

Kumar Vivek and ors. Vs. Smt. Binda Devi and ors.

Kumar Vivek and ors. Vs. Smt. Binda Devi and ors.

SooperKanoon Citation : sooperkanoon.com/120616

Court : Patna

Decided On : Jan-18-2006

Judge : M.L. Visa, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 6 and 6(5); Hindu Succession (Amendment) Act, 2005; Registration Act; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 40, Rules 1 and 2 - Order 41, Rule 11

Appeal No. : M.A. No. 109 of 2005

Appellant : Kumar Vivek and ors.

Respondent : Smt. Binda Devi and ors.

Advocate for Def. : Shashi Shekhar Dwivedi, Ajay Kumar and Renu Jha, Advs.

Advocate for Pet/Ap. : Sukumar Sinha, Navin Kumar and Braj Nandan Singh, Advs.

Disposition : Appeal allowed

Prior history : 1. Since, with the consent of both the parties, this appeal was heard for its final disposal along with IA No. 5465 of 2005 when it was listed under the heading 'For Hearing under Order 41, Rule 11 of Code of Civil Procedure (In short 'C.P.C. '), this appeal is disposed of finally by this order. 2. Appellants/defendants have filed this appeal for setting aside order dated 20-1-2005 passed by Sub Judge XII, Patna in Title (Partition) Suit No. 586 of 2002

appointing a receiver in respect of 5/9th

Judgement :

1. Since, with the consent of both the parties, this appeal was heard for its final disposal along with IA No. 5465 of 2005 when it was listed under the heading 'For Hearing under Order 41, Rule 11 of Code of Civil Procedure (In short 'C.P.C. '), this appeal is disposed of finally by this order.

2. Appellants/defendants have filed this appeal for setting aside order dated 20-1-2005 passed by Sub Judge XII, Patna in Title (Partition) Suit No. 586 of 2002 appointing a receiver in respect of 5/9th share of suit properties and directing the receiver to furnish security with regard to account which he will receive in respect of 5/9th share of suit properties, submit his account in the last of every month, to receive remuneration of 10% of the amount received from 5/9th share of suit property and to deposit balance amount in Court which will remain deposited till the decision of the suit.

3. Brief facts of the case are that respondents/plaintiffs have filed Title (Partition) Suit No. 586 of 2002 claiming 5/9th share in the suit properties fully described in Schedule I of plaint (Annexure-1). The suit properties as detailed in Schedule I of plaint are of two types. One property is described as Deo Bhawan situate at Mithapur P. S. Jakkanpur, Patna and other properties are agricultural land situate at Mauza Sipara, Dasratha and Jaganpura. Janak Singh, Deo Prasad Singh and Ram Pyare Singh were brothers. Deo Prasad Singh who was issue-less died in the state of jointness with his brothers and after his death, Janak Singh and Ram Pyare Singh became the owners of joint property with equal shares. Ram Pyare Singh was married to Chain Kueri Devi and she died issueless. Thereafter, Ram Pyare Singh married Pan Kueri Devi. Plaintiff No. 1 is daughter of Ram Pyare Singh from this Pan Kueri Devi and Plaintiffs Nos. 2 to 5 are sons of plaintiff No. 1 meaning thereby they are grandsons of Ram Pyare Singh. Because Ram Pyare Singh did not have a son from Pan Kueri Devi, so he married Deo Kueri Devi who was his third wife and from Deo Kueri Devi, he got a son late Vijoy Singh. Late Meena Devi who was defendant No. 1 was wife of this late Vijoy Singh. Defendants Nos. 2 to 4 are sons of late Vijoy Singh and late Meena Devi. The

