

Siya Ram Singh and ors. Vs. Most. Longia Devi and ors.

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Court : Patna

Decided On : Apr-06-2007

Judge : Syed Md. Mahfooz Alam, J.

Appeal No. : Appeal From Original Decree No. 84 of 1985

Appellant : Siya Ram Singh and ors.

Respondent : Most. Longia Devi and ors.

Advocate for Def. : Ashok Kumar Sinha, No. 3, Adv. for Respondent Nos. 1 and 2, Raghib Ahsan, Ataul Haque, Nilima Sinha and Deepak Kumar Singh, Advs. for Respondent Nos. 3, 4 and 5 and Kamlesh Kumar, Prabha Kumari and Mr

Advocate for Pet/Ap. : Parmeshwar Prasad and Manoj Kr. Sinha, Advs.

Disposition : Appeal dismissed

Judgement :

Syed Md. Mahfooz Alam, J.

1. This First Appeal has been preferred against the judgment dated 1st September, 1984, passed by Sri D.P.S. Choudhary, 1st Additional Sub-Ordinate Judge, Patna, in Title Suit No. 193 of 1975 whereby the learned Sub-Ordinate Judge has been pleased to dismiss the suit of the plaintiffs (respondent Nos. 1 and 2) seeking 1/4th share in the properties mentioned in Schedule-II to IV to the

plaint. The present appellants were intervenor- defendant Nos. 16 to 23 in the Title suit.

2. The plaintiff Rajendra Singh and others (respondent Nos. 1 and 2) had brought Title Suit No. 193 of 1975 in the Court of the Sub-Ordinate Judge, Patna, for partition of his 1/4th share in the suit properties mentioned in Schedule-II to IV of the plaint and for carving of separate Takhta in respect of his share by appointing survey knowing Pleader Commissioner.

3. The case of the plaintiffs, in brief, is that the plaintiffs and original defendants are members of Hindu joint family governing by Mitakshra School of Law. The defendant No. 1 Mukund Singh was the Karta of the joint family. Issri Singh was the common ancestor of the parties. He had seven sons, namely, 1. Mahabir Singh, Ram Dewan Singh, Lakhuman Singh, Lobhi Singh, Khuba Singh, Ram Sajjan Singh and Dhorha Singh. Out of the seven sons of Issri Singh, Ram Sajjan Singh and Lakhuman Singh died issueless and their properties devolved on their remaining brothers. One of the son of Issri Singh, namely, Khuba Singh separated by metes and bounds in the year 1920 from his remaining four brothers and thereafter he started managing the affairs of his family. After his death, his heirs came in separate possession of the properties and, as such, the property allotted to the share of Khuba Singh are not the subject matter of the suit. The defendant No. 1 Mukund Singh being the eldest member of the joint family consisting of the plaintiffs and defendants (except the heirs of Khuba Singh, who had separated in the year 1920) is the Karta of the joint family but as he became very old, he is unable to look after the needs of joint family, rather, ignores the interest of the joint family due to which there is discontentment amongst the members of the joint family. The said Mukund Singh shows undue favour to other defendants causing rift in the family. He is also keeping separate bank account in his name out of the income of the joint family and does not render any amount to the members of the joint family and the rent of the tenanted house received by him are not credited in the account of the joint family. Since the interest of joint family was not properly looked into by the defendant No. 1, as such, the plaintiffs expressed desire for separation and made request for partition of the joint family property on various dates but the defendant No. 1 denied to partition the joint family property and,

hence, the necessity of the suit arose. The plaintiffs claimed that in the joint family property they have 1/4th share, as such, the plaintiffs filed the suit for partition of 1/4th share in the suit property.

4. It appears from the record that four separate written statements were filed on behalf of the defendants; one was filed on behalf of the defendant No. 1, second one was on behalf of defendant No. 2, third was on behalf of defendant Nos. 13 and 14 and 4th was on behalf of intervenor-defendant Nos. 16 to 23. It appears that defendant Nos. 16 to 23 were impleaded as party in the suit by order dated 3.3.84 on the basis of the petition filed by them for impleading them as intervenor-defendants.

5. As per the written statements, the case of the defendant Nos. 1 and 2 and 13 & 14 is that although the plaintiffs and defendants are the descendants of common ancestor Issri Singh but they are no longer members of the joint family and complete partition amongst them had taken place long long ago. They have also denied that defendant No. 1 is the Karta of the joint family. According to their case the averment made in the plaint that in the year 1920 only Khuba Singh, one of the sons of Issri Singh separated and other four sons remained joint is altogether false and the fact is that at the time of said partition in the year 1920 all the remaining five sons of Issri Singh separated from each other through partition by metes and bounds and since then the members of different branches of the sons of Issri Singh were living separately from each other in mess and business and managing their share of property separately and, so, there was complete partition in the family in the year 1920 and since then no property left by Issri Singh remained joint. It is altogether false to say that defendant No. 1 being the Karta of the joint family was managing the joint family property and was maintaining bank account of the joint family. It is also false to say that he had sold any joint family property and, as such, rendering of any amount to the plaintiffs does not arise. It has been further stated that all the defendants and the plaintiffs are living separately and they have got separate possession as per the share allotted to each of the member. One is not concerned with the other in any manner in the matter of joint enjoyment of the property. There is no unity of title and possession between the parties with respect to the suit land and, as such, no question of partition of the

