

Smt. Sano Devi and ors. Vs. Smt. Rajo Devi and ors.

Smt. Sano Devi and ors. Vs. Smt. Rajo Devi and ors.

SooperKanoon Citation : sooperkanoon.com/125859

Court : Patna

Decided On : Jan-21-2000

Judge : B.P. Sharma, J.

Appeal No. : A.F.O.D. Nos. 31 and 43 of 1973

Appellant : Smt. Sano Devi and ors.Lakho Singh

Respondent : Smt. Rajo Devi and ors.Sano Devi and ors.

Disposition : Appeal Dismissed

Prior history : B.P. Sharma, J. 1. Both these appeals have been preferred by two sets of defendants in T.S. No. 17 of 1964/32 of 1969 in which judgment was passed on 30th of September, 1972 by the 1st Additional Sub-ordinate Judge, Monghyer. The appellant in F.A. No. 31 of 1973 happened to be the defendant 1st set while the appellant in F.A. No. 43 of 1973 was defendant No. 7 in the suit. 2. The plaintiffs in the suit were Smt. Rajo Devi and Smt. Malti Devi. Smt. Rajo Devi claimed herself to be the wife of la

Judgement :

B.P. Sharma, J.

1. Both these appeals have been preferred by two sets of defendants in T.S. No. 17 of 1964/32 of 1969 in which judgment was passed on 30th of September, 1972

by the 1st Additional Sub-ordinate Judge, Monghyer. The appellant in F.A. No. 31 of 1973 happened to be the defendant 1st set while the appellant in F.A. No. 43 of 1973 was defendant No. 7 in the suit.

2. The plaintiffs in the suit were Smt. Rajo Devi and Smt. Malti Devi. Smt. Rajo Devi claimed herself to be the wife of late Shivcharan Singh (deceased). The Genealogical table has been given at the foot of the plaint in Schedule-A, according to which, one Din Dayal Singh was the common ancestor of the parties. He had three sons, namely, Churaman Singh, Tengar Singh and Makhan Singh. Tengar Singh died issueless leaving behind his brothers Churaman and Makhan Singh. Churaman has three sons, Elaichi Singh, Kedar Singh and Ashrfi Singh. The Branch of Churaman Singh separated from the Branch of Makhan Singh, prior to the survey operation. Makhan Singh left behind two sons, namely, Ram Charan Singh and Shivcharan Singh who were joint and members of a Joint Hindu Mitakshara family. The elder brother happened to be the Karta of the family. He was original defendant No. 1 who subsequently died and his wife was added as defendant in his place. He had three sons Garibdas Singh, Banshi Singh and Ram Lakhan Singh. Garibdas had a son Ram Swarath Singh. Banshidass had his sons Ram Padarath Singh ' and Nunulal Singh. Ram Lakhan was the youngest of the three brothers. The details of property are in Schedule-B of the plaint and the plaintiffs claimed half share in the property and prayed for a decree for partition declaring half share in the suit property in favour of the plaintiffs and further prayed for appointment of a pleader Commissioner to prepare the necessary Takthabandi to be allotted to the plaintiffs and the defendants separately.

3. The two sets of written statements were filed in the suit. One set of W.S. was filed on behalf of original defendant No. 1 and the defendants 2 and 3. According to them, the entire suit for partition is not maintainable and the suit is barred by the provisions of Section 34 of the Specific Relief Act and also because of the non-joinder of the necessary parties. It has been further stated in the W.S. that Ram Padarath Singh who has been made defendant No. 6 in the suit is not connected with the family and the plaintiffs have no right, title or interest in the property not they are in possession over any part of the land/property and the entire suit has been filed on the basis of concocted story and baseless facts. Therefore, the suit