further case of plaintiffs/ respondents is that there was a partition of joint family properties through registered deed of partition dated 26-6-1987 between the branches of Janak Singh and Ram Pyare Singh. Suit properties were allotted to late Vijoy Singh, father of defendants Nos. 2 to 4 who was the only male person who represented the branch of Ram Pyare Singh in that partition. Binda Devi and her sons who are plaintiffs/respondents were not parties to that partition deed and in fact they had no knowledge about this partition deed dated 26-6-1987 and Binda Devi could come to know it in the month of Jeth, 2001 when late Vijoy Singh disclosed this matter to her. According to plaintiffs/respondents, they have got share in the properties which fell to the share of branch of Ram Pyare Singh and after partition some other properties were acquired and all properties are mentioned in Schedule I of plaint which are suit land. So long late Vijoy Singh was alive, he used to care for plaintiffs and give share of produce and income to them but after his death, the attitude of defendants completely changed and they are not giving anything to plaintiffs/respondents which compelled plaintiffs/respondents to file the partition suit. According to plaintiffs/respondents, the defendants/appellants are realising several thousands of rupees as rent from Deo Bhawan and huge income from agricultural land but they are not giving any share to plaintiffs/respondents and they are damaging the interests of plaintiffs/respondents and they have sold some land and had invested the income in market building known as Deo Bhawan and they have started negotiation to sell the suit properties to different persons and therefore, they want to gain unlawfully and to cause loss to plaintiffs/respondents.

4. The appellants/defendants appeared and filed written statement pleading inter alia that Bhikhari Singh was the common ancestor of parties who had three sons, namely, Janak Singh, Deo Prasad Singh and Ram Pyare Singh. Out of them Janak Singh died during the lifetime of his father Bhikhari Singh. They admitted that Deo Prasad Singh was issueless and he died in the year, 1976. About Ram Pyare Singh, they admitted that he married thrice and his first wife was Chain Kueri Devi, his second wife was Pan Kueri Devi, the mother of plaintiff No. 1 Binda Devi and grandmother of remaining plaintiffs. Their further admission was that Deo Kueri Devi, who was third wife of Ram Pyare Singh, gave birth to Vijoy Kumar Singh. In this way, the appellants/defendants have admitted genealogical table

given by plaintiffs/respondents but their case is that neither Binda Devi, plaintiff No. 1 who is the daughter of late Pan Kueri Devi nor any of her sons who are other plaintiffs have got any right to seek partition. According to them, Rajeshwar Prasad Singh, husband of Binda Devi was Telephone Operator at Patna and Binda Devi and her husband needed a piece of land to construct their house in the town of Patna and Binda Devi requested her father Ram Pyare Singh for two kathas of land and acceding to this request, Ram Pyare Singh, without consideration and by way of gift, gave two kathas of land to Binda Devi and at that time, Deo Prasad Singh was alive and husband of Binda Devi impressed upon Deo Prasad Singh and Ram Pyare Singh that instead of a deed of gift, a sale deed be executed because any family member subsequently may challenge the deed of gift, therefore, two kathas of land to Binda Devi was given by Ram Pyare Singh through a sale deed but since no consideration money was realised by Ram Pyare Singh from Binda Devi who was his own daughter, the sale deed was in fact a deed of gift. Apart from giving land to Binda Devi, Ram Pyare Singh and Deo Prasad Singh helped Binda Devi and her husband in money matter and building materials for construction of a house and this was all because Binda Devi was daughter of Ram Pyare Singh who never thought of taking any share in the family property on the death of her father Ram Pyare Singh and she openly said that she was fully satisfied with the land given to her by her father and did not want anything more from the property of her father and, therefore, she did not claim any share when registered partition deed on 26-6-1987 was executed among her brother Vijoy Singh and his two sons and one daughter and sons of Janak Singh for partition of joint family property and Binda Devi, her husband and her sons were fully aware about execution of partition deed and because Binda Devi renounced her interest in the joint family property agreeing that property involved in the family arrangement deed dated 26-6-1987 be partitioned among appellants/defendants and registered partition deed is dated 26-6-1987 and Ram Pyare Singh had died in the year, 1982 and by that time, Deo Prasad Singh was already dead who died in the year, 1976 but Binda Devi never claimed any produce or income on the joint family property. The further case of appellants/defendants is that Vidya Singh, son of Janak Singh also made a deed of gift to his son-in-law in the year, 1999 and he also instead of executing a deed of gift gave