suit property arises. It has been stated in the written statement of defendant No. 1 at para 11 that the property described in Schedule-II are not the joint family property, rather, the exclusive property of defendant No. 1 and the plaintiffs in order to grab the property have made a false claim and set up a concocted story of jointness and, as such, the above named defendants have prayed to dismiss the suit of the plaintiffs.

6. The case of the intervenor-defendants (defendant Nos. 16 to 23) is that this suit was filed by the plaintiffs in collusion with the defendant No. 1 Mukund Singh in order to deprive the intervenor-defendants from getting share in the joint family property. The intervenor defendants being junior members of the family did not know in details about the immovable properties of the joint family and taking advantage of this fact the said Mukund Singh (defendant No. 1) was disposing of the joint family property without the knowledge and consent of the other members of the family. Some of the lands of joint family have been acquired by government and the defendant No. 1 being the senior most member of the family received the compensation money from the government but he did not distribute the compensation amount amongst the members of the joint family. Further case of the intervenor-defendants is that it is altogether false to say that in the year 1920 any partition took place between the sons of Issri Singh by metes and bounds and it is also false to say that in the said partition heirs of Khuba Singh had separated from his other four brothers. According to the case of the intervenor-defendants, the properties of Issri Singh was never partitioned amongst his heirs and they are still joint in which the intervenor-defendants have got 1/5th share but the plaintiffs and other defendants are in collusion with each other and, as such, the plaintiffs have filed this suit in order to usurp the share of the intervenor-defendants. The prayer has been made for partition of 1/5th share of the intervenor-defendants.

7. From perusal of the judgment of the trial court, it appears that on the basis of the pleadings of both the parties the trial court has framed as many as six issues which are as follows:

I. Is the suit as framed maintainable?

II. Have the plaintiffs got valid cause of action for the suit?

III. Have plaintiffs got unity of title and possession over the suit properties as claimed for?

IV. Was there any partition by Khuba Singh in the year 1920 as claimed for?

V. Are the plaintiffs entitled for 1/4th share in the properties or 1/5th share?

VI. To what other relief or reliefs are the plaintiffs entitled?

8. It appears that the trial court discussed issue Nos. 3, 4 and 5 simultaneously and after making full discussion on the above mentioned issues the trial court arrived at the finding that there is no unity of title and unity of possession with respect to the suit property between the parties. The Court further held that there was complete partition in the family of Issri Singh in the year 1920 and it is incorrect to say that there was partial partition in which only one of the brother Khuba Singh had separated. The trial Court further held that neither the plaintiffs have 1/4th share in the suit property nor the intervenor-defendants have 1/5th share in the suit property and thereafter on the basis of his above findings the learned Additional Sub-Ordinate Judge dismissed the suit.

9. Against the said dismissal of the suit, the intervenor-defendants now the appellants have filed this appeal.

10. The only question which arises for consideration in this appeal is whether there is unity of title and unity of possession between the parties with respect to the suit property or whether the suit property had been partitioned long long ago?

11. Before discussing the point mentioned above, I would like to point out that the case of the plaintiff Rajendra Singh and Sidh Nath Singh was that there was partial partition in between the remaining five sons of Issri Singh in the year 1920 and in the said partition one of the son of Issri Singh, namely, Khuba Singh separated from his other four brothers and, accordingly, the properties were partitioned between Khuba Singh on the one hand and the remaining four sons of Ishwari Singh, namely, Ram Devan Singh, Lobhi Singh, Mahabir Singh and Dorha Singh on the other hand and since then Khuba Singh was separate from his other brothers and after his death his heirs also remained separate and came in

exclusive possession of the properties of Khuba Singh. The said case of the plaintiffs was negated by the trial court and according to the finding of the trial court there was complete partition amongst the sons of Issri Singh long long ago and since the plaintiffs have not preferred any appeal against the said finding of the trial court and, so, the said finding has attained finality and, therefore, the question of partial partition, as stated by the plaintiffs, is not under consideration before me in this appeal. Thus, the only question for consideration before me is whether there is unity of title and unity of possession amongst the heirs of Issri Singh with respect to the suit property or whether there was complete partition between them long long ago?