is also barred under Sections 36 & 42 of the Specific Relief Act. The Genealogy has also been challenged to the effect that the plaintiff No. 1 was never married wife of late Shivcharan Singh and the plaintiff No. 2 was never the daughter of Shivcharan Singh. It is also further stated that actually, there was a partition between the said Shivcharan and the defendant No. 1, the two brothers, and they were separate from each other and they did not constitute any joint Mitakshara family. One branch did not have any concern with another after this partition. It is further stated that originally, the deceased Shivcharan Singh and the defendant No. 1 happened to be the member of a joint family, but after the partition, they became separate from each other and one had no concern with another. It is further stated that Shivcharan died in the year 1963 but it is incorrect to say that the plaintiff succeeded to his share in the property after his death, as they do not happen to be the legal heirs of deceased Shivcharan. It is further stated that Shivcharan was actually married with one Smt Sudama Devi, daughter of one Meghu Singh of village Damodarpur, P.S. Lakhisarai in the district of Monghyr and from this marriage, one Lakho Singh was born. Thereafter, Smt. Sudama Devi died. It is further stated that after the death of his wife, Shivcharan brought plaintiff No. 1 from a Mathia near village Nawadah in the district of Gaya and without marriage, he started keeping her as concubine. It is also further stated that from this illegal relationship, between deceased Shivcharan and the plaintiff No. 1, a daughter (Plaintiff No. 2) was born but the real heir of Shivcharan happened to be Lakho Singh. This Lakho Singh had differences with the plaintiff No. 1 and he did not allow possession to the plaintiffs over the property left behind by Shivcharan and, therefore, a story has been concocted in order to get share by the plaintiffs. It is also stated that after the partition between Shivcharan and the defendant No. 1, defendant No. 1 did not continue to be the Karta of the joint family, as alleged. It is stated that the averment in the plaint is incorrect that Shivcharan Singh had no son or male issue. This fact has been deliberately suppressed by the plaintiffs with dishonest intention. It is also denied that the plaintiffs were in danger at the hands of the defendants and it is also denied that there was any demand of partition or refusal by the defendant on 22nd May, 1964, as alleged, because the occasion did not arise. It is further stated that actually Lakho Singh, who was the son of Shivcharan, remained in possession over the property belonging to Shivcharan

after his death and he has the property mentioned in Schedule-B in his possession. Regarding some of the properties detailed in Schedule-B, it has been stated that it has been wrongly described as suit property over which the plaintiffs and the defendants have joint possession. It appears that at a later stage, when said Lakho filed an intervenor-petition and the Court allowed this petition and he was added as defendant No. 7 in the suit and he also filed a separate W.S. practically supporting the case of defendant Nos. 1, 2 and 3 in their W.S. After perusing the entire pleadings in the suit, some issues were framed and the same were recast subsequently and the issues for decision were:

- (1) Is the suit as framed maintainable?
- (2) Have the plaintiffs any valid cause of action for the suit?
- (3) Is the suit barred by Section 34 of the Specific Relief Act?
- (4) Was the plaintiff No. 1 the legally-married wife of Sheocharan Singh?
- (5) Are the plaintiffs entitled to a decree for partition, as claimed? and,
- (6) To what relief or reliefs, if any, are the plaintiffs entitled to get?

After the entire evidence was led and the arguments were heard, the learned trial Court proceeded to decide the issues. Regarding Issue No. 4, after considering the evidence on the record, the learned trial Court came to the conclusion that so far as Issue No. 4 is concerned, it was answered in the affirmative, as Rajo Devi, the plaintiff No. 1 was held to be the legally married wife of Shivcharan Singh. Regarding Issue No. 5, the evidence was discussed and the learned trial Court held in the conclusion that the plaintiffs are entitled to half share in the property. Regarding Issue No. 1, it was held that the suit was maintainable. Regarding Issue No. 3, it was held that the suit was not barred by Section 34 of the Specific Relief Act; as this issue was not pressed. Thereafter, both the Issue Nos. 2 and 6 have been answered in favour of plaintiffs and the suit was finally decreed and a preliminary decree was accordingly passed which led to filing of the present two appeals.

4. It has been contended on behalf of appellants that the judgment of the learned lower Court is bad in law as well as on facts because the Court below did not properly appreciate the evidence on the record and recorded the findings without properly scrutinising the evidence, both oral and documentary. It is contended that the plaintiffs failed to prove the unity of the and possession with the defendants and the trial Court also ignored that certain properties belonged to the branch of Elaichi and others. Similar instances have been given that in various paragraphs of the judgment, the learned trial Court did not properly appreciate the evidence and decided the suit and decreed the same on conjecture and surmises. Therefore, it has been contended that the judgment of the trial Court is fit to be decided.