the deed the shape of sale deed without any consideration money and the deed was executed out of love and affection for his daughter and son-in-law and this deed contains recital regarding partition dated 26-6-1987 and plaintiff No. 4 Manoranjan Kumar, son of Binda Devi is one of the attesting witness to this sale deed and he did not raise any objection. According to appellants/defendants, Deo Bhawan which is included in suit land is on west of plot No. 187 and Deo Prasad Singh and Shudheshwar Prasad and Bidya Singh who are sons of Janak Singh and nephews of Deo Prasad Singh had separated before 1970 and there was separate mutation of their names in the Anchal and they purchased a three-storeyed house standing on plot No. 187 for valuable consideration from Dhaneshwar Prasad Singh and others and came in the possession as absolute owners and with that purchase and acquisition, Ram Pyare Singh and his son had no concern at all and this house bears Holdings Nos. 207, 208, 209, 210 and 211 and out of these holdings, Holdings Nos. 207 and 207A with land and house was allotted to Deo Prasad Singh in partition and he was in exclusive possession of the same and because he had no issue so out of love and affection, he made a gift in favour of Vijoy Kumar by registered deed of gift dated 3-2-1976 and Vijoy Kumar who was minor accepted the deed of gift through his father and guardian Ram Pyare Singh and he became the absolute owner of gifted properties and remaining Holdings No. 208, 209, 210 and 211 belonging to Vidya Singh and Susheshwar Singh were also purchased by Meena Devi, wife of Vijoy Kumar Singh by virtue of two registered sale deeds dated 1-6-1986 and entire consideration money was paid by Binda Devi and, therefore, all the holdings of S. P. No. 187 as mentioned in Schedule I of plaint with present Holdings No. 28/43/208, 29/44, 30/45, 31/46, 32/47 and 43/48 are exclusive properties of late Vijoy Kumar Singh and his wife Meena Devi who had taken loan from State Bank of Bikaner and Jaipur, R. Block Branch, Patna for further construction and development of the building which is now a triple storeyed building and partly four storeyed and it contains five shops besides residential flats which have been let out to different tenants. The plaintiffs/respondents never laid any claim on this house and the names of Vijoy Kumar Singh and Meena Devi have been recorded for this house who were paying taxes and were getting tax receipts and because Vijoy Kumar Singh died in the year, 2001 leaving behind his widow Meena Devi and two sons and daughter who

succeeded his estate came in possession of all his properties including the Deo Bhawan. The case of appellants/defendants is that the plaintiffs/respondents have no title and possession over the suit properties and their claim is false and frivolous.

5. The plaintiffs/respondents filed a petition under Order 40 Rules 1 and 2 and Section 151 of C.P.C. for appointment of receiver to suit property. The appellants/defendants filed a rejoinder to that petition and after hearing both the parties, the Court below by impugned order allowed the prayer of plaintiffs/respondents and appointed Mr. Shobhapati Brahmotta, Advocate as receiver in respect of 5/9th share of suit property with a further direction to him to furnish security with regard to the account which he will receive in respect of 5/9th share of suit properties, submit his account in the last of every month, to get remuneration of 10% of the amount received from 5/9th share of suit properties and to deposit balance amount in Court which was ordered not to be given to plaintiffs/respondents till the decision of the suit. Against this order, the appellants/defendants have preferred this appeal under consideration.

6. After filing this appeal, the appellants filed IA No. 5465 of 2005 praying therein to stay the operation of the impugned order at least with respect to Deo Bhawan.

7. Mr. Sukumar Sinha, learned Counsel appearing on behalf of appellants has argued that appellants/defendants are exclusive owners and in possession of suit properties and plaintiffs/respondents who are, admittedly daughter and sons of daughter of Ram Pyare Singh have neither title nor possession over the suit properties. About Deo Bhawan which is the part of suit property, he argued that Ram Pyare Singh through whom the plaintiffs/respondents are claiming their share in suit properties did not contribute any share towards consideration of sale deeds through which this property was acquired by Deo Prasad Singh, Sudheshwar Singh and Vidya Singh who purchased the property out of their separate income. On the point of appointment of receivership, he has cited decision of this Bench reported in the case of Dadan Tiwary v. Ramji Tiwary and Ors. 2006 (1) PLJR 238 and has submitted that respondents/ plaintiffs have not been able to make out a case of waste, damage and alienation of property which are relevant