12. It appears that at para 20 of the judgment of the trial court, the trial court has held that from the evidence of D.W.3, it is clear that there was complete partition in the family and every co-partners were dealing the properties respectively according to their shares. The court has further observed that admission of D.W.3 in para 5 that every co-sharers received the compensation amount according to their shares in the year 1958-60 is enough to prove that every co-partners were living separately. The court has further observed that there is substance in the contention of the defendants that the presumption of jointness is not so strong in this case and it is not very safe to presume that such a big family of late Issri Singh is continued to be joint upto now. The circumstances of the case support the defendants' case that there has been complete partition in the family long long ago. The court has further observed that the facts and circumstances and the evidence, as discussed above, prove beyond doubt that the family of late Issri Singh had separated in the year 1920. There was complete partition in the family and there was no partial partition, as alleged by the plaintiffs. So, the court held that the plaintiffs have got no unity of title and possession with respect to the suit property and neither the plaintiffs are entitled for 1/4th share in the property nor the intervenor defendants are entitled for 1/5th share as claimed by them. Let me see whether the above findings of the trial court are correct or not.

13. It has been submitted by the learned Advocate of the appellants (intervenor-defendants) that the Hindu Law presumes that every Hindu family is joint and the onus to prove that the family is separate lies on the person, who pleads that there

was partition in the family. In support of his argument, he has placed reliance upon the following decisions: (i) : [1967]1SCR93 (Girijanandini Devi and Ors. v. Bijendra Narain Choudhary) and (ii) : [1969]3SCR245 (Mudigowda Gowdappa Sankh and Ors. v. Ram Chandra Revgowda Sankha (dead) and Anr. This has been an accepted proposition that every Hindu family is presumed to be a joint family and the undivided joint family is the normal characteristic of a Hindu family. The presumption is that the members of a Hindu family are living in a state of jointness, unless contrary is proved. But now it is settled principle of Law that the presumption is stronger among the nearer relations, the remoter we go, the weaker is the presumption. To support my view, I place reliance upon the decision reported in : AIR1999 Pat189 (Chunia Mahatani and Ors. v. Sobha Mahto and Ors.). The relevant paragraph of the said decision is quoted below:

It is now the settled principle of law by the go of the day when the members in the joint family are increasing day to day then the notion of jointness of the Hindu family becomes weak and disruption comes automatically by way of possession of their shares even if there is no partition by any deed or by partition as contemplated by metes and bounds. But, such factum always remained to be seen from the circumstances of each case.

14. The geneological table attached with the plaint will show that the intervenor-defendants (now appellants) are fourth generation away from the common ancestor Issri Singh and, therefore, the notion of jointness amongst the heirs of Issri Singh has become very weak due to the remoteness of relationship with the common ancestor and also due to the lapse of a period of 50 to 60 years during which period the heirs of Issri Singh have admittedly seperated in mess and living. In this background, if the evidence adduced on behalf of the parties are scrutinised then the only conclusion will be that the heirs of Issri Singh had seperated long long ago and each of the branch of Issri Singh has got no concern with the affiaris of another branch. In this regard, the evidence of D.W.1 Satya Narayan Singh is that all the properties had been partitioned before his birth and the said partition was done by his ancestors. D.W.2 Mukund Singh corroborating his evidence has deposed that about 60 years ago all his pattidars had seperated and since then all the properties are separate and nothing is joint. The disruption of the joint status of

the heris of Issri Singh stands proved from the deposition of plaintiff Rajender Singh (P.W.1), D.W.1 Ramesh Singh and intervenor-defendants Ram Bilas Singh. They all have accepted this fact that the different branches of Issri Singh are separate in mess and living since long. P.W.1 Rajender Singh has accepted in his evidence at para-6 that he is seeing from his very HOSH that

all the parties are separate. Likewise, D.W.4 Ram Bilas Singh (intervenor-defendant) has deposed at para 1 of his evidence that all the five pattidars are separate in mess and living. The conduct and the indifferent attitude of plaintiff Rajender Singh (P.W.1) and intervenor-defendant Ram Bilas Singh (D.W.4) towards the so called joint property also prove that the suit properties are not joint family property of the parties as neither P.W.1 nor D.W.4 has got any idea about the details of the joint family property or about the joint family fund. P.W.1 Rajender Singh (plaintiff) has deposed at para 7 of his deposition that he can not say what are the properties for which he has sought partition. Likewise, D.W.4 (intervenor - defendant) has deposed at para 4 of his deposition that he has no knowledge about the properties belonging to the joint family. He has further deposed that he has got no idea where the properties situate. This indifferent attitude of P.W.1 and D.W.4 establishes beyond doubt that all the branches of the family of Issri Singh are separate in all respect and that is why they have got no concern with the properties of other branches. Thus, the above analysis of the evidence and the materials brought on record establish beyond doubt that all the branches of the family of Issri Singh had seperated long long ago and there is no unity of title and unity of possession between the parties with respect to the suit properties.

15. On the basis of above discussions, I have come to the conclusion that the finding of the trial court that the heirs of Issri singh had separated long long ago and that there is no unity of title and unit of possession between the parties with regard to the suit property is correct and, as such, the same is hereby upheld.

16. In the result, I do not find any merit in this appeal and the same is hereby dismissed. The judgment and decree of the court below are hereby upheld.