In the suit, altogether fourteen witnesses have been examined on behalf of plaintiffs and eighteen witnesses have been examined on behalf of defendant 1st set, whereas fifteen witnesses have been examined on behalf of defendant 2nd set, i.e. defendant No. 7. A large number of documents have also been filed. Out of the documents filed on behalf of plaintiffs, Ext. 1 Series are the rent receipts, Ext.-2 is the Choukidari receipt, Ext.-3 Series are the salardeeds executed at different points of time in favour of different members of the family. Ext.-4 is the certified copy of the mortgage-deed in favour of Ramcharan Singh and Shivcharan Singh, the two brothers. Ext.-5 is the voter-list. Ext-6 is the certified copy of the order-sheet of Case No. 22 (M) of 1947. Ext-7 is the certified copy of deposition of Yamuna Singh in case No. 745-C of 1965. Ext-8 is the original Khatian. Ext.-9 is the certified copy of the judgment in Case No. 745-C of 1945. Ext.-10 is the certified copy of Paribarik Pustika and Ext.-11 is the original copy of Paribarik Pustika. So far as the defendants are concerned, some documents have been filed on their behalf also. Ext-A is a sale-deed executed in favour of Ganga Sagar and another in the year 1964, Ext-A/1 is the sale-deed executed in favour of Banshi Singh and others in the. year 1955. Ext. A/2 is the sale-deed executed in favour of Banshi Singh. Ext.-A/3 is the sale-deed again executed in favour of Banshi Singh and others in the year 1961. Ext.-A/4 is the sale-deed executed in favour of Ramcharan Singh in 1934. Ext.-A/5 is the sale-deed executed in favour of Ramcharan Singh in the year 1935. Ext.-A/6 is the sale-deed executed in favour of Ram Charan Singh in the year 1936. Ext-A/7 is the sale-deed again executed in

favour of Ramcharan Singh in the year 1936, Ext-A/8 is the sale-deed executed in favour of Ramcharan Singh in the year 1936. Ext-A/9 is the sale-deed executed in favour of Ramcharan Singh in the year 1950. Ext.-A/10 is the sale-deed executed in favour of Ramcharan Singh in the year 1962. Ext.-A/11 is the sale-deed executed in favour of Ramcharan Singh in the year 1960. Ext.-A/12 is the sale-deed executed in favour of Ram Swarath Singh in the year 1965. Ext.-A/13 is the sale-deed executed in favour of Banshi Singh and another in the year 1959. Ext.-A/14 is the certified copy of the sale-deed executed in favour of Umar Singh and Asharfi Kuer in the year 1936. Ext.-A/15 is the sale-deed executed in favour of Ramcharan Singh and others in the year 1943, Ext.-A/16 is the sale-deed executed in favour of Garib Das in the year 1957 and Ext.-A/17 is the sale-deed executed in the year 1919. Ext.-E/3 is the mortgage-bond executed in the year 1948. Ext.-E/4 is the mortgage-deed executed in favour of Ramcharan Singh in the year 1940. Ext. E is the mortgage-bond executed in favour of Shivcharan Singh in the year 1927. Ext.-E/1 is the mortgage-bond executed in favour of Shivcharan Singh and Ext.-E/2 is the mortgage-bond executed in favour of Ramcharan Singh in the year 1927. Ext-B Series are the rent receipts in favour of Ram Charan Singh, Ext.-C Series are the Choukidari receipts in favour of Ramcharan Singh and Ext-F is the certified copy of deposition of Garibdas in a criminal case made in the year 1967. So far as the defendant 2nd set are concerned, Ext-A-1 is the original sale-deed dated 26th July, 1936 executed by Baiju Kumar in favour of Shivcharan Singh. Ext.-A-1/1 is the original sale-deed dated 21st July, 1950 executed in favour of Shivcharan Singh. Ext.-A-1/2 is the sale-deed dated 2nd July, 1960 executed by Nekho Kumar in favour of Shiv Charan Singh Ext-A-1 /3 is the sale-deed dated 22nd June 1954 executed by Jagdish Singh in favour of Lakho Singh and Ext-A-1/4 is the sale-deed executed by Jairam Kumar iii favour of Lakho Singh. Ext-B-1 is the oiginal mortgage-bond dated 16th July, 1960 executed by Yamuna Singh in favour of Shivcharan Singh. Ext-C-1 is the Choukidari receipt in the name of Nageshwar Singh. Ext-C-1/5 to Ext-C-1/7 are the Choukidari receipts in favour of Subelal. Ext-D-1 to Ext-D-1/7 are the rent receipts in the name of DebiPoddar. Ext-C-1/8 to Ext-C-1/10 are the Choukidari receipts in favour of Deo Narayan Singh and Abhilakh Singh. Ext.-E-I is the endorsement on hand-note with signature, Ext.-E-1/1 is the endorsement with

signature of Sudbharna deed and Ext-E-1/2 is the endorsement with signature on Sudbharna-deed.