considerations for appointment of a receiver. He has also relied upon a decision of this Court in the case of *The Church of North India and Ors. v. The Anglican Church* reported in 2000 (4) PLJR 810 : 2001 AIHC 1822 by which it has been held that an order of appointment of receiver will not be made where it has the effect of depriving a defendant even of a de facto possession. On the other side, Mr. S. S. Dwivedi, learned Counsel appearing on behalf of respondents/plaintiffs by relying upon a decision of this Court in the case of *Smt. Jairani Devi and Ors. v. Ram Sanehi Singh and Ors.* reported in 1997 (2) PLJR 1009 has argued that when one co-owner occupied the whole property and excluded other co-owners from the shares of the rent and profits of the properties although no waste or mismanagement by the co-owner in possession is proved, a case of appointment of receiver is made out. In this decision, the decision of this Court in the case of *Kamal Chaudhary and Anr. v. Rajendra Chaudhary and Ors.* reported in : AIR1976 Pat366 has been relied upon by which it was held that in a partition suit when one co-owner occupies the whole property and excludes other co-owners from the shares of rents and properties, a case of appointment of receiver is made out although no waste or mismanagement by the other co-owners in possession is proved.

8. Admittedly, plaintiffs/respondents include Binda Devi, daughter of Ram Pyare Singh from his second wife Pan Kueri Devi and sons of Binda Devi. The appellants/defendants are sons and daughter of late Vijoy Singh who was son of Ram Pyare Singh from his third wife Deo Kueri Devi. Meena Devi was the wife of late Vijay Singh and mother of defendants/appellants. Admittedly, Vijoy Singh and Meena Devi both are dead. The case of respondents/plaintiffs is that there was a partition of joint family properties through registered deed of partition dated 26-6-1987 between two branches of Janak Singh and Ram Pyare Singh but in that partition, plaintiff No. 1 Binda Devi or her sons were not parties and they had no knowledge about this partition and Binda Devi could come to know about it in the month of Jeth, 2001' when Vijoy Singh disclosed it to her. The plaintiffs/respondents are claiming share in the properties of the branch of Ram Pyare Singh. On the other hand, the case of appellants/defendants is that although Binda Devi was the daughter of Ram Pyare Singh from his second wife and she was step sister of the father but she was married and she had no share in

the joint family property and Ram Pyare Singh had already made a gift of two kathas of land in her favour although in the shape of sale deed, therefore, neither she nor her any son got share in the partition which was effected by a registered deed dated 25-6-1987.

9. Mr. Sukurnar Singh, learned Counsel of appellants has argued that Ram Pyare Singh died in the year, 1984, therefore, in the partition effected by registered deed dated 26-6-1987, the appellants/defendants were parties. His submission that Ram Pyare Singh died in the year, 1984 has not been challenged. His further submission that the land on which Deo Bhawan is standing was purchased by Deo Prasad Singh, the brother of Ram Pyare Singh and his two nephews, namely, Sudheshwar Singh and Vidya Singh who all three had separated before 1970 and, thereafter, Deo Prasad Singh who was issueless made a deed of gift of his purchased share of the land on which Deo Bhawan is standing in favour of Vidya Singh by a registered deed of gift dated 3-2-1976 and, thereafter, Sudheshwar Singh and Vidya Singh sold their lands on which Deo Bhawan is standing to Meena Devi, mother of appellants/defendants by two separate registered sale deeds dated 1-3-1986 has also not been challenged by the plaintiffs/respondents. His further argument that Vijoy Kumar Singh and his wife Meena Devi had taken a loan from the State Bank of Bikaner and Jaipur, R Block Branch, Patna for further construction and development of building which is now known as Deo Bhawan has also not been challenged and they used to pay taxes to Patna Municipal Corporation and tax receipts are issued in their names have also not been challenged. From these arguments, so far Deo Bhawan is concerned, it appears that it was acquired by Vijoy Kumar Singh and Meena Devi and was subsequently developed by Vijoy Kumar Singh and Meena Devi and Ram Pyare Singh through whom the respondents/plaintiffs are claiming share in this property had no concern with this property, About other suit properties which are agricultural land it is the own case of respondents/plaintiffs that there was a partition effected by a registered deed dated 26-6-1987 of joint family property. It is their admission that they were not parties to this partition. The ground for their not becoming party, as stated by them, is that they had no knowledge about this partition. The case of appellants/defendants is that Vidya Singh son of late Janak Singh had also made a gift of land to his son-in-law in the year, 1979 and he also as Ram Pyare Singh,

instead of executing a deed of gift, gave the shape to this transfer as sale deed but that deed was without any consideration because it was executed out of love and affection for his daughter and son-in-law and this deed contains recital of partition dated 26-6-1987 and Manoranjan Kumar, plaintiff No. 4 is one of the attesting witness to this sale deed. This unchallenged submission of appellants/respondents suggests that plaintiff No. 4 was aware of the partition in the family which was effected by a registered deed dated 26-6-1987 and the case of respondents/plaintiffs is that for the first time in the month of Jeth, 2001, Binda Devi, plaintiff No. 1 came to know about this partition when Vijoy Singh told her is not convincing.

