted to Ugan Mahto i.e. the father of the plaintiffs has been specified under Schedule A of the written statement. After the partition in the year 1925, the brothers of Jigan Mahto and his nephew Jaglal also partitioned the lands amongst themselves in or about the year 1938. The lands which were allotted to Jaglal Mahto is mentioned in the Schedule B of the written statement

and the land which were allotted to Hiro Mahto has been mentioned in schedule C of the written statement. Thus, the parties to the suit are in separate and exclusive cultivation and possession of the land allotted to them by said partition and they have been selling and transferring the lands also. The defendant no. 1 further pleaded that the plaintiffs also sold the lands of the suit land vide registered sale deed dated 24.09.1970 and the defendants have also sold the lands to various persons by registered documents. The defendant nos. 6 and 7 in their written statement took similar plea as that of defendant no. 1 and challenged the maintainability of the suit on various technical grounds and also claimed previous partition for the suit property and pleaded that the properties have been sold by the parties to the suit. The defendant no. 9 and 10 in their written statement also challenged the maintainability of the suit on various technical grounds. They admitted the entire case of the plaintiff and they claimed the partition of the suit land. The defendant no. 13 pleaded that the plot no. 2600 was never in possession of the plaintiff. The defendant no. 14 to 18 who were subsequently impleaded as defendants in the suit, in their written statement pleaded that Hiro Mahto separately possessed and cultivated the portion of the suit land and transferred the same to the defendants by way of registered sale deed. Similarly, the defendant no. 20, 24, 27 and 29 who were subsequently added as defendants in the suit, in their written statement claimed partition.

8. Learned trial court on the basis of the pleadings of the parties, framed the following issues:-
 - a. *Is the suit maintainable in its present form?*
 - b. *Has the plaintiff any cause of action for the suit ?*
 - c. *Is the suit barred by law of limitation and adverse possession?*
 - d. *Is the suit barred by the principles of estoppel, waiver and*

acquiescence ?

- e. *Is the suit barred by non-joinder and mis-joinder of necessary parties?*
 - f. *Is the suit hit under section 34 of the Specific Relief Act ?*
 - g. *Is there unity of title and unity of possession between the parties?*
 - h. *Is the plaintiff entitled for a decree of partition as prayed for?*
9. In support of their case, the plaintiff examined five witnesses and proved the documents which have been marked as Ext. 1 to 3. From the side of the defendants, 27 witnesses were examined and documents were also proved which have been marked as Ext. A to H-1.
10. Learned trial court first took up issue nos. (g) and (h) together and after considering the evidence in the record, came to the conclusion that the defendants have failed to prove their contention that there has been a previous partition between the parties by metes and bounds rather the evidence of the plaintiff and also the evidence of some of the witnesses examined by the defendants, goes to show that at no point of time, there was any partition and held that there is unity of title and possession between the parties and the plaintiff is entitled for a decree of partition.
11. Learned trial court next took up issue no. (e) and after considering the evidence in the record, came to the conclusion that the suit is not barred by non-joinder or mis-joinder of the parties.
12. Learned trial court next took up issue nos. (a), (b), (c), (d) and (f) together and after considering the evidence in the record, came to the conclusion that the suit is maintainable in its present form and there is no error or omission in the framing of the suit. There is cause of action for the suit and disposed of issue nos. (c), (d) and (f) as not pressed by the defendants, and went on to hold that the plaintiff is entitled to 1/3rd share of the land as mentioned in the plaint and decreed the suit.

13. Being aggrieved by the judgment and decree passed by learned trial court, the defendant - Jaglal Mahto, and others filed Title Appeal no. 53 of 1993 in the court of learned Principal District Judge, Hazaribagh which was ultimately heard and disposed of by learned First Appellate Court .

14. Learned First Appellate Court considering the materials available in the record and submissions made before it, formulated the following point for determination:-

"Whether the objections contained in the memo of appeal are sustainable against the impugned judgment and decree or not?"

15. Learned First Appellate Court made independent appreciation of the evidence in the record and considered that the sale deeds executed by Hiro Mahto, out of which one is in favour of sons of Jaglal Mahto and other in favour of Maina Devi, daughter of Jaglal Mahto, have not been proved by cogent evidence and such sale deeds were collusive ones.

16. Learned First Appellate Court then considered that the defendants have not proved any sale deed executed by the plaintiff in favour of Shanti Devi and Vijay Laxmi as claimed by the defendants and considering the Ext. 1 series, Ext. 3 and the evidence of the PWs as well as the admissions of the plaintiff's case by some of the witnesses of the defendants, that the suit land was joint between the parties and as the defendants have not been able to prove that the disputed land was partitioned in the year 1925 and 1938, as pleaded by them.

17. Learned First Appellate Court further considered the presumption of the joint-ness in Hindu Family and as no partition could be proved by the defendants as pleaded by them and as there was no partition by the metes and bound, learned First Appellate Court went on to hold

that the suit for partition filed by the plaintiff is maintainable and confirmed the findings of learned trial court.

18. The predecessor Judge in the roster on the basis of the submissions made before it, formulated the following point for determination vide order dated 04.12.2008-

"Whether the actual transaction between the members of the joint family admitting about the previous partition is a strong evidence of separation as evident from Ext. G series ?