5. By producing these documents, the defendants tried to show that since long, the branches of deceased Shivcharan Singh and his brother Ramcharan Singh were having separate transactions and, therefore, it has been contended that these documents go to show that the branches of Shivcharan and Ramcharan were not joint; rather, they were separate in mess and business. It has also been tried to show that after the death of Shivcharan, his son Lakho had also some separate transactions. On the other hand, by producing the documents the plaintiffs have tried to show that there are sufficient materials to show that both the branches were common and it has also been alleged on behalf of plaintiffs during evidence that this Lakho Singh, defendant No. 7 of the second set, actually happened to be the son of Ramcharan who has been described as Ram Lakhan Singh in the Genealogical Table and it has been alleged that this Ramlakhan Singh has been set up as Lakho Singh and a false plea with deliberate intention to deprive the plaintiffs of their share has been taken that Shivcharan actually left behind a son, namely, Lakho Singh. It has been contended on behalf of plaintiffs that since Ram Charan Singh and Shivcharan Singh were full brothers, there was presumption in favour of their jointness and since a plea of partition has been taken on behalf of defendants, it was their duty to prove this partition which the defendants have not been able to prove. It was also contended on behalf of the plaintiffs that there are sufficient materials in the original evidence of witnesses that Shivcharan had actually legally married plaintiff No. 1 and out of this legal wedlock, the plaintiff No. 2 was born. Therefore, it was contended on behalf of plaintiffs that since partition could not be proved by the defendants and since the plaintiff No. 1 has been proved to be the legally-married wife of Shivcharan and plaintiff No. 2 has been proved to be the daughter of Shivcharan and plaintiff No. 1, they are entitled to the share of Shivcharan after his death and because there was no partition in the family, the plaintiffs continued to be jointly in possession of the property in suit with Ramcharan and his branch and, therefore, the suit was fit to be decreed.

6. As it has been stated earlier, after considering the evidence of both the parties, oral as well as documentary, the learned trial Court was satisfied that the plaintiffs happened to be the legal heirs of deceased Shivcharan Singh and it has also been proved that the plaintiffs continued to be joint with the branch of Ramcharan Singh and, therefore, the suit was decreed in favour of the plaintiffs.

7. The Issues for consideration, therefore, are:

(i) Whether Ramcharan and Shivcharan were joint in the year 1937 when Shivcharan died and whether the plaintiffs continued to be joint with the defendants 1st set?

(ii) Whether the acquisitions were made separately or jointly?

(iii) Whether the plaintiffs are widow and daughter of Shivcharan Singh (the deceased)?

(iv) Whether Elaichi's property was partible?

It was contended on behalf of appellants that since some property in dispute stands in the name of Elaichi and his branch and since Churaman's branch is not party to the suit, mentioning of the land standing in their names being made subject-matter of partition, the suit is defective and the same was not fit to be decreed.

8. So far as the witnesses on behalf of the plaintiffs are concerned, P.W. 14 happened to be a formal witness and the rest are witnesses on the point of jointness and the relationship between the deceased Shivcharan and the plaintiffs. Out of the eighteen witnesses, examined on behalf of defendant 1st set, D.Ws. 1, 8, 11, 12, 15 and 17 are the formal witnesses and the rest are witnesses on the point of possession and genealogy.

9. P.W. 1 Sitaram Singh has supported the claim of the plaintiffs. P.W. 3 has stated about the possession but his evidence is not significant. P.W. 5 stated about the payment of rent. It has been pointed out on behalf of appellants that so far as P.W. 6 is concerned, he has stated in paragraph 4 of his deposition that the