10. The respondents/plaintiffs in their plaint have stated that so long Vijoy Singh was alive, he used to care for them and used to give share for the produce and cash income to them but after his death, the attitude of defendants completely changed and they are not now giving any share to respondents/plaintiffs compelling them to file the suit for partition. The fact that Ram Pyare Singh gave two kathas of land to Binda Devi for constructing a house is not in dispute. The only dispute is about the nature of this transfer. According to appellants/respondents, it was a gift whereas according to respondents/plaintiffs, it was a pure sale deed and was for consideration money which was paid by Binda Devi. If the argument on behalf of respondents/plaintiffs that Binda Devi purchased two kathas of land from Ram Pyare Singh is admitted, it suggests that a daughter purchased land from her father after paying entire consideration money. It further suggests that even father did not give the land without consideration to his daughter when she required it for constructing a house and she had to purchase it from him. So, during the lifetime of Ram Pyare Singh, his daughter Binda Devi did not claim any share. The reason for doing so, as stated by appellants/defendants, is that because, being a married daughter, she had no share in the joint family property and when she got two kathas of land from her father as gift although the deed was given the shape of sale deed, she was satisfied with her claim and she renounced her interest in the joint family property and agreed with the partition in the family arrangement dated 26-6-1987 among remaining sharers and also that she would not have any share in the property. The further case of appellants/defendants is that before Ram Pyare Singh died in the year, 1982, Deo

Prasad had already died in the year, 1976 and partition in the family took place in the year, 1987 and at the time of partition neither Binda Devi nor her any son claimed any share or any produce from the income of family property. Admittedly, the property is in possession of appellants/defendants. The case of respondents/plaintiffs is that so long Vijoy Singh was alive, he used to take care and give share to them but after his death in the year, 2001, the appellants/defendants are not giving anything to them. As stated above, respondents/plaintiffs were not parties to a partition of family properties which was effected on 26-6-1987 and they are claiming their share on the basis of being daughter and grandsons of Ram Pyare Singh and out of suit properties, Deo Bhawan was acquired and developed by Vijoy Singh and Meena Singh. parents of appellants/defendants and not by Ram Pyare Singh. For agricultural property, their case is that till the death of Vijoy Singh who died in the year, 2001, they were getting share but after his death, they are not getting the same and, therefore, they have come for partition. The suit is still pending. No case of waste, damage or alienation of property by defendants has been made out. The impugned order shows that by order dated 21-7-2003, prayer of respondents/plaintiffs with respect to injunction has been allowed by Court below and appellants/defendants have been restrained from making any transfer or alienation or sale of suit properties leaving 5/9th share. The Court below has taken this order as a prima facie case in favour of respondents/ plaintiffs. It might have been a prima facie case for issuing injunction restraining the appellants/defendants from alienating or selling the 5/9th share of suit property but this fact alone cannot be a ground for appointment of a receiver. By Hindu Succession (Amendment) Act, 2005, daughter of a co-parcener has been made a co-parcener by birth in her own right in the same manner as the son but then Sub-section (5) of Section 6 of Hindu Succession Act provides that nothing contained in Section 6 shall apply to a partition which has been effected before the 20th day of December, 2004 and explanation appended to Sub-section (5) shows that partition means any partition by execution of a deed of partition duly registered under the Registration Act or partition effected by the decree of a Court. Admittedly, in this case, partition of registered deed had taken place on 26-6-1987. In view of the facts stated above, I do not find it a fit case for appointment of a receiver.

11. In the result, this appeal is allowed and the impugned order of Court below appointing a receiver in respect of 5/9th share of suit properties is hereby set aside. I. A. No. 5465 of 2005 also stands disposed of.

12. All findings and observations of this order are confined to decide the question of appointment of receiver only and will not affect the decision of the suit which is pending between the parties before the Court below and without being prejudiced by this order the court below will decide the suit on the basis of materials brought on record by the parties in support of their respective cases.

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