

Saburj Devi Vs. Chandrawati Devi

Saburj Devi Vs. Chandrawati Devi

SooperKanoon Citation : sooperkanoon.com/119932

Court : Patna

Decided On : Apr-28-1998

Judge : Radha Mohan Prasad, J.

Appeal No. : A.F.O.D. No. 908 of 1970

Appellant : Saburj Devi

Respondent : Chandrawati Devi

Disposition : Appeal Dismissed

Prior history : Radha Mohan Prasad, J. 1. This appeal is directed against the judgment and decree 30th June, 1970 and 9th July, 1970 respectively passed in Partition Suit No. 17 of 1967 by the Subordinate Judge, Motihari, whereby the suit has been decreed on contest against defendants 1 to 4 and the plaintiffs have been held to be entitled to a decree for partition of the suit lands detailed in Schedules 1 and 2 of the plaint. 2. The plaintiffs-respondents filed the suit for partition of the said lands.

Judgement :

Radha Mohan Prasad, J.

1. This appeal is directed against the judgment and decree 30th June, 1970 and 9th July, 1970 respectively passed in Partition Suit No. 17 of 1967 by the

Subordinate Judge, Motihari,

whereby the suit has been decreed on contest against defendants 1 to 4 and the plaintiffs have been held to be entitled to a decree for partition of the suit lands detailed in Schedules 1 and 2 of the plaint.

2. The plaintiffs-respondents filed the suit for partition of the said lands. Admittedly, Bisheshwar Rai and Achhaibar Rai were full brothers. Plaintiffs and defendants 1st part belong to the branch of Achhaibar Rai and defendants second party belong to the branch of Bisheshwar Rai. Admittedly, Achhaibar Rai and Bisheshwar Rai separated before the revisional survey. However, according to the plaintiffs, there was separation but there was no partition of the lands by metes and bounds whereas according to the contesting defendants, there was separation in all respects.- Mahabir Singh, Jadu Singh and Bir Singh were sons of Achhaibar Rai and separated before survey. According to the plaintiffs, there has been no batwara of the lands which belonged to Mahabir, Bir and Jadu Whereas, according to the contesting defendants, there has been batwara of the said lands by metes and bounds and no property is joint. The lands detailed in Schedule 2 of the plaint are Khata No. 54 which, admittedly, belong to both the branches, namely, Bisheshwar Rai, Achhaibar Rai. Mostt. Deo Sunder Kuer was the widow of Mahabir Rai. However, no dispute has been raised with respect to the said lands.

3. In the present appeal the dispute is with respect to Schedule 1 which relates to Khata No. 53. Thus, the real issue involved in the present appeal is as to whether there was partition by metes and bounds with respect to Schedule 1 property or the separation was simply for the sake of convenience: This issue was bifurcated into three issues, namely, Issues No. 4, 5 and 6, which have been considered together by the Trial Court which on consideration of the evidences held that the evidences of P.Ws. show that the parties have got separate houses of their own since long and that they are cultivating some lands separately for the sake of convenience. On the basis of the Khatian entries with respect to the suit lands it has been held that it does not lend support to the defendants' theory that Bir Singh alone separated and Mahabir Singh and Jadu Singh remained joint and that the

defendants have failed to prove the fact that there has been batwara of the suit lands by metes and bounds. Accordingly, the plaintiffs have been held to be entitled to a decree for partition of the suit lands by metes and bounds of their share to the extent of half in Schedule I lands of the plaint and to the extent of 1/4th in Schedule II lands of the plaint.

4. None has appeared on behalf of the respondents.

5. It was contended by Mr. Devendra Prasad Sharma, learned Counsel appearing for the appellants that the ancestors of the plaintiffs and defendants separated long before survey and this is evident from the survey records also which show that they got their share and are in possession of the respective lands separately. It was also contended that besides the oral evidence, the only documentary evidences filed by the parties are survey Khatians (Ext. A and Ext. A/1). Ext. 1 has been filed on behalf of the plaintiffs whereas Exts. A and A/1 have been filed on behalf of the defendants-appellants. Exts. 1 and A/1 are the certified copy of Khatian with respect to the lands of Khata No. 53 and Ext. A is with respect to lands of Khata No. 54. There is no dispute about correctness of recording in the survey record of rights.

6. On going through the said Exhibits, the Trial Court has rightly held that the Khatian entries, as they are, cannot be much assistance in arriving at a definite conclusion that there has been batwara of the lands by metes and bounds or not. This controversial question has to be decided on the evidence adduced by the parties keeping in view also the Khatian entries. The Trial Court has relied upon the Jamabandi of all the lands which, admittedly, is joint till today and one rent receipt was granted for all the lands in the name of Gaya Singh (plaintiff No. 1) which is evident from the evidence of defendant No. 2 himself who has been examined as D.W. 11. Same is the evidence of D.W. 7 and other witnesses and as such, the Trial Court has rightly put the onus on the contesting defendants to prove the theory of batwara of the lands and of the separation of Bir Singh, Jadu Singh and Mahabir Singh, as alleged. The Trial Court has considered the oral evidence of both the parties in detail and no infirmity has been pointed out by the learned Counsel for the appellants. The evidences of defendants witnesses and

the plaintiffs witnesses at best show that the parties have got separate houses of their own since long and that they case cultivating some lands separately for the sake of convenience but cannot be derived therefrom that there was partition of the suit lands by metes and bounds as alleged by the contesting defendants-appellants.

7. Under such circumstances, I do not find any infirmity in the impugned judgment of the Trial Court and the same is, thus, affirmed. The appeal is, thus, dismissed, but without costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com