Mosammat, meaning thereby, plaintiff No. 1 was living in a Kachcha house for the past 25-30 years and, therefore, it was contended on behalf of the appellants that it goes to show that the plaintiff No. 1 was separate from the defendants. Some contradictions in the statements of witnesses on this point have also been pointed out. It has been pointed out on behalf of appellants that in the plaint, it was not mentioned as to who was the father of the plaintiff No. 1 and when the marriage between the deceased (Shivcharan Singh) and the plaintiff No. 1 took place and in this context, it has been pointed out that D.W. 2 has supported the story of partition and separate cultivation in the family. D.W. 3 is also a witness on this point. D.W. 4 is a formal witnesses. D.W. 5 has stated that Ramcharan Singh and Shivcharan Singh separated in the year 1935. He was deposing in the year 1972 and his age at that time was 60 years. So he must have been born in 1912 and, according to him, he saw the partition in 1935 when he was aged about 23 years. According to him, a Pucca house of the defendants was constructed five years after the partition, i.e., in the year 1940-41. He has also stated that the wife of Ramcharan died 8-9 years after the earthquake. The earthquake took place in the year 1934 and it comes to about 1943. According to him, at that time, Ramlakhan was aged 3-4 years. D.W. 6 has also supported the story of partition. He had executed a sale-deed in favour of Lakho Singh at the instance of Shivcharan Singh. This document is Ext.-A/13. D.W. 7 is said to have supported the story of partition, though he said that there was partition between the two branches 20 years ago, i.e. in the year 1951-52. This is against the case of defendants according to whom partition took place long ago. D.W. 9 has also stated about the separate existence of two families. D.W. 11 also supported the case of defendants by supporting the story of partition. D.W. 12 is on the point of genealogy and relationship. D.W. 13 is supposed to have supported the story of partition.

10. According to D.W. 14, both Ram Charan Singh and Shiv Charan Singh were married in Damodarpur and one Maghu was the father-in-law of both the brothers. He has also further stated that Shivcharan had brought plaintiff No. 1 from Parimath near Nawada and, according to him, Shivcharan had become invalid for two years prior to his death and during this period, Garibdas was managing the affairs. He, however, admits that there is no paper available regarding partition. He admitted that partition had taken place in which Shivcharan had got 30 bigha of

land and, according to him, Shivcharan died 8-9 years before he deposed. According to him, Sudama, the first wife of Shivcharan, died 2-3 months after the earthquake which took place in the year 1934. It makes the story of defendants absurd, because Lakho was aged about only 16-18 years when he deposed in Court and he himself gave his age as 19 years. If it is so that he was aged about 19 years in the year 1972, when he deposed, he could not have been born near about earthquake in 1934. Defendant No. 1, Ramcharan himself denied that Lakho was his son but it does not appear to be correct, because, if the first wife of Shivcharan, as alleged, died near about earthquake and Lakho is said to be son of Shivcharan with his first wife, he must have been born in 1934 which is falsified. D.W. 16 has just stated as a hearsay witness that he learnt that Shivcharan had brought plaintiff No. 1 from a Mathia and, according to him, he had never seen Rajo Devi, the plaintiff No. 1. Ext.-E is a document of the year 1936 which indicates that Ramcharan had received his price of share in the land from Shivcharan and thereby, it is contended that Shivcharan was separate from Ramcharan in the year 1936. It has been contended on behalf of appellant that from the evidence oral as well as documentary, it appears that both the branches had separate dealings. From amongst the witnesses on behalf of defendant 2nd set, the statement regarding marriage of Shivcharan with another woman, said to be mother of Lalcho Singh, took place is there and it has been stated that Lakho lived in village Damodarpur after the death of his mother. It has been contended in this connection on behalf of the respondents that in the W.S. filed in this case, no specific date of partition was given and, however, it was vaguely stated in the 2nd Section that it was after the earthquake of 1934, about 3-4 months thereafter that there was partition. It comes to near about 1935, as alleged by some witnesses also. It has also been pointed out on behalf of respondents that in the W.S., a Schedule has been given as property attached to Shivcharan, but in 1970, it was given a go, by when the 2nd amendment was brought. Therefore, it has been pointed out that the defendants were not themselves sure about the property allotted to the parties. It has also been contended that there is no mention of partition or separation in any of the documents filed in the suit and there is also no oral evidence available on the point of mode of partition. It has been pointed out that D.W. 5 has spoken about the partition but without details of land allotted to the