19. Learned counsel for the appellants relying upon the judgment of a co-ordinate Bench of this Court in the case of **Dukhi Sahu v. Ram Kumar Sahu** reported in **2008 2 JLJR 475**, para 21 of which reads as under as under :-

"21. Though separate transactions by the members of the joint family may not by themselves establishes separation, but mutual transaction between two members of the family stand on entirely different footing and they furnish strong evidence of separation."

submits that as there was mutual transaction between Hiro Mahto who is the descendant of Bandan Mahto and Jaglal Mahto as well as the daughter of Sohar; so they furnished strong evidence of separation which both the courts below failed to take into consideration. In this respect, learned counsel for the appellant also relied upon the judgment of the Hon'ble Patna High Court in the case of **Bhola Nath Mishra & Ors. Vs. Most. Dhari Devi & Ors.** reported in **2017 0 Supreme (Pat) 1393**, in para 20 of which, the Hon'ble Patna High Court relied upon the Division Bench judgement of that Court, in the case of **Ram Bahadur Nath Tiwary vs Kedar Nath Tiwari And Ors.** reported in A.I.R. 1977 Patna 59, where the Division Bench of Hon'ble Patna High Court held that inter-se transaction between the parties is a strong piece of evidence of partition between the parties. If there had been no partition then there is no way how one party

could have transferred particular property to the other party when both are co-sharers and have got equal ownership, hence it is submitted that as both the courts below have failed to consider the Ext. G series; therefore the judgment and decree passed by both the courts below be set aside and the suit of the plaintiff be dismissed on the ground that there being a previous partition of the suit property in the year 1925, the suit for partition filed in the year 1993 is not maintainable.

20. Learned counsel for the respondents on the other hand submits that true it is that mutual transaction between two members of the family is a strong piece of evidence of separation but as has rightly been held by the coordinate Bench in the case of **Dukhi Sahu vs. Ramkumar Sahu (supra)**, such separate transactions by themselves do not establish separation. It is further submitted that since it is the categorical case of the plaintiff that Ext. G series is a collusive document, so such collusive document prepared behind the back of the plaintiff, cannot establish the prior partition between the parties. More so, when the defendants failed to establish their case that the plaintiff has also sold any portion of the suit land as pleaded by them. It is next submitted that the co-sharer can alienate even the joint family property but such alienation will be subject to the partition between the co-shares hence it is submitted that the issue of previous partition being a clear issue of fact and as no perversity has been committed by either of the courts below in arriving at the finding of fact that there was no partition by metes and bound between the plaintiff and the defendants, the same is not open to be interfered with by this Court exercising its power under Section 100 of the CPC in appreciating the evidence in the record; hence it is submitted that this Second Appeal being without any

merit be dismissed.

21. Having heard the submissions made at the bar and after going through the materials in the record, it is pertinent to mention here that it is a settled principle of law that the burden is upon that person taking plea of a partition, to prove that fact. The general principle is that an undivided Hindu Family is presumed to be joint unless the contrary is proved. The finding whether there was partition or not is a finding of fact and interference in the concurrent findings of the facts on this point by exercise of power under Section 100 of the Code Of Civil Procedure is not justified, as has been held by the Hon'ble Supreme Court of India in the case of **Bhagwati Prasad Sah and Others vs. Dulhin Rameshwari Kuer and Another** reported in **1951 0 SCR 603**.
22. Now coming to the sole substantial question of law as formulated by the Predecessor Judge in the roster, i.e. as to whether the actual transaction between the members of the joint family admitting about the previous partition is a strong evidence of separation as evident from Ext. G series is concerned, had there been any admission on the part of the plaintiff about previous partition, either by executing a sale deed or by any other mode, of course, the same would have been a strong piece of evidence, leading the court to the conclusion that there was an earlier partition, but the fact remains in this case that the plaintiff is not a party to the Ext. G series and there is absolutely no admission on the part of the plaintiff anywhere that there was any previous partition. The Ext. G series has been *inter se* the transfer of land made by the descendants of branch of Budhan Mahto, whereas the plaintiff is the descendant of the brother of Budhan, namely Lalo Mahto, hence, this Court is of the considered view that since plaintiff has not admitted anywhere of

any previous partition, nor the plaintiff is party to any document, which would even remotely show that he had any knowledge of any previous partition and also considering the fact that the defendants have failed to put forth as to in what manner, the partition was effected between the ancestors of the defendants and the plaintiff and exact date of any such partition, the concurrent findings of facts arrived at by both the courts below that the defendants failed to establish any previous partition; in the considered opinion of this Court, cannot be termed as perverse, as such finding of fact, has not been arrived at by excluding any admissible evidence in the record or by taking into consideration any inadmissible evidence in the record nor such finding of fact can be termed as outrageously defying any logic, incurring the blame of being perverse, so this Court is of the considered view that though it is a settled principle of law that the admission made about the previous partition by the members of the joint family, is a strong evidence of separation but in the facts of the case, in view of the concurrent finding of fact, which cannot be termed as perverse, this Court certainly cannot re-appreciate the evidence in the record in exercise of its power under Section 100 of the Code of Civil Procedure and under such circumstances, cannot set aside the finding of fact of both the courts below that the defendants have failed to prove the previous partition in the year 1925, set up by them, so the sole substantial question of law is answered accordingly.

23. In view of the discussion made above, this Court is of the considered view that there is no merit in this Second Appeal. Accordingly, this Second Appeal is dismissed on contest but under the circumstances, without any cost.
24. Let a copy of this Judgment along with the Lower Court

Records be sent to the Court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 26th November, 2024
Smita / AFR