parties. D.W. 14 Ramcharan, defendant No. 1, also did not state anything in this regard. However, so far as the sale-deeds are concerned, it has been contended on behalf of respondents that it has been tried to show that the sale-deeds were taken on several occasions by different documents but according to Ext.-3/P which is of the year 1940, a sale-deed was taken in favour of both the brothers Ramcharan and Shivcharan and both were shown having one share each. Therefore, it has been contended that it clearly goes to show that in the year 1940, both the brothers were joint. Similarly, it has been pointed out that Ext.-4 was executed on 6th December, 1951 and Ext.-4/A was executed in 14th May, 1951 and in both these documents, names of both the brothers occurred. It has also been pointed out on behalf of respondents that the Paribarik Pustika (Ext.-10) shows that the plaintiffs were members of the same family. It has also been pointed out that from Ext.-7 which is the certified copy of deposition of D.W. 7 in a different case, it appears that Rajo Devi, plaintiff No. 1 was wife of Shivcharan Singh. It has also been pointed out that Ext.-A1 is a document of the year 1928 which was a mortgage-deed in favour of Shivcharan Singh. It shows that the documents were executed in favour of Shivcharan Singh alone in the year 1928 also whereas the plea of the defendants is that partition took place in 1935. Therefore, it goes to falsify the case of the defendants. It has been contended that it is obvious that the family had sufficient landed-property and at different times, different properties were acquired in the names of different members of the family from the nucleus of the joint family and, therefore, merely because some documents have been executed in favour of individual members of the family, it can never be presumed that there was a partition in the family. Therefore, it has been contended that the onus of the defendants could not be discharged in this case, because there is no positive material to show that there was any partition between the two branches.

11. So far as the factum of marriage is concerned, P.W. 1 who happened to be a co-villager of the parties, supported the marriage between deceased Shivcharan and the plaintiff No. 1 Rajo Debi. Similarly, P.W. 3 of village Koria and P.W. 4 again of village Koria have also supported the story of marriage. P.W. 12 happened to be a relation of Rajo Devi and he has also supported this fact. It has also been pointed out on behalf of respondents that D.W. 2 in paragraph 6 of the

deposition has stated that wife of Shivcharan was living in a Kachcha house. D.W. 3 has described the person as widow, son-in-law and daughter of the deceased. So he admits the relationship between the deceased Shivcharan and the plaintiff No. 1. Similarly, D.W. 5 also admitted the widow as wife of Shivcharan and D.W. 1 himself has also admitted this fact in paragraph 26 of his deposition. Some statement has been made to this effect by D.W. 16. a man aged about 65 years in paragraphs 2, 3 and 4 and it is obvious that there is no positive materials to show that Rajo Devi was a concubine of Shivcharan. It is admitted that Rajo Devi lived as wife of Shivcharan and the materials have been brought on the record on behalf of plaintiffs-respondents that Rajo Devi was legally married to Shivcharan. There is no positive material to show that she was a concubine and not legally married wife of Shivcharan Singh.

12. So far as the question of separate acquisition of the branch of Ramcharan is concerned, it has been urged on behalf of respondents that no separate source of income to make this acquisition by the defendants has been disclosed. D.W. 14 has tried to support the story of partition, but he has failed to disclose the mode and manner of partition and the entire evidence on this point is incompetent and absurd. It has been pointed out that in the Choukidari receipt dated 30th June, 1936, it was pointed out that it was granted in favour of Madhuban Singh. It indicates that there was no partition in the year 1934 or 1935 as alleged on behalf of defendants. It has also further been alleged that so far as Annexure-10 and Annexure-10/1 are concerned, they indicate that the plaintiffs were members of the same family. Therefore, it has been submitted that the defendants-appellants have failed to discharge their onus of proving the factum of partition pleaded by them and the presumption of jointness is available.

13. It has been further stated that even if some land standing in the name of Elaichi and others has been included and they have not been impleaded as parties, they would be supposed to have held the land as tenant-in-common and it has also been pointed out that in paragraph 10 of the W.S., statements in paragraph-2 of the plaint is admitted which shows that the suit property belonged to the joint family of the plaintiffs and the defendants. It has, therefore, been submitted on behalf of respondents that from the materials, it becomes clear that

Lakho Singh could not have been the son of deceased Shivcharan Singh and there is no positive material to show that Shivcharan had married another woman before he married plaintiff No. 1. In such a situation, there is no alternative but to hold that the plaintiffs happened to be the legal heir of deceased Shivcharan Singh who died in jointness with his brother Ramcharan Singh, deceased defendant No. 1 and since there is no positive material to show partition in the family, the presumption of jointness is available. In such a circumstance, if the learned trial Court held that the plaintiffs were entitled to partition, and allotted half share in the suit property to them, there does not appear to be any illegality and impropriety in it and the findings of the learned trial Court are based on evidence and the circumstances appearing in the case. In this view of the matter, there does not appear to be any reason to interfere with the findings of the trial Court in these appeals.

14. Accordingly, both the appeals aforesaid are dismissed and the judgment of the learned trial Court in preliminary decree is upheld